

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

C.W.P. No.3305 of 2014 (O&M)
Date of decision: 28.01.2015

Prem Pal

-----Petitioner (s)

V/s

**The Secretary, Govt. of Punjab Housing & Urban
Development Department, Sector 9, Chandigarh &
others.**

-----Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Jaswinder Singh Randhawa, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, Advocate
for respondents no.2 and 3.

HARI PAL VERMA, J.

CM No.785 of 2015:

The application is allowed subject to just
exceptions. Affidavit of the petitioner is taken on record.

Main Case:

Petitioner has filed the present writ petition
under Articles 226/227 of the Constitution of India

challenging the order dated 8.7.2008 (Annexure P2), whereby H.No.LIG-1256-A, Phase-10, Mohali allotted to the petitioner has been ordered to be resumed along with forfeiture of 10% of the total amount of the site in question. Challenge has also been laid to order dated 12.05.2011 (Annexure P3), whereby appeal against the aforesaid order of resumption has been dismissed, as well as order dated 8.8.2013 (Annexure P4), whereby revision petition has been dismissed.

Briefly stated, the petitioner was allotted H.No.LIG-1256-A, Phase-10, Mohali vide allotment letter dated 29.2.2006. However, the said allotment was cancelled by respondent no.3 vide memo dated 8.7.2008 (Annexure P2) on account of unauthorized construction in the house in question, pointing out construction of room, stairs and projection on stairs to be unauthorized. Against the order of resumption dated 8.7.2008 (Annexure P2), the petitioner filed an appeal before respondent no.2. However, the said appeal was dismissed on 12.5.2011 (Annexure P3), with the observations that the unauthorized construction could not be regularized under need based/compounding policy and that sufficient time has been granted to the petitioner but the unauthorized construction has not been removed. Petitioner filed further revision petition against the order dated 12.5.2011, but the same was also

dismissed, as the petitioner has raised unauthorized construction by violating the terms and conditions of the allotment letter, which were not the subject of compounding. Accordingly, the revision petition was dismissed vide order dated 8.8.2013 (Annexure P4).

It is in the aforesaid circumstances the petitioner has filed the present writ petition challenging the order of resumption dated 8.7.2008 (Annexure P2), order dated 12.5.2011 (Annexure P3) passed in appeal and order dated 8.8.2013 (Annexure P4) passed in revision petition.

On notice having been issued, respondents no.2 and 3 have filed written statement with a plea that the petitioner was allotted the house in question and he was required to follow the terms and conditions of the allotment letter. It was incumbent upon the petitioner not to raise any unauthorized construction or demolish without the prior permission of the authority, but it has come to the notice of the respondent-authorities that the petitioner constructed two rooms and projection through stair in an unauthorized manner, for which, show cause notice and opportunities of hearing were granted to the petitioner for removal of the same. However, when the allottee did not remove the unauthorized construction or even failed to give assurance for the removal of unauthorized construction, the order of resumption dated 8.7.2008 was passed. Since

unauthorized construction was existing and the same could not be regularized under the compounding policy, the order of resumption was passed as per the terms and conditions of the allotment letter.

We have heard learned counsel for the parties.

No doubt, for violating the terms and conditions of the allotment letter and for raising unauthorized construction, the respondent-authorities are competent to pass the order of resumption, however, process of resumption has to be invoked sparingly, rather it should be resorted to as a last resort, as held by the Hon'ble Apex Court in **Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & others (2004) 2 SCC 130.**

At the time when notice of motion was issued, this Court passed following order on 21.2.2014:-

“Though the only appropriate order to be passed in this case would be to stay the resumption order subject to demolition of entire unauthorized construction within two weeks, yet we extend the time for such demolition only because it is urged by learned counsel for the petitioner that marriage of petitioner's daughter is fixed for 26.04.2014.

Let notice of motion be issued to the respondents for 21.05.2014.

Meanwhile, demolition and resumption shall remain stayed subject to the condition that the petitioner shall demolish the entire unauthorized

construction before 10.05.2014 and file a compliance affidavit alongwith photographs. In the event of non-compliance, this writ petition shall stand dismissed automatically.”

In compliance of the aforesaid order, the petitioner has filed an affidavit dated 13.1.2015, wherein it has been deposed that the petitioner has removed the illegal construction i.e. the front wall and side wall of the rooms constructed on the front portion of the house in question. Moreover, latest inspection report dated 21.1.2015 has also been produced in Court by the respondents, wherein it has been asserted that the unauthorized construction/ violations as existed in H.No.LIG-1256-A, Phase-10, Mohali have been removed. Thus, when the petitioner has removed the violations/unauthorized construction, we deem it appropriate to quash the resumption order and restore the site.

Accordingly, the writ petition is allowed and order of resumption dated 8.7.2008 (Annexure P2) is quashed. Consequently, the order dated 12.5.2011 (Annexure P3) passed in appeal and order dated 08.08.2013 (Annexure P4) passed in revision are also quashed.

Further, the petitioner is directed not to raise any such unauthorized construction or violate the terms and conditions of the allotment letter. In case it is found that the site in question is being misused by the petitioner, in future, liberty is granted to the respondents to move an appropriate application before this Court for revival of order of cancellation of the lease.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

January 28, 2015
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