IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 21191 of 2012 (O&M)
Date of Decision: 11.01.2016

Suresh Jain and others ..Petitioners

versus

Union Territory, Chandigarh and others ..Respondents

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

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

Present : Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate, for the petitioners.
Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Abhey Pal Singh, Advocate, for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioners seek a writ to quash an order dated 12.04.2012 by which respondent No.3-Superintendent, Estate Office, Union Territory, Chandigarh has called upon them to deposit a sum of ₹ 49,13,363/- on account of 'unearned profit' as a condition precedent to the consideration of the petitioners' request for issuance of a 'No Objection Certificate' for transfer of lease hold rights held by petitioner Nos.1 and 2 in favour of petitioner No.3 in respect of an industrial plot. The petitioners have sought the consequential relief directing the respondents to issue a 'No Objection Certificate' for transfer of lease hold rights by petitioner Nos.1 and 2 in favour of petitioner No.3. The petitioners have also sought a declaration that Rule 7(i) of the Chandigarh Estate Rules, 2007 as amended by Chandigarh Estate (Amendment) Rules, 2009 is illegal, arbitrary and discriminatory.

2. The case in a nutshell is this. The impugned demand for unearned profits is in accordance with Clause 4 of a lease deed dated

23.10.1974 entered into between petitioners No.1 and 2 and the respondents. This clause is challenged after over 40 years on the ground that the letter of allotment dated 19.06.1972 did not contain such a provision. We have rejected the contention on two grounds. Firstly, Clause 8 of the letter of allotment required the parties to execute a lease deed on such terms as may be directed by the Estate Officer, Chandigarh. The lease deed was executed without protest or demur. The clause is not illegal. It is not open to the petitioners to challenge this clause after over 40 years. Secondly, even assuming that the terms of the letter of allotment and not of the lease deed are applicable, it would make no difference. Clause 18 of the letter of allotment prohibits the petitioners from sub-letting the building. If the respondents agree to relax this clause, they are entitled to do so on such terms and conditions as they desire.

3. An industrial plot was leased out by the respondents in favour of petitioner Nos.1 and 2 for a term of 99 years on the terms and conditions contained in a letter of allotment dated 19.06.1972. Clauses 8, 13, and 18 of the letter of allotment read as under:-

> "8. After making payment of 25% of the premium and taking the possession of the site you will have to execute the lease deed in such manner as may be directed by the Estate Officer, Chandigarh.
>
> 13. You shall not sell or otherwise transfer your rights in the site or part thereof for a period of 15 years from the date of completion of the building. If for exceptional reasons you are allowed by the Government to transfer your rights in the site to another party, 50% of the unearned increase in the value of land at the time the plot is allowed to be transferred shall be payable to the Government before registering the transfer.
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> 18. You cannot sublet any portion of the building erected on the said plot (on monthly lease basis) to any

other party/person and the building erected on the site shall be used exclusively for the purpose it has been allotted."

4. Pursuant to clause-8, the parties executed a lease deed dated 23.10.1974. Clause 4(a) thereof reads as under:-

> "4(a) the lessee shall not sell or otherwise transfer his rights in the site or part thereof for a period of fifteen years from the date of completion of the building. After the expiry of this period the lessee may be allowed by Government to sell or transfer his rights in the site to any other party subject to the condition that 50% (fifty percent) of the unearned increase in the value of land at the time the site is sold or transferred shall be payable to the Chandigarh Administration before registering such sale or transfer. The value of the property for this purpose shall be assessed by the Estate Officer or any other authority which may be appointed by the Chief Administrator whose decision shall be final and binding on the lessee."

5. The lease deed has been in existence and operated between petitioner Nos.1 and 2 on the one hand and the respondents on the other for over 40 years. None of the clauses thereof were objected to by petitioner Nos.1 and 2 at the time of entering into the agreement and even thereafter. A challenge to clause 4(a) is now sought to be raised after over 40 years.

6. On 12.07.2011, the petitioners made an application to respondent No.3 seeking a 'No Objection Certificate' for the transfer of the lease hold rights of petitioner Nos.1 and 2 in favour of petitioner No.3. The respondents having not taken any decision in respect thereof, the petitioners filed a Civil Writ Petition No. 469 of 2012 which was disposed of by an order and judgment of a Division Bench dated 12.01.2012 directing the

respondents to decide the petitioners' application. The respondents decided the application.

7. By the impugned communication dated 12.04.2012 the respondents called upon the petitioners to deposit a sum of ₹ 49,13,363/- on account of unearned profit and to furnish an undertaking that they would be bound by any increase which is calculated at a later point of time as a condition precedent for considering the application for a 'No Objection Certificate'.

8. It is not disputed that clause 4(a) of the lease deed dated 23.10.1974 entitled the respondents to levy a charge of 50% of the unearned increase in the value of the land. It is contended, however, that this clause is contrary to the terms of the letter of allotment dated 19.06.1972 which stipulated that the plot would be leased to the petitioners on the terms and conditions contained therein. It is contended that clause 4(a) of the lease deed is contrary to clause 13 of the letter of allotment dated 19.06.1972. We will assume that it is. It makes no difference.

9. Clause 8 of the letter of allotment dated 19.06.1972 required the parties to enter into a regular lease deed. It was open to the parties to enter into a lease deed on such terms and conditions as they desired. Petitioner Nos.1 and 2 did not object to any of the terms and conditions of the lease deed. If they were not satisfied with any of the terms and conditions thereof including clause 4(a) it was open to them to have raised a dispute in that regard and to have sought enforcement of the letter of allotment. They did not do so. They voluntarily and with open eyes accepted all the terms and conditions of the lease deed. There is nothing illegal about the same. It is not contended that the lease deed was entered into on account of coercion, fraud

or undue influence. Indeed such a condition, even if raised, would be difficult to accept especially in a case such as this where for over 40 years the parties raised no dispute. They now seek to avoid the terms. There is no valid basis on which they can be permitted to do so.

10. In any event clause 18 of the letter of allotment dated 19.06.1972 prohibited petitioner Nos.1 and 2 from subletting any portion of the building erected on the said plot (on monthly lease basis) to any other party/person. Thus in any event, even assuming that the terms of the letter of allotment dated 19.06.1972 are operative between the parties, petitioner Nos.1 and 2 cannot sublease the property without the permission of the respondents. In that event the respondents would be entitled to impose such terms and conditions as they desire, if they decide to relax clause 18.

In the circumstances, it makes no difference whichever angle the matter is looked at. If the petitioner Nos.1 and 2 desire transfering their lease hold rights in the plot to petitioner No.3 they are bound to comply with the requisite terms and conditions contained in the impugned communication dated 12.04.2012.

11. In this view of the matter, it is not necessary to consider the challenge to the validity of rule 7 of the Chandigarh Estate Rules, 2007 as amended by Chandigarh Estate (Amendment) Rules, 2009.

12. The writ petition is accordingly dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

11.01.2016 (ARUN PALLI)
'ravinder' JUDGE