

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.24832 of 2014

RESERVED ON: SEPTEMBER 03, 2015

DATE OF DECISION: SEPTEMBER 23, 2015

G.C.Dhuriwala son of Late Sh.Atma Ram GargPetitioner

Versus

Union Territory, Chandigarh and othersRespondents

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

Present: Mr.G.C.Dhuriwala, petitioner in person.

Mr.Vikram Vir Sharda, Additional Standing counsel
for respondents No.1 to 3.

Mr.S.P.Garg, Advocate for respondent No.4.

<><><>

TEJINDER SINGH DHINDSA, J.

Challenge in the instant writ petition is to the order dated 19.8.2014 passed by the Estate Officer, Union Territory, Chandigarh re-iterating the decision of the Chandigarh Administration in imposing misuse charges in respect of House No.616, Sector 18-B, Chandigarh (hereinafter to be referred as 'the premises'). Petitioner also seeks the issuance of a writ of mandamus for refund of an amount of ₹4,65,813/- that he has already deposited towards misuse charges along with interest @ 18% per annum.

2. A brief factual backdrop would be necessary.

3. The misuse charges were levied on the basis that a part of the premises was being used for running a Clinic for consultancy purpose by Dr.Pawan Kumar and Dr.Sunita Kumar under the name and style of "Kumar Clinic" and also on account of installation of a photostat machine on the ground floor. The period of misuse was indicated to be from 17.8.2006 to 23.1.2007. Admittedly, the present petitioner was part owner of the premises during the period of alleged misuse. No Objection Certificate (NOC) having been applied for by the petitioner for sale/transfer of his share in the premises, the same was responded to by the Administration by informing him that he would have to first deposit the misuse charges to the tune of ₹2,93,333/- along with interest. Faced with such a predicament, the petitioner in spite of being part owner of the premises, deposited the entire misuse charges amounting to ₹4,65,813/- along with interest on 28.7.2011 under protest.

4. Petitioner assailed the imposition of misuse charges upon the premises in question and also sought a refund of the amount already deposited by filing Civil Writ Petition No.5093 of 2013 in this Court and the same was disposed of by a Division Bench in terms of order dated 31.3.2014, which reads as under:

"The petitioner while seeking quashing of the orders dated 26.7.2011, 28.7.2011 and 17.12.2012 (P5, P7 and P14 respectively), further seeks a mandamus to direct the respondents to refund an amount of ₹2,93,033/- plus ₹1,72,480/- which he has

deposited towards misuse charges and interest thereupon.

The above stated charges have been levied by the Chandigarh Administration in respect of residential premises No.616, Sector 18-B, Chandigarh on the ground that a part of the said premises was misused by running a Medical Clinic and a Photostat machine.

The petitioner relied upon the notification dated 14.8.1996 issued by the Chandigarh Administration whereunder a part of the residential premises to the extent of 50 square meters is permitted to be used by the professionals like Doctors, Advocates, Architects etc. The said plea of the petitioner has been rejected on the ground that the Doctor who was running the Clinic and the one who was running a Photostat machine, were not residing in the same house.

With a view to counter the above stated reason, the petitioner has produced on record documents (A-1 to A-3) along with the rejoinder.

Since these documents were not earlier before the authorities at the time of passing of the impugned orders and it appears that these documents have a direct bearing on the issue involved in the instant case, we allow this writ petition, set aside the impugned orders dated 26.7.2011, 28.7.2011 and 17.12.2012 (P-5, P-7 and P-14 respectively) and remand the case to the Assistant Estate Officer, U.T., Chandigarh to decide

the petitioner's claim for the refund of above mentioned amount afresh. Let an appropriate speaking order be passed within a period of two months from the date a certified copy of this order is received and if found entitled to, the due amount be refunded to the petitioner within one month thereafter. If the refund is not made within the prescribed period, in that event, the petitioner shall be entitled to interest @ 7% per annum.

Disposed of. Dasti."

5. In purported compliance of the order dated 31.3.2014 passed by this Court, the Estate Officer, Union Territory, Chandigarh, respondent No.3, has passed the impugned order dated 19.8.2014, Annexure P17, affirming the decision of imposition of misuse charges on the premises.

6. Upon notice having been issued, reply of the Assistant Estate Officer, Union Territory, Chandigarh, on behalf of respondents No.1 to 3 has been filed and placed on record. The imposition of misuse charges upon the premises is sought to be justified in terms of the reasoning furnished in the impugned order, dated 19.8.2014 itself. It has been stated that the Doctor who was running the Clinic in a portion of the premises was not himself the owner and as such, the same amounted to a misuse. Even as regards installation of a photostat machine on the ground floor of the premises, it has been stated that no intimation in writing to the Estate Officer had been furnished and the same would also fall within the expression "misuse".

7. The petitioner, who appears in person, as also learned counsel appearing for the Chandigarh Administration have been heard at length.

8. In exercise of the powers conferred under Section 4 of the Capital of Punjab (Development and Regulation) Act, 1952, the Chandigarh Administration issued notification dated 14.8.1996, duly published in the Official Gazette. Such notification was in the form of directions regarding construction of buildings in Chandigarh. Clause 3 of the notification reads as under:

"3. The professionals/consultants, viz. Doctors, Advocates and Architects etc. shall be permitted to use part of the area of their residence to the maximum extent of 50 Sq. Mtrs. or 25% of the covered area, whichever is less, for offering professional consultancy only. However, provisions of the Chandigarh Advertisement Control Order, 1954 as amended from time to time, shall be strictly observed."

9. A bare reading of Clause 3 would make it apparent that a relaxation has been afforded to professionals in the nature of Doctors, Advocates etc. and they have been permitted to use a portion of their residence for purposes of professional consultancy only. The maximum extent of usage for such purpose was also categorically stipulated i.e. upto 50 Sq. Mtrs. or 25% of the covered area of the premises in question whichever is less. In the present case, there is no dispute as regards the area that was being used in the premises for running of a Clinic for consultancy

purpose. The same was within the permissible limits defined in Clause 3 of the notification issued on 14.8.1996. Respondent No.3, however, in the impugned order dated 19.8.2014 has interpreted Clause 3 of the notification dated 14.8.1996 and has read the same to mean that the relaxation envisaged therein for the professionals cannot be invoked in favour of the tenants/occupiers. In other words, the view taken is that the permission to use part of the area of the premises in question would be open only to such professionals, be it Doctors, Advocates etc. who are owners of the property.

10. We are unable to reconcile with such line of reasoning. In reading a provision, it would be necessary to consider the context in which it has been made and the purpose and object which it seeks to achieve. The provision would have to be read in a manner which effectuates and furthers the intent and objective thereof. Clause 3 of the notification dated 14.8.1996 is worded in clear and unambiguous terms. Professionals/consultants who reside in the premises have been granted permission to use a part thereof for consultancy purpose subject to a stipulated maximum extent of covered area. Such a provision has to be given a meaning without adding/ substituting or reading something alien into it. Confining the scope of Clause 3 to such professionals who not only are using the premises in question for their residence, but are also owners thereof would clearly amount to adding something to the provision and thereby restricting the scope and ambit thereof. The same would not be permissible. In our considered view, the benefit of Clause 3 of the notification

dated 14.8.1996 would extend to all such professionals/consultants to use a part of the premises subject to the maximum extent of area stipulated thereunder and also subject to their using the premises for their own residence. The pre-requisite of being owner of the premises cannot be imported into Clause 3 as has been done by respondent No.3 while passing the impugned order. It is not the case of the Administration that Dr.Pawan Kumar who was running the Clinic in the premises was not residing therein. Imposition of misuse charges on such count, as such, cannot sustain.

11. As far as installation of STD/PCO/FAX or photostat machine in a residential premises is concerned, the same is governed by an order dated 19.6.1998 issued by the Chandigarh Administration, Finance Department. The same is extracted hereunder:

"CHANDIGARH ADMINISTRATION

Finance Department

Order

The 19th June, 1998

No.2240-UTF (3)-98/8211 – In exercise of powers conferred by proviso to rule 9 of the Chandigarh (Sale of Sites and Building) Rules, 1960 the Chief Administrator, with the prior approval of the Administrator, Union Territory, Chandigarh, hereby makes the following orders in respect of sites that have been allotted for residential purpose in the Union Territory, Chandigarh, namely:-

1. The transferees are allowed to use upto 20% of the residential area of the building subject to a maximum of 15 sq.mts. for the installation of a STD, PCO, Fax or Photostat Machine.

2. The transferees intending to install the STD, PCO, Fax or Photostat Machine, must inform the Estate Officer, Union Territory, Chandigarh about the same, in writing.

3. Only a part of the sanctioned building can be used for such a purpose and not external structures shall be installed.

*Chandigarh
The 7th June, 1998,*

*N.S.Kang
Finance Secretary &
Chief Administrator &
Union Territory, Chandigarh"*

12. In terms of such order dated 19.6.1998, installation of a photostat machine in the residential premises is permissible subject to usage of maximum of 15 Sq. Mtrs. It is, however, obligatory upon the person installing the STD, PCO, FAX or photostat machine to inform the Estate Officer about the same in writing. Concededly, in the present case, the Inspector (Misuse), on inspection, had submitted a report that there was no misuse in the premises. Such factual position is discernible from the document placed on record at Annexure P2 and which has not been denied by the respondents. It, thus, emerges that less than 15 Sq. Mtrs. had been put to use in the premises for installation of a photostat machine. The same was permissible in the light of order dated 19.6.1998. Failure to inform the Estate Officer with regard to installation of such machine can, at best, be considered

as a lapse, but cannot be construed to be a misuse of the premises so as to attract the levy of misuse charges.

13. We find that, even otherwise, the impugned order dated 19.8.2014, Annexure P17, runs contrary to the directions contained in the order dated 31.3.2014 passed by the Division Bench while disposing of Civil Writ Petition No.5093 of 2013. In the afore-noticed writ petition that had been filed by the present petitioner, a categorical stand was taken by the Estate Officer while filing the written statement and in para 6 thereof, it had been stated that Dr.Pawan Kumar and Dr.Sunita Kumar, who were running the clinic in the premises under the name and style of 'Kumar Clinic', were not residing therein. It had further been stated that the premises had not been occupied by way of residence even by the Proprietor running the photostat machine and as such, the benefit of notification dated 14.8.1996 was not available. Such stand had been specifically noticed by the Division Bench while remanding the matter to the Estate Officer for a decision afresh and with specific directions to take into account the documents at Annexures A1 to A3 that had been appended along with the writ petition. The same very documents have been placed on record along with the instant petition at Annexure P16 (colly). Perusal of the same would reveal that the petitioner had filed an ejectment petition against Dr.Pawan Kumar and Dr.Sunita Kumar on 2.6.2001 vide Rent Petition No.25 and which was decided on 12.5.2004 by the Rent Controller in favour of the petitioner thereby directing Dr.Pawan Kumar and his wife to vacate the premises within a period of two months. Dr.Pawan

Kumar filed Rent Appeal No.20 dated 29.5.2004, which was dismissed by the Appellate Authority on 5.2.2008 giving him three months' time for vacating the premises. He then filed Civil Revision No.2449 of 2008 in this Court and which was also dismissed on 16.2.2010. Even a voter's list pertaining to the year 2005 has been placed on record in which Shri Anil Malhotra i.e. proprietor of the photostat machine and his family are registered as voters pertaining to the premises in question. Curiously, the Estate Officer while passing the impugned order dated 19.8.2014 has chosen not to deal with such documents in spite of the specific directions having been issued by the Division Bench. Rather he has proceeded to now take a somersault and interpret Clause 3 of the notification dated 14.8.1996 in a fashion which is wholly untenable for the reasons that we have already indicated hereinabove.

14. In view of the above, the writ petition is allowed. Impugned order, dated 19.8.2014, Annexure P17, passed by respondent No.3 is quashed and it is directed that misuse charges that the petitioner had already deposited i.e. ₹4,64,813/- be refunded to him along with interest @ 8% per annum with effect from the date he had deposited the same till such time the same are actually refunded.

15. Petition allowed.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

SEPTEMBER 23, 2015
SRM