

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8109 of 2013 (O&M)

Date of Decision: 06.02.2017

Punjab & Sind Bank

... Petitioner

VS.

UT Chandigarh & Ors.

... Respondents

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

Present: Mr. Vikas Singh, Advocate for the petitioner

Mr. AP Setia, Advocate for the respondents

SURYA KANT, J. (Oral)

(1) The petitioner – Punjab and Sind Bank has laid challenge to the order dated 09.06.2009 whereby the Chandigarh Administration resumed its residential house No.1101, Sector 11-C, Chandigarh as well as the subsequent orders dated 09.11.2010 and 19.11.2012 vide which its appeal and revision petition against the order of the resumption were dismissed.

(2) The facts are not in dispute.

(3) House No.1101, Sector 11-C, Chandigarh measuring 1450.90 sq.yards is admittedly a residential building. The petitioner-Bank purchased the same for the purpose of Staff Training Residential College. Subsequently, the Bank opened its Branch and started using the said building for commercial/business activities.

(4) The Building Byelaws in UT, Chandigarh have emanated out of the provisions of the Capital of Punjab (Development and Regulation) Act, 1952. Besides other penal provisions, Section 8-A of the 1952 Act deals with “**Resumption and Forfeiture for Breach of Conditions of Transfer**”. Under this Section, if a transferee fails to pay the consideration money on account of

Officer is empowered to resume such building after observing principles of natural justice. There are remedies of statutory appeal and revision petition under Section 10 of the Act against the order of resumption.

(5) The Constitutionality of Section 8-A of 1952 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.** The second attempt to strike down Section 8-A was made before another Full Bench of this Court in **Dheera Singh Vs. U.T., Chandigarh Admn. & Ors., 2012(4) RCR (Civil) 970** which too upheld the provision though with a caveat that having regard to the doctrine of proportionality, the building shall be resumed only as a last resort in a case where the defiant allottee is a habitual violator and is not inclined to stop the misuse of premises.

(6) In the case in hand, the record reveals that the Chandigarh Administration through its Assistant Estate Officer started serving notices on the petitioner-Bank somewhere in the year 2002 to stop the misuse of residential premises and to restore it to its original purpose.

(7) The petitioner-Bank, nevertheless, continued to run its branch from the subject premises leaving no option with the Assistant Estate Officer but to resume the site vide order dated 09.09.2009. While resuming the property, the Assistant Estate Officer further directed that the petitioner shall be liable to pay misuse charges. The petitioner-Bank filed appeal which was dismissed on 09.11.2010. Its revision petition was also declined on 19.11.2012.

(8) Meanwhile, the petitioner-Bank made an attempt to seek permission of the Administration to run its commercial activities from the premises but its request having been turned down, the Bank approached this Court by way of CWP No.25243 of 2013 which was dismissed on 18.11.2013.

The Bank approached the Hon'ble Supreme Court in SLP (C) No.4027 of 2015 which was dismissed on 13.02.2015 though six months' time was granted to shift the branch from the present premises.

(9) It is in these compelling circumstances that the Bank has now shifted its branch and has stopped the misuse of the residential house in question.

(10) The Chandigarh Administration has filed its written statement defending the action of resumption, as according to it, the petitioner-Bank did not stop the misuse despite serving several notices, the first one being dated 09.09.2002. Learned counsel for UT Administration, however, admits that the Bank has now shifted its Branch and the house has been restored to residential purpose.

(11) Counsel for the petitioner-Bank undertakes that in future also, the premises shall not be misused for commercial/business activities and shall continue to be used for residential purposes only.

(12) In the light of the fact that the petitioner has now stopped the misuse and having regard to the principles laid down by the Full Bench in **Dheera Singh** (supra), we are of the considered view that the resumption order cannot sustain in the changed circumstances. Consequently, the writ petition is allowed; the resumption order as well as the appellate and revisional orders are set aside subject to the condition that the petitioner shall not misuse the premises in future for a purpose other than residential.

(13) At this stage, learned counsel for the UT Administration states that misuse charges levied on the Bank have been calculated as per the chart (R2) and according to him, the amount of such charges is approximately ₹ 13 crores.

On this premise, learned counsel for UT Administration submits that while

setting aside the resumption order, the Bank may be directed to pay the above-stated misuse charges.

(14) We have given our thoughtful consideration to the submissions but are not inclined to accept the same. No formula much less any transparent, fair and just method to justify the imposition of such exorbitant charges, the total amount of which exceeds the actual market value of the property itself, has been brought on record. While a wrong-doer should not go unpunished but under the garb of punitive action, the Chandigarh Administration cannot indulge into unjust enrichment. Taking into consideration the totality of the circumstances, we impose ₹ 1 lac per year on the Bank as misuse charges from the year 2002 to 2015 besides cost of ₹ 2 lacs. In this manner, the Bank shall be liable to pay a sum of ₹ 13 lacs + ₹ 2 lacs = ₹ 15 lacs as misuse charges. The order of resumption is thus set aside conditionally subject to petitioner's depositing the above-stated penalty with Chandigarh Administration within a period of one month from the date of receipt of certified copy of this order.

(15) The writ petition stands disposed of in above terms.

(Surya Kant)
Judge

06.02.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

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

Yes
No