

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16927 of 2015 (O&M)

Date of Decision: 21.02.2017

Harbhajan Kaur Bajwa & Anr.

... Petitioners

VS.

Cantonment Board, Ambala Cantt. & Anr.

... Respondents

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

Present: Mr. KS Jetley, Advocate for the petitioners

Ms. Ranjana Shahi, Advocate for the respondents

SURYA KANT, J. (Oral)

(1) The petitioners seek quashing of the order dated 22.07.2015 passed by the General Officer Commandant-in-Chief, Headquarter Western Command, Chandimandir in purported exercise of his powers under Section 340 of the Cantonment Act, 2006 whereby the construction made in Bungalow No. 37, Mall Road, Ambala Cantt. exceeding the plinth area measuring 514 square feet has been ordered to be demolished. Before advertng to the petitioners' contentions against the impugned order, it is necessary to briefly notice the status of the subject bungalow or the rights of the petitioners *vis-à-vis* that property.

(2) Bungalow No.37, Mall Road, Ambala Cantt. vests in the Ministry of Defence, Government of India. There are several old bungalows constructed during pre-Independence era in Ambala Cantt. Some of these unoccupied and vacant bungalows were allotted by way of "Grants" to ex-Army personnel. These allottees are called as "Holders of Occupancy Rights" (in short, 'the HOR').

(3) The HOR in respect of the bungalow in dispute were granted to late Gurmukh Singh Bajwa, who was an ex-Army Officer and was father-in-law of petitioner No.1. After the death of Gurmukh Singh Bajwa, the 'occupancy rights' were transferred in favour of his legal heirs, namely, Varinder Singh Bajwa, Tejinder Singh Bajwa, Surinder Singh Bajwa (husband of first petitioner).

(4) Later on after the death of husband of petitioner No.1, HOR were transferred in favour of the remaining family members including the first petitioner vide memo dated 09.07.2003 (P10).

(5) At no point of time, the first petitioner or her other family members or their predecessor-in-interest staked 'ownership' rights in the subject bungalow and remained contented with their status as HOR. The first petitioner too did not question memo dated 09.07.2003 vide which first time HOR were transferred in her favour along with other family members.

(6) The records further reveal that the original sanctioned plan of the subject bungalow is not available in the record of the Cantonment Board at Ambala. There is, however, a site plan of the year 1940 in which the total area of Bungalow No.37 is depicted as 514 square feet.

(7) There is no controversy that the first petitioner or for that matter other HOR have been permitted by the Army authorities to carry out necessary repairs/renovation of the bungalow to the extent of its sanctioned area of 514 square feet. It is pertinent to notice at this stage that on a specific query by us, learned counsel for the petitioners candidly admits that the first petitioner, who is a nonagenarian, is blessed with her own children and grandchildren.

(8) The confrontation between the first petitioner and the Army authorities appears to have started when the first petitioner under the garb of appointing her 'General Power of Attorney' entered into an underhand sale and 'sold' a part of the bungalow property to the second petitioner by way of registered Power of Attorney dated 16.05.2006 (P9). From the contents of the GPA, it is seen that the second petitioner, who is stranger to the family of first petitioner and is not related to her in any manner, has been authorized even to "alienate the above property" besides authorization to execute sale deed etc.

(9) Petitioner No.2 after 'purchasing' a part of the bungalow increased the constructed area of the bungalow from 514 square feet to 1014 square feet which prompted the Cantonment authorities to initiate action against the petitioners resulting into passing of the impugned order vide which they have been directed to demolish the construction exceeding 514 square feet area.

(10) We have heard learned counsel for the petitioners on merits as well as in specific on the question of legality and legitimacy of the Power of Attorney or the *locus standi* of petitioner No.2. In our considered view, an HOR in the bungalow has no alienable right or authority whatsoever to alienate or transfer the rights without prior permission of the Ministry of Defence. No such permission was admittedly taken when petitioner No.1 indulged in an illegal and unauthorized 'sale' transferring the so-called rights and parting with possession of a part of the bungalow in favour of the second petitioner.

(11) The GPA is nothing but an attempt to hoodwink the law and defeat the very purpose for which the occupancy rights were granted to ex-

Army personnel. It is also a conceded fact that petitioner No.2 is not an ex-Army personnel.

(12) In view of the fact that petitioner No.1 has no authority in law to further transfer the occupancy rights or to create any kind of interest in the subject bungalow in favour of second petitioner, the very hyper-technical pleas taken by the petitioners that they had applied for exceeding the area of construction or such permission is 'deemed to have been accorded in law' are wholly misconceived and misdirected.

(13) The joining of second petitioner in the legal proceedings is an attempt to get the seal of approval of Courts for the clandestine transaction entered into between the two petitioners.

(14) Adverting to the merits, we do not find anything on record to suggest that the first petitioner actually applied for renovation of the existing structure of bungalow on the basis of which she could claim the deemed permission. The authorities have categorically averred in their written statement that no such permission was applied or accorded.

(15) The petitioners cannot draw much support from the orders passed in Civil Suit for permanent injunction whereby the petitioners were protected from demolition or dispossession till the pendency of their appeal which has been subsequently dismissed.

(16) For the reasons afore-stated and taking serious note of the fact that the petitioners have entered into a dubious transaction to defeat the law, the writ petition is dismissed with cost of ₹ 25000/- to be paid by petitioner No.2. The second petitioner is directed to deposit the cost amount with the Mediation and Reconciliation Centre of the High Court within one month failing which the Registry is directed to put up the matter

(17) for initiation of *suo motu* Contempt of Court Proceedings.

The cost amount shall be spent on setting up of Children Court under the aegis of the Centre.

(18) Ordered accordingly.

(Surya Kant)
Judge

21.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

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