

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 23757 of 2013 (O&M)
Date of Decision: 28.05.2016

Kamal Kumar

..Petitioner

versus

The Advisor to the Administrator, 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, Senior Advocate with
Ms. Ramneeq Kaur, Advocate and
Mr. Sharan Sethi, Advocate, for the petitioner.

Ms. Deepali Puri, Advocate,
for respondent No.3-M.C. Union Territory, Chandigarh

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has challenged an order dated 14.07.2010 passed by the Chief Administrator-Union Territory, Chandigarh-respondent No.2 upholding the order passed by respondent No.3-Estate Officer, Municipal Corporation, Union Territory, Chandigarh dated 16.07.2009 resuming the property allotted to the petitioner and forfeiting 10% of the premium and interest. The petitioner has also challenged an order dated 05.10.2011 passed by respondent No.1 dismissing the revision petition filed by the petitioner against the said order of respondent No.2.

2. A shop-cum-office (SCF) in the motor market and commercial complex was allotted in favour of M/s Hindustan Garage on the terms and conditions contained in the allotment letter dated 07.02.1978. Clauses 8 and

10 of the allotment letter read as under:-

“8(a) The allottee shall complete the building in accordance with the sanctioned plan which shall be according to the control sheets prepared by the Chief Architect and Secretary to the said department within one year of the date of allotment, failing which the plot will be liable to be resumed. The time limit may be extended by the President, Notified Area Committee, Manimajra, if he is satisfied that the failure to complete the building within the said period was due to any cause beyond the control of the allottee.

(b) In case of failure to complete the building within the period prescribed in sub-clause (a) above or such period as the President, Notified Area Committee, may extend, the President, Notified Area Committee, Manimajra may, if he think fit resume the site or building ad may further forfeit the whole or any part of the money, if any, paid in respect thereof.

9. xx xx xx xx

10. That the allottee shall not sell/transfer/mortgage or alienate in any other manner his rights in the site or building constructed thereon for a period of 15 years from the date of completion of the building.”

3. The allottee admittedly did not construct the building within the period stipulated despite the fact that he was afforded opportunities to do so. It is obvious that the original allottee lost all interest in the property. The original allottee infact parted with his interest therein contrary to clause-10 of the allotment letter which prohibited the allottee from selling, transferring, mortgaging or alienating in any other manner his rights in the site or the building constructed thereon for 15 years from the date of completion of the building.

4. The original allottee was obviously never interested in developing the plot. He merely intended trading in it. As set out in detail in the order of Revisional Authority, the original allottee executed two General

Power of Attorney's on 16.06.1979 in favour of one Prem Sagar and one Dr.Ashwani Kumar. Dr. Ashwani Kumar in turn executed a General Power of Attorney on 06.01.1981 in favour of one Gurdeep Singh. Said Prem Sagar on the other hand entered into an agreement to sell the property with the petitioner. It is important to note that the petitioner had also entered into an agreement to sell the premises to one Smt. Sudesh Walia widow of Gurdeep Singh. This establishes that not one of these persons was interested in developing the plot for the purpose for which it was allotted. It was treated like an ordinary article of commerce.

5. The present proceedings have been filed by Kamal Kumar. The petitioner states that he had entered into an agreement to purchase the site from the original allottee and thereafter disputes and differences arose between the original allottee and himself whereupon on 17.11.2008 he filed a Civil Suit No. 250 of 2005 for specific performance of the agreement to sell dated 05.01.1981. At this time the period for completing the building as per the letter of allotment had long since expired. The petitioner relies upon a decree of specific performance dated 22.04.2013 passed in his favour by Civil Judge (Junior Division), Chandigarh. This decree can never bind the respondents irrespective of whether the suit was filed in collusion or not. The respondents were not parties to the suit. They have nothing to do with it. Their right to contend that the agreement was contrary to the letter of allotment cannot be affected by any legal proceedings between the petitioner and the original allottee or any other party for that matter.

6. The petitioner now offers to purchase the property at the market rate and states that he will make an offer to the respondents for the same. That is a matter between the parties. We express no views with respect thereto.

7. As many as 11 notices were issued by the respondents calling upon the allottee to comply with the terms and conditions of the letter of allotment. The original allottee, however, failed and neglected to do so. In these circumstances, even if the petitioner was the original allottee, it would have been difficult to upset the well reasoned orders of the Estate Officer, the Appellate Authority and the Revisional Authority. It is 30 years since the plot was allotted to the original allottee. There is no question now of conferring such an advantage in favour of the petitioner or even the original allottee for that matter.

8. In the circumstances, the writ petition is dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

28.05.2016
'ravinder'

(ARUN PALLI)
JUDGE