

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.25138 of 2012
Date of Decision: September 08, 2015

Ajit Singh

.....Petitioner

versus

The State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE JASPAL SINGH.

Present: Mr.R.S.Sihota, Senior Advocate with
Mr.B.R.Rana, Advocate, for the petitioner.
Mr.Balwinder Singh, Advocate,
for respondent Nos.2&3.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The controversy in this case pertains to unauthorized construction raised in MIG House No.HJ-580, MIG Category, Ferozepur Road, Ludhiana. The above-stated flat was allotted to Ms.Balwinder Kaur wife of Jasbir Singh on the terms and conditions contained in the allotment letter dated 17.09.1987 which are reproduced by the official-respondents in their written statement.

[2] Despite condition No.11 to the effect that “the allottee shall not sell, alienate or transfer any of his rights or interests whatsoever in the said property”, the original allottee executed a General Power of Attorney dated 26.05.1989 in favour of one Irvinder Singh son of Bhag Singh. The said GPA holder then applied for transfer of the flat in the name of Ajit

Singh son of Sant Singh. The later submitted an affidavit dated 11.12.1992 for the transfer of the dwelling unit in his favour and agreed that he shall abide by the terms and conditions of the original allotment.

[3] The subject flat was transferred in favour of Ajit Singh on 29.12.1992. According to the respondents, the original allottee as well as the transferee failed to pay the due installments and then it was revealed that they have further raised unauthorized construction in the dwelling unit where a shop had been constructed and the property was being used for commercial purposes. Show cause notice etc. were served on the transferee and finally vide order dated 09.05.2003 (P-3) the Estate Officer, PUDA, cancelled the allotment and forfeited the entire structure alongwith 10% of the amount already deposited.

[4] It appears that Ajit Singh-transferee had meanwhile further executed a Power of Attorney in favour of Smt.Gursharn Kaur w/o Darshan Singh, who claims to have filed an appeal against cancellation of allotment, in September, 2003. The said appeal was dismissed vide order dated 24.08.2011 on the ground of non-deposit of due arrears and for not removing the unauthorized construction.

[5] Smt.Gursharn Kaur thereafter is said to have deposited Rs.16,800/- on 12.04.2012. However, her revision petition was dismissed by the Special Secretary to Government of Punjab, Department of Housing and Urban Development, vide order dated 27.08.2012 (P-8) as despite having been given sufficient opportunities, the unauthorized construction was not removed.

[6] The aggrieved petitioner has approached this Court.

[7] Having regard to the stand taken by the respondents in their reply-affidavit, this Court vide order dated 09.04.2014 directed the Estate Officer, GLADA, to inspect the premises and submit a report whether mis-use of the premises had been stopped and whether or not unauthorized construction stood removed?

[8] The Greater Ludhiana Area Development Authority's (GLADA) consistent stand is that the petitioner has not removed the unauthorized construction so far. It was pointed-out by their counsel on 02.02.2015 that as per the latest inspection reports dated 14.07.2014 and 29.01.2015 the unauthorized constructions are still in existence and those constructions are not compoundable.

[9] The petitioner is undoubtedly a habitual defaulter. Though there are two inspection reports nailing his stand, yet he took a plea on 23.02.2015 that a part of the illegal structure leaving the load bearing walls intact, stood removed. In our considered view, the demolition of such wall does not amount the removal of unauthorized construction or stoppage of mis-use of the premises.

[10] The question that arises for consideration is whether the petitioner has raised unauthorized construction and if so, whether such construction is compoundable?

[11] Since the authorities have taken a categorical stand that unauthorized construction is still in existence and the same is non-compoundable, we have no reason to disbelieve them. The petitioner thus cannot continue to enjoy those unauthorized constructions under a misplaced sympathy. Any

lenient view at this juncture would amount to hoodwinking the building bye-laws and will encourage unscrupulous elements to by-pass the building norms or mis-use their premises. Only a reasonable time can be given to such like defaulters for the removal of illegal constructions, failing which resumption of site as the last resort would be fully justified in view of Full Bench decision of this Court in Dheera Singh versus U.T. Chandigarh Administration and others, 2012 (4) RCR (Civil) 970.

[12] For the reasons afore-stated, we dispose of this writ petition with the following directions:-

- (i) the orders of cancellation of allotment or dismissal of appeal and revision petition shall remain in abeyance for a period of six months;
- (ii) the Estate Officer, GLADA will serve the petitioner with a show-cause notice within two weeks from the date of receiving a certified copy of this order, specifying the unauthorized constructions as per the last inspection carried out by the authorities;
- (iii) the petitioner shall be required to remove such illegal constructions being non-compoundable, within a period of three months and shall file an affidavit of compliance alongwith photographs and other proof of removal of unauthorized constructions, with the Estate Officer, GLADA;
- (iv) the Estate Officer, GLADA may then obtain a fresh inspection report to satisfy that the unauthorized constructions have been

removed.

- (v) In case the unauthorized constructions are found to have been removed, the allotment shall be restored in favour of the eligible transferee subject to payment of due amount alongwith interest, compound interest and penalty.
- (vii) The Estate Officer shall also be at liberty to levy additional penalty for the unauthorized constructions, if so permissible under the Rules/By-laws/Policy. The allotment shall be restored and regularized only when such charges are deposited within two months in two equal installments.

[13] In the event of non-compliance of any of these directions, the order of cancellation of allotment dated 09.05.2003 as well as the appellate and revisional orders shall stand revived and the authorities shall be required to execute the same.

[14] Ordered accordingly.

[15] Dasti.

[SURYA KANT]
JUDGE

September 08, 2015
mohinder

[JASPAL SINGH]
JUDGE