

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.22765 of 2014 (O&M)

RESERVED ON: 20.10.2015

DATE OF DECISION: 05.11.2015

Brij Mohan

....Petitioner

versus

Union Territory, Chandigarh Administration, Chandigarh, etc.

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA**

Present: Mr. Baldev Kapoor, Advocate for the petitioner

Mr. Deepak Sharma, Advocate for the respondents

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner seeks a writ of certiorari to set aside an order of resumption dated 29.11.1971. The petitioner has also challenged an order dated 19.04.2012 rejecting his application for permission to sell the plot on the ground that it stands resumed. Lastly, the petitioner has challenged an order dated 05.12.2012 rejecting his application/representation dated 04.09.2012 to reverse the said orders.

2. The petitioner's father was allotted an industrial plot on 18.07.1967. The same was transferred to the petitioner's name on 04.12.1970. By an order dated 29.11.1971, the respondent stated that the petitioner had failed to complete the building on the plot within one year from the date of issuance of the allotment letter and the extension granted. The notice stated that the petitioner having failed to complete the building within the stipulated

period, the plot stood resumed and 10% of the price paid in respect thereof stood forfeited.

3. The petitioner's case is that he had no notice of a show cause notice dated 25.08.1971 pursuant to which the said order dated 29.11.1971 was passed. The petitioner filed an appeal against the said order which was disposed of by an order dated 01.02.1972 passed by the Chief Administrator. The Chief Administrator restored the site subject to the condition that the building was completed by 31.03.1973. The petitioner's contention is that he did not receive this order of the Chief Administrator as he had shifted his residence. He received a copy of the same only after 31.03.1973.

4. The petitioner filed a revision application against the order dated 01.02.1972 in the Court of the Chief Commissioner, Union Territory, Chandigarh. The revisional authority by an order dated 09.08.1973 restored the site to the petitioner subject to the condition that the building was completed in all respects according to the plan and the occupation certificate was obtained by 31.08.1974.

5. The petitioner thereafter filed an application for review of the order dated 09.08.1973 passed by the revisional authority. The revisional authority disposed of the application by an order dated 26.03.1975. It was observed that the office portion of the building had been completed up to the ceiling level, as confirmed by the building inspector, who was present at the hearing. The revisional authority, therefore, granted an extension up to 30.09.1975 to enable the petitioner to complete the construction and obtain the occupation certificate.

6. The petitioner filed a further review application before the revisional authority which was disposed of by an order dated 29.06.1977. It is important to note that the order records that the Estate Officer confirmed that the building was completed in all respects but that the petitioner could not obtain the occupation certificate within the period stipulated by the revisional authority. The revisional authority, therefore, by the said order, restored the site subject to the condition that the petitioner obtained the occupation certificate by 01.10.1977.

7. Thus, the petitioner, admittedly, had completed the construction of the building within the stipulated period as extended by the revisional authority. The petitioner's case is that he had made an application for the occupation certificate but that the application has not been processed to date. Unfortunately, the respondents state that the file pertaining to the matter is missing. Considering the manner in which this matter has proceeded, *prima facie* at least, it appears that an application for occupation certificate must have been made. It is difficult to imagine that a party who has invested so much time, effort and money in the property and had completed the construction of the building, would have failed to apply for the occupation certificate. We are conscious of the fact that the respondents' contention is that there are certain unauthorised constructions/structures upon the plot. That by itself would not mean that the occupation certificate was not even applied for. Had the application been processed, it is possible that the authorities would have informed the petitioner that the occupation certificate could not be granted on account of such structures. They would have given the petitioner an opportunity of remedying the breach and thereafter obtaining the

occupation certificate, if necessary, by making an application for extension.

8. The matter came to light only in the year 2012 when the petitioner's application to sell the property was rejected. The petitioner had by his letters dated 21.02.2012 and 12.03.2012 requested for a no-objection certificate to sell the property. The respondents by the impugned letter dated 19.04.2012 rejected the same on the ground that the site stands resumed. By the impugned order dated 05.12.2012, the respondents rejected the petitioner's application dated 04.09.2012 for annulment of the order of resumption dated 29.11.1971.

9. As we mentioned earlier, the petitioner had, admittedly, completed the construction on the plot within the stipulated period as extended from time to time. The only ground on which it is now contended that the plot stood resumed is that the petitioner failed to obtain the occupation certificate within the stipulated period. The petitioner's contention is that he had applied for the occupation certificate but that the same had not been processed. The respondents denied the same. Unfortunately, the petitioner does not have a copy of the application for occupation certificate and the respondents have misplaced the file.

10. The case, therefore, must rest on a balance of probabilities. Considering the facts and circumstances of the case, we are of the view that the balance of probabilities must tilt in the petitioner's favour. As we mentioned earlier, the petitioner had invested large amounts over the last almost 50 years in the property. The petitioner has also over the years invested considerable time and efforts in the same. It would be unfortunate

and unjust to deprive the petitioner of the property in such circumstances. These facts, in fact, indicate that the petitioner must have made an application for the occupation certificate.

11. The respondents have relied upon an order passed by the Court of Chief Commissioner dated 11.02.1980 in an application for review filed by the petitioner against the order of the Chief Commissioner dated 26.03.1975. The order, *inter alia*, records:-

"..... He could not only complete the formality of obtaining the occupation certificate within the time allowed. He prays that the present petition may be treated as a mercy petition and the petitioner allowed six months for obtaining the occupation certificate.

3. It is stated by the representative of the Estate Office that, though the building is complete, the petitioner has constructed a number of sheds in the court-yard which are not permissible under the law and which, according to the architectural control sheets, cannot be regularised. Therefore, occupation certificate cannot be granted in respect of that building."

It is not clear from this order whether the application for the occupation certificate had been made but was not granted by the authorities or whether the application was not made at all. The first sentence quoted above indicates that the application was made but the formality of obtaining it could not be completed within the time allowed and for the reasons stated thereafter viz. illegal construction of structures.

As we mentioned earlier, there is no record available with either the petitioner or the respondents regarding this aspect of the matter. We would, therefore, exercise our discretion under Article 226 in favour of the petitioner to the extent of permitting him to make an application for the occupation certificate and to direct the respondents to consider the same in accordance with law.

We exercise this discretion in view of the petitioner's undertaking to remove any unauthorised construction within a stipulated period.

12. The petition is, therefore, disposed of with the following order:

- (i) The petitioner shall make an application for an occupation certificate within two weeks from today. The respondents shall respond to the same. In the event of the respondents' deciding not to grant the occupation certificate, they shall furnish reasons for the same and give the petitioner an opportunity of remedying the breaches/defects, if any, within the period stipulated in the communication;
- (ii) In the event of the petitioner complying with the conditions within the period stipulated, the order of allotment shall stand and the order of resumption shall stand withdrawn/quashed;
- (iii) In the event of the petitioner failing to comply with the requisitions contained in the response and thereby failing to obtain the occupation certificate, the order of resumption shall stand; and
- (iv) In the event of the occupation certificate being obtained, the petitioner shall be at

liberty to make a fresh application for an
NOC to sell the property.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

05.11.2015
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(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether reportable: ~~YES~~[✓]/NO