

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-8325-2008 (O&M)
Date of Decision:17.05.2022

Abnash Chander Mahajan and othersPetitioners

Vs.

Chandigarh Administration and others ...Respondents

**CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH
HON'BLE MR.JUSTICE LALIT BATRA**

Present: Mr. G.S.Bhandal, Advocate,
for the petitioners.

Mr. Sanjeev Ghai, Advocate,
for respondents no.1 and 2.

None for respondent no.3.

AMOL RATTAN SINGH, J. (Oral)

By this petition, the petitioners seek issuance of a writ in the nature of *certiorari* quashing the order dated 30.01.2008 (copy Annexure P-10) passed by respondent no.1, with a direction sought to respondents no.1 and 2 to recover the misuse charges amount to Rs.2.7 lakhs from respondent no.3.

On 05.05.2022, the following detailed order had been passed by this court:-

“Learned counsel for the petitioners submits that the petitioners having shifted to New Delhi in the year 1993, it was not to their knowledge that the basement leased out by them to respondent No.3 herein, was being misused; and consequently the misuse charges as have been imposed vide the impugned orders, passed by the appellate authority dated 30.05.2007 and the revisional authority thereafter, dated 30.01.2008 (Annexures P-7 and P-10 respectively), deserve to be quashed.

Mr. Ghai, learned counsel appearing for the respondent-Union Territory however submits that as per the provisions of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973, upto the year 2006 a basement constructed beneath shop-cum-office could only be used for storage purposes, with the petitioners on the other hand, even as per the lease deed Annexure P-2, having leased it out/sublet it to respondent No.3 for the purpose of “running the business of general trade”, and therefore they cannot take a plea that they were not aware that it was being misused by the said respondent.

He next submits that the appellate authority having in fact set aside the resumption order and having further directed that the misuse charges be calculated, with the petitioners to pay those charges within 30 days from the date of communication of the calculation to the petitioners, but with the petitioners thereafter not having done that and having in fact filed a revision, and with the revisional authority also having directed payment of Rs.2.75 lacs within one month of the order dated 30.01.2008, failing which the resumption order would take effect, and the petitioners not having done even that, the impugned orders do not deserve to be set aside and in fact it would be the resumption order which would be deemed to have taken effect after the expiry of seven days from 30.01.2008.

Having considered the matter, we are of the opinion that even in terms of the ratio of the judgment of the Supreme Court in **Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and Others, (2004) 2 SCC 130** and of a Full Bench of this court in **Dheera Singh vs. U.T. Chandigarh, 2012 (4) RCR (Civil) 970**, resumption should be an absolute last resort, and with the misuser of the basement now having stopped, therefore, provided the petitioners pay the misuser charges as directed by the revisional authority vide its order dated 30.01.2008, along with interest to be calculated by the respondents till the date of payment (calculated upto 31.05.2022), within a period of two weeks of the calculations being made and submitted before this Court, the resumption orders need not be implemented, with it to be noticed that even as per learned counsel for the petitioners, the amount calculated by the respondents is Rs. 7,00,228/- (upto 04.11.2019), and is payable.

Naturally, the interest to be calculated upto 31.05.2022 would be at the same rate, with the petitioner in any case not being aggrieved of the amount calculated upto 04.11.2019. For the said calculations to be put up to this court, adjourned to 17.05.2022.

To be shown in the urgent motion list.

If possible, the amount calculated would be supplied to counsel for the petitioners before that date, with learned counsel for the petitioners submitting that the petitioners would get a demand draft issued for the said amount by the next date of hearing.”

Today, learned counsel for the petitioners has produced in court a demand draft favouring the Estate Officer, UT, Chandigarh, for an amount of Rs.8,00,761.00/-, with him submitting that in fact learned counsel for the respondent UT, Chandigarh, had given the calculations for the aforesaid amount, with the official present from the UT, Chandigarh, also endorsing that fact.

Consequently, this petition is disposed of with the aforesaid demand draft produced in court today handed over to learned counsel for the respondent UT, Chandigarh. Therefore, upon realisation of the amount of the demand draft, the site/show room in question would be restored to the petitioners immediately.

Naturally, as a consequence thereof, the portal on the website of the respondents would reflect the position after restoration, immediately thereafter.

It is made clear that the restoration would be as per the records of the respondents prior to resumption of the plot; and as regards substitution of any legal representatives of the deceased petitioner no.3 (Vijay Laxmi), an appropriate application would be moved which would be considered on its

merits by the respondents as per procedure laid down.

A photocopy of the demand draft be kept on the record of this case file.

(AMOL RATTAN SINGH)
JUDGE

May 17, 2022
dharamvir//

(LALIT BATRA)
JUDGE

Whether reasoned/speaking : Yes
Whether reportable : Yes