

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 11314 of 2015 (O&M)

Date of Decision: 17.05.2016

Davinder Kaur

..Petitioner

versus

State of Punjab and others

..Respondents

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

Present : Mr. R.K.Chopra, Sr. Advocate with
Mr. Vikas Chatrath, Advocate and
Ms. Gagandeep Kaur, Advocate, for the petitioner.

Mr. Rajinder Goyal, Addl. Advocate General, Punjab.

Mr. Nitin Kaushal, Advocate, for respondent Nos.2 and 3.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner finds herself in an extremely unfortunate predicament on account of her being left alone with a minor child upon the death of all the other members of her immediate family and the passage of time which has resulted in the facts being blurred. In the facts and circumstances of the case we are inclined to draw a presumption in her favour, not merely because she would otherwise lose her only residential accommodation but on the balance of probabilities.

2. The flat was allotted to one Ms. Ajit Kaur Sethi on 27.12.1985. It was transferred to S.Jasbir Singh Kang and his wife Smt. Amarjit Kaur who are the petitioner's in-laws on 27.12.1985. Smt. Amarjit Kaur and Jasbir Singh Kang expired on 29.09.2000 and 08.01.2008 respectively leaving behind their sons Shivinder Singh who was the petitioner's husband and one Amarinder

Singh. The petitioner married Shivinder Singh on 24.05.1997. Unfortunately, Amarinder Singh died on 14.11.1999 and petitioner's husband Shivinder Singh died on 29.10.2010.

3. On 05.10.2012 when the petitioner sought a transfer of the flat in her name, she was understandably shocked to learn that the plot has been purportedly resumed on 22.12.1993. We will presume that the resumption order was passed. The respondents contend that the resumption notice was pasted on the premises on 04.01.1994. It is a little difficult to believe this for had it actually been pasted on the premises, it would be unlikely that the members of the petitioner's family would have sat back and done nothing in the matter.

4. Even assuming that the notice was pasted, in the facts and circumstances of the case, it would make no difference. The amounts payable under the letter of allotment were paid in the years 1994 and 1998. Unilateral payments by allottees indeed cannot create any right in their favour including to avoid an order of resumption. However, considering what transpired in this case it appears that the order of resumption had at some stage be either revoked or cancelled. In any event that is the impression created on account of the conduct of the parties. In this regard it is important to note the record furnished to the petitioner under the Right to Information Act. The noting's in the file relating to 27.10.1998 indicate that the original allottee had appeared before the authorities and stated that he would close the gate within four days and remove the encroachment. This was after the alleged resumption on 22.10.1993. The minutes further record that the Junior Engineer was directed to check the same on the spot. The allottee was directed to appear again on 03.11.1998 and submit a clarification. The minutes dated 02.11.1998 further indicate that the

hedge and gate had not been closed. The minutes of subsequent meetings relate to this aspect. The minutes dated 13.11.1998 record that there was no provision in the Act to remove the gate but if the gate had unauthorizedly been installed and the allottee had violated the building bye-laws, action could be taken to resume the plot of the party and after resumption, action regarding vacating the house could be taken. The minutes record the action to be taken regarding resumption. In other words this would indicate that there was no order of resumption in force on that day. This in turn would indicate that the earlier resumption had either been cancelled or withdrawn or abandoned.

We see no reason to speculate in favour of the respondents. Admittedly, no resumption order was passed after 13.11.1998 on the ground that the gate had been installed by the original allottee unauthorisedly. On the other hand, on a balance of probabilities it appears to us that the order of resumption dated 22.12.1993 had either been recalled or cancelled.

5. In the circumstances, the petition is allowed. The impugned orders dated 23.01.2013 and 27.02.2015 are quashed and set aside. Further, the order of resumption dated 22.12.1993 in any event is quashed and set-aside as having been revoked and cancelled.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

17.05. 2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	Yes	No.√
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