

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

CWP-2098-2000 (O&M)
Date of decision:- 15.02.2016

Smt. Manjit Kaur and others

...Petitioners

Versus

Union Territory Administration and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. N.S. Boparai, Advocate,
and Mr. Bikram Singh Dhillon, Advocate,
for the petitioners.

Mr. Vikas Chatrath, Advocate,
Mr. Parveen Kumar, Advocate,
and Ms. Neeru Thakur, Advocate,
for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioners have challenged an order dated 09.07.1992 passed by respondent No. 4 – the Estate Officer under the Capital of Punjab (Development and Regulation) Act, 1952 (in short the Act) holding that the petitioners have willfully committed defaults in respect of the showroom allotted to them and, therefore, ordering the resumption of the same and the forfeiture of 10 per cent of the total amount of premium paid in respect thereof. The petitioners have also challenged an order dated 06.10.1998 passed by the Chief Administrator dismissing their appeal.

The petitioners have further challenged the order of the Advisor dated 01.09.1999 passed in revision whereby it was ordered

that the order of resumption would stand annulled in the event of the petitioners succeeding in the eviction proceedings instituted by them against the occupier i.e. the State Bank of Patiala and obtaining possession of the premises within four months. It was the petitioners' act of letting out the premises to the State Bank of Patiala which was held to be a violation of the terms and conditions of allotment.

Finally, the petitioners have challenged an order dated 29.12.1999 passed by the Advisor dismissing their application for review of the order dated 01.09.1999.

2. In view of what transpired after the filing of this petition, it is not necessary to deal with the merits of the case and the facts that have led to the petition being filed.

3. The following interim order dated 18.07.2002 was passed in this petition:-

“Attention of the Court was invited to the averments made in paragraph 7 of the written statement filed on behalf of respondents Nos. 1 to 4. A perusal thereof reveals that although it is permissible to apply for change of use, it is also open for the authorities to permit change of use after paying charges by the petitioners, yet the petitioners have failed to take any steps in accordance with law.

The records available in Court, however, reveal that the petitioner applied for change of use on 27.08.1999 and also on 16.04.2000. However, the said applications have not yet been decided by the Chandigarh Administration. In the facts and circumstances of this case, it would be just and appropriate to direct the Chandigarh Administration to decide the applications filed by the petitioners

seeking change of use within four weeks from today. The decision of the Chandigarh Administration of the applications will be without prejudice to the controversy in the present writ petition. It is further clarified that in case the Chandigarh Administration permits change of use on payment/charges, the petitioner may deposit such payment/charges within 4 weeks thereafter, which again will be without prejudice to the present petition.

If the petitioner fails to deposit the payment/charges within 4 weeks, it will be presumed that the order of change of use is not acceptable to the petitioners.

To come up for further hearing on 23.09.2002.

Copy of the order be furnished to the counsel for the parties dasti on payment of usual charges.”

4 (A) Pursuant thereto, the respondents addressed the following letter dated 20.09.2002 to the petitioners:-

“Subject:- Regarding Conversion of Show Room No. 3-A, Sector 7-C, Chandigarh.

Please refer to the subject cited above.

In view of the orders of the Hon’ble High Court dated 18.07.2002, you are requested to deposit a sum of Rs. 10,56,260/- as conversion charges from Building Material Trade to New General Trade, in respect of ground floor of above mentioned site.”

(B) Admittedly, the petitioners paid the entire amount of Rs. 10,56,260/- as conversion charges as demanded by the said letter dated 20.09.2002.

(C) Thereafter, the respondents by a letter dated 02.12.2002 stated that the change of user was allowed without prejudice to the decision of the writ petition from Building Material to General Trade (New) for the ground floor only.

5. These facts to our mind put an end to this litigation. The impugned orders merely directed the resumption of the premises and nothing more. They did not impose any penalty. Nor did they seek to impose misuse charges. Further, the show cause notice itself was issued only under Section 8-A of the said Act. The petitioners were only called upon to show cause as to why the site be not resumed under Section 8-A of the Act and an amount not exceeding 10 per cent of the total amount of consideration money, interest and other dues payable in respect of the sale of the site be not forfeited. In other words, the petitioners were not called upon to show cause as to why any other charges ought not to be levied. As we noted, thereafter and pursuant to the order of this Court, the respondents requested the petitioners to deposit a sum of Rs. 10,56,260/- as conversion charges in respect of the premises and the petitioners paid the same. The respondents by the letter dated 02.12.2002 allowed the change of user. That put to an end the order of resumption and forfeiture of 10 per cent of the amount paid.

6. The question of the conversion being without prejudice to the decision of the writ petition does not now arise. On the one hand, the petitioner has accepted the conversion on the conditions stipulated in the said correspondence, namely, the payment of Rs. 10,56,260/-. On

the other hand, the respondents have themselves allowed the conversion. The interim order passed by this Court did not compel them to allow the conversion. It merely required the respondents to consider the petitioners' application(s) for conversion. In other words, therefore, the conversion of the premises now stands final. It is axiomatic, therefore, that the order of resumption no longer survives.

7. Learned counsel appearing on behalf of the respondents, however, states that the petitioners are also bound and liable to pay misuse charges for the relevant period.

8. As we mentioned earlier, none of the impugned orders levied misuse charges. Even the show cause notice did not purport to levy misuse charges. As on date, therefore, the question of misuse charges is not the subject matter of the proceedings.

9. We do not express any opinion as to the respondents' rights to levy misuse charges. In the event of their doing so, the rights and contentions of all the parties are kept open. We express no opinion in respect thereof either.

10. The writ petition is accordingly disposed of by quashing the impugned orders and with the above observations regarding the conversion.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

15.02.2016

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