

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10241 of 2011 (O&M)

Date of Decision: 16.05.2017

Mohinderjit Singh Cheema

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr. ML Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate for the petitioner

Mr. Rajesh Bhardwaj, Addl. AG Punjab

Mr. Suvir Sehgal, Sr.Standing Counsel, UT Chandigarh
Mr. Daman Dhir, Advocate for UT Chandigarh

SURYA KANT, J. (Oral)

(1) The petitioner through this writ petition filed in the year 2011, seeks a writ of mandamus to direct the State of Punjab in the Department of PWD (B&R) to hand over the vacant possession of residential house No.233, Sector 9, Chandigarh. A writ in the nature of *certiorari* for quashing the orders dated 12.01.2001 (P5), 01.05.2001 (P6) and 26.03.1990 (P4) whereby the subject property was resumed by the Chandigarh Administration, has also been sought.

(2) The facts may be briefly noticed. The residential premises bearing H.No.233, Sector 9, Chandigarh measuring 2973.03 sq.yards, was allotted to late Jeewan Singh on 24.04.1952. He died in the year 1965 and the premises was inherited by his two sons in equal shares, namely, Lt.Col.Jagjit Singh Cheema and Jaswant Singh. The writ petitioner is son of late Jaswant Singh whereas respondents No.4 to 9 are legal heirs of Lt.Col. Jagjit Singh Cheema.

(3) In utter disregard to the provisions contained in the Capital of Punjab (Development and Regulation) Act, 1952 and the Rules framed thereunder, the above-stated residential premises was let out to Manav Mangal School for running its branch of Junior Model School. Since the allotted premises could not be used other than for residential purposes and it was rented out for running a school, it was a clear breach of the conditions of sale. The Estate Officer, UT Chandigarh therefore resumed the property vide order dated 23.12.1982 (P1) in purported exercise of his powers under Section 8A of the 1952 Act.

(4) Lt.Col.Jagjit Singh Cheema filed statutory appeal under Section 10(1) of the Act against the order of resumption but it was dismissed by the Chief Administrator on 28.01.1986 (P2). He thereafter filed a revision petition under the Act.

(5) Meanwhile, in an out-of-court settlement, Manav Mangal School vacated the premises in June, 1989. After some time, the predecessors-in-interest of the petitioner and his co-sharers leased out the premises on 15.11.1989 to State of Punjab (lease deed Annexure P3) with a clear stipulation in clause No.10 to the effect that “the lessee shall not use the premises for purpose other than residential purpose only”. The house was rented out as the Department of PWD (B&R) had assured that the premises shall be used for residence of a Minister or a senior officer.

(6) It is, however, alleged that instead of utilizing the premises in dispute for residential purposes, the Govt. of Punjab started using it as an office of PWD (B&R).

(7) Since misuse of the premises for non-residential purposes was still subsisting, the statutory revision petition filed by Lt.Col.Jagjit Singh

was disposed of on 26.03.1990, granting him time till 30.04.1990 to stop the misuse failing which the revision petition was ordered to be automatically dismissed.

(8) The record reveals that Lt.Col.Jagjit Singh made frantic efforts and there is long correspondence between him and the officers of PWD(B&R) Department, where he continued to insist to either vacate the premises or use it for residential purposes. The misuse of the premises however, continued unabated due to which the Chandigarh Administration initiated eviction proceedings against the State of Punjab under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and eventually an order of eviction was passed on 12.01.2001. State of Punjab filed appeal in which there was delay of 48 days. Learned District Judge, Chandigarh dismissed the appeal on 01.05.2001 (P6) being barred by limitation. State of Punjab thereafter challenged that order before this Court in Civil Revision No.3096 of 2001 in which the petitioner or his co-sharers were not arrayed as parties. They, however, got themselves impleaded vide order dated 08.09.2003.

(9) State of Punjab also moved application bearing CM No.15-C-II of 2007 in the pending revision petition, seeking a direction for the deposit of rent of the premises with the appropriate person/authority. This Court allowed that application vide order dated 27.07.2007 and permitted the State of Punjab to deposit the arrears of rent with the Court with a further direction that *“the successful party shall be entitled to claim the rent in accordance with law”*.

(10) The above-stated revision petition was finally allowed on 03.06.2013 and while accepting the application for condonation of delay of

48 days, the District Judge-cum-Appellate Authority, Chandigarh was directed to decide the appeal on merits. The said appeal was finally dismissed on merits on 09.01.2014 (A13).

(11) State of Punjab again challenged the above-stated orders before this Court by way of CWP No.6128 of 2014, raising a question of law as to whether the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 could be enforced against the State also?

(12) Independent of the above-stated proceedings between Chandigarh Administration and the State of Punjab, respondent No.6 also filed an eviction petition against the State of Punjab under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking vacation of the premises on various grounds like change of use, *bona fide* personal necessity and non-payment of rent etc. The said eviction petition was allowed by the Rent Controller, Chandigarh on 11.02.2016 (A16). Still aggrieved, State of Punjab filed appeal before the Appellate Authority. The petitioner and his co-sharers are said to have settled the dispute with the State of Punjab during pendency of the appeal whereby they agreed to forgo their claim towards *mesne* profits and the State of Punjab agreed and eventually handed over vacant possession of the premises to them on 18.05.2016.

(13) As mentioned in the very beginning, the instant writ petition has been filed by the petitioner primarily challenging the resumption of premises on the ground of its misuse firstly by Manav Mangal School and thereafter by State of Punjab by setting up an office instead of using it for residential purposes. When this writ petition came up for preliminary hearing on 06.07.2011, it was admitted and was ordered to be heard along with CR No.3096 of 2001. After the decision of the said Civil

Revision on 03.07.2013, the instant writ petition was taken up for hearing and on 17.08.2016, this Court asked the UT Administration to inspect the premises and submit a status report.

(14) In deference thereto, Tehsildar (Misuse), UT Administration, Chandigarh has filed affidavit dated 20.09.2016 and as per para 6 of it, the premises was inspected and it was “*found that there was no misuse of the same*”.

(15) The Assistant Estate Officer, UT Chandigarh has filed written statement dated 16.05.2017 opposing the petitioner’s claim. A preliminary objection of inordinate delay and laches has been taken pointing out that the order under challenge is dated 12.01.2001 whereas the writ petition was filed in the year 2011. It is further averred that the petitioner/his co-sharers have been found repeatedly misusing the premises for non-residential purposes hence its resumption was fully justified. It is averred that the petitioner cannot be permitted to take benefit of its own wrongs and that the delay in filing the writ petition is fatal to his cause. Reliance has been placed on the decision of the Hon’ble Supreme Court in **Piyare Lal vs. Union of India** **AIR 1975 SC 650**.

(16) We have heard learned counsel for the parties at a considerable length and gone through the record.

(17) The 1952 Act was legislated to regulate the sale of building sites and to promulgate Building Rules at the time when construction of new Capital of Punjab at Chandigarh was in progress. The said Act was followed by yet another piece of legislation known as Punjab New Capital (Periphery) Control Act, 1952. The common object behind both the statutes was to develop Chandigarh as a planned City and to further ensure that the allotted

sites are strictly used for the purpose of allotment and no haphazard unregulated clusters come into existence on its periphery upto a distance of 5 miles. Originally, Section 9 of 1952 Act empowered the Estate Officer to resume the site or a building on the ground of non-payment of consideration money or the breach of any condition of transfer or of any Rule framed under the Act. Section 9 was however declared violative of Articles 14 & 19(1)(f) of the Constitution by the Supreme Court in **M/s Jagdish Chand Radhey Shyam vs. State of Punjab & Ors. (1972) 3 SCC 428**, for want of appropriate guidelines as to when the Government will resort to either of the two remedies as the provision could be used selectively to discriminate between the similarly placed persons. Section 9 was thereafter omitted from the Statute and it was substituted by Section 8A which came into force w.e.f. 01.11.1966.

(18) Section 8A of the 1952 Act empowers the Estate Officer for resumption and forfeiture of a site for breach of conditions of transfer. It reads as follows:-

“8-A Resumption and forfeiture for breach of conditions of transfer. –

(1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under section 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both should not be made.

(2) *After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1), of the whole or any part of the money paid in respect of such sale.”*

(19) The constitutionality of Section 8A has been attacked time and again. The provision was firstly upheld by a Full Bench of this Court in **Ram Puri, Chandigarh vs. Chief Commissioner, Chandigarh and others, AIR 1982 (Pb & Hr) 301**. Hon’ble Supreme Court also upheld the validity of Section 8A in **Babu Singh Bains etc. vs. Union of India & Ors. (1996) 6 SCC 565** which was a case where residential premises was being misused to run a Guest House.

(20) The matter was re-agitated before the Apex Court in **M/s Teri Oat Estates Pvt. Ltd. vs. UT Chandigarh & Ors., (2004) 2 SCC 130** where a commercial site allotted on leasehold basis was resumed for non-payment of the consideration amount. The *vires* of Section 8A was expressly assailed but the Apex Court, relying upon its previous decision in **Babu Singh Bains** case, upheld the provision after applying the ‘doctrine of proportionality’. The Apex Court thus restored the site in that case by imposing a penalty of ₹ 15 lacs on the allottee.

(21) The ‘principle of proportionality’ as a restraint on the power of forfeiture, and resumption as the last resort, was reiterated by the Supreme Court in **Jagmohan Singh vs. State of Punjab & Ors. (2008) 7 SCC 38**

*“In **Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh & Ors. [(2004) 2 SCC 130]**, this Court has taken notice of the fact that different orders were being passed by the High Court from time to time. The orders passed by the High Court have been upheld therein upon applying the doctrine of proportionality as contra-distinguished from Wednesbury Unreasonableness principle. [(See also **Jitendra Kumar & Ors. vs. State of Haryana & Anr. [(2008) 2 SCC 161]**].*

15. In Teri Oat (supra), it was opined that the power of forfeiture should be taken recourse to as a last resort and the action of the statutory authority is required to be judged on the touchstone of Article 14 of the Constitution of India...”

(22) Section 8A of 1952 Act was again assailed before a Full Bench of this Court in **Dheera Singh vs. UT Chandigarh Administration (2013) 1 PLR 1** on totally renewed grounds. This Court upheld Section 8A after reading down the doctrine of proportionality as its integral part. This Court thus held as follows:-

*“The doctrine of proportionality as ruled in **M/s. Teri Oat Estates Pvt. Ltd.** is now an integral part of Section 8-A to protect an allottee against unreasonable or arbitrary action by the Authority under that provision. It necessarily means and the respondents cannot be heard to say otherwise except that the power of resumption can be invoked as a last resort and the action of the Estate Officer is required to be judged on the touch-stone of Article 14 of the Constitution. It implies that the Estate Officer before passing a resumption order shall be obligated to determine whether the breach of terms and conditions of allotment or violation of any building byelaw by the allottee is ‘willful’ and ‘deliberate’ or it has occurred for the reasons beyond his control? In the*

case of the latter category it shall not be possible to invoke the power mechanically and resume the property. For example, if an allottee indisputably rents out his residential premises to a tenant for residential purposes only and the tenant in utter defiance to the terms of tenancy starts misusing the premises for commercial purposes against whom the landlord, without any inordinate delay, initiates eviction proceedings under the East Punjab Urban Rent Restriction Act, 1949 (as applicable to UT Chandigarh) inter alia on the ground of misuse of the premises, how can the allottee be held guilty of willful and deliberate violation of the building byelaws? The only recourse in such an eventuality available with the Estate Officer shall be to keep the resumption proceedings in abeyance till the eviction proceedings are decided though he must keep track of the status of eviction proceedings from time to time. Any attempt to deviate from such like fait accompli conditions shall vitiate the action rendering the resumption proceedings to nothing but a colourable exercise and/or abuse of power by the Estate Officer. Similarly, the first or stray violation(s) can hardly justify the impaling effect of 'resumption' and any such casual attempt with a bureaucratic approach deserves serious view in exercise of power of judicial review."

[emphasis by us]

(23) From the above-cited case-law, it stands out that resumption of a site is only the last resort and such a grave action is necessitated only in a case of persistent and defiant violations by an allottee/occupier of the premises. Applying these principles to the facts of the case in hand, one can not overlook that though initially the predecessors-in-interest of the petitioner and his co-sharers were responsible for the misuse of the premises

Administration resumed the site due to such misuse, the then owners took remedial steps and got the premises vacated from Manav Mangal School. Thereafter, the premises was rented out to Punjab Government for residential purposes only. The misuse of premises by Punjab Government was indeed not within the control of the petitioner/his co-sharers or their predecessors-in-interest. Such misuse by the Government authorities in violation of terms and conditions of lease deed cannot be termed as an act in collusion with the then landowner(s). The brief history of multiple rounds of litigation noticed in the previous paragraphs of this order surely suggests that the petitioners or his co-sharers were not party to the misuse of the premises. The illustrative principles evolved in **Dheera Singh's** case (supra) as reproduced in Para 22 of this order are thus directly attracted.

(24) After the vacant possession was handed over to them, the petitioner and his co-sharers have restored the premises to its original use, namely, for residential purposes. Taking into consideration the totality of the circumstances, coupled with the fact that the premises is no longer being misused, we are satisfied that the resumption of the premises at this juncture is totally unjustified.

(25) Consequently, the writ petition is allowed; the impugned orders dated 12.01.2001 (P5), 01.05.2001 (P6) and 26.03.1990 (P4) are set aside and the premises is restored in favour of all the successors of the original allottee. However, keeping in view the fact that the then owners of the premises themselves are responsible for the first misuse of the premises which led to its resumption and applying the 'doctrine of proportionality', we impose a penalty of ₹ 15 lacs which shall be paid by them to the

Chandigarh Administration within a period of two months from the date of receipt of certified copy of this order.

(26) Since this Court vide order dated 27.07.2007 passed in CR No.3096 of 2001 and again on 03.07.2013 while deciding the above-stated revision petition had directed that the amount of rent deposited by Punjab Government shall be payable to the successful party and the said amount (approx. ₹ 40 lacs or so) is still lying deposited with this Court, it is directed that the said arrears of rent be released to the petitioner and his other co-sharers of the premises within three months from the date of receipt of copy of this order.

(27) Ordered accordingly.

(Surya Kant)
Judge

16.05.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
Yes