

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

**CWP-7733-2009 (O&M)
Reserved on:09.02.2022
Date of Decision:02.06.2022**

Ranjit Kaur & another

... Petitioners

Versus

Chandigarh Administration & others

... Respondents

**CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE LALIT BATRA.**

Present:- Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate for the petitioners.

Mr. Ashish Rawal, Advocate for the respondents.

...

TEJINDER SINGH DHINDSA, J.

Plot No.1574, Sector 38-B, Chandigarh measuring 633.75 sq. yards was allotted to the petitioners on lease hold basis for a period of 99 years in an open auction held on 11.07.1985.

Vide order dated 28.03.2007 (Annexure P-11) passed by the 3rd respondent i.e. Estate Officer, U.T. Chandigarh, lease of the plot was cancelled and forfeiture of 10% of the premium, ground rent, interest etc. was also directed. The order of cancellation of the lease stands affirmed by the appellate and revisional authorities vide orders dated 02.12.2008 (Annexure P-14) and 18.03.2009 (Annexure P-16).

Instant petition has been filed assailing the afore noticed three orders at Annexures P-11, P-14 and P-16.

Learned senior counsel submits that the action of cancellation of the lease of the plot in question is on the premise that the petitioners did

not construct thereupon within three years from the date of auction. It is contended that the respondent/authorities overlooked the vital fact that actual physical possession of the plot had been handed over to the petitioners only on 01.09.1992 and as such, no construction could have been effected prior to that date. The documents appended as Annexures P-5 to P-9 have been adverted to, to assert that the administration itself was not sure about the actual amount payable by the petitioners towards extension fee on account of non-construction. The amount demanded kept varying without any explanation being offered and inspite of the office of the 3rd respondent having been visited on numerous occasions to get clarity in the matter but no details were furnished. It was then argued by learned senior counsel that the notification dated 24.08.2007 (Annexure P-13) had been issued, notifying the Chandigarh Lease Hold and Sites and Buildings (Amendment Rules, 2007) and amending Rule 16 thereof to grant further time to allottees to raise construction on the sites allotted to them and the benefit of such amended Rule has been arbitrarily denied to the petitioners. It is argued that had the respondents taken a sympathetic view and granted reasonable time to the petitioners to raise construction on the plot in view of amended Rule 16, they would have adhered to the same and completed the construction within the extended time so granted. Much emphasis has been placed on the plea that resumption of the property of a citizen ought to be resorted to only as a last recourse. The power of resumption under the Rules should be used sparingly by the authorities as resumption is a drastic measure and should be resorted to only when there is a flagrant violation of the condition of lease. In support of such contention, reliance has been placed upon judgment of the

Hon'ble Supreme Court of India in **Teri Oat Estates (P) Ltd Vs. U.T. Chandigarh and others, 2004 (2) SCC 130**; a Full Bench decision of this Court in **Shri Ram Puri Vs. the Chief Commissioner, Chandigarh, 1982 (PLR) 388** and a Division Bench judgment of this Court in **M/s James Hotels Limited Vs. U.T. Chandigarh, 2009 (2) PLR 454**.

Yet another submission raised is that the impugned order of cancellation of lease has been passed without giving any proper opportunity of hearing to the petitioners and as such, on such ground alone, the action cannot sustain.

Per contra, learned counsel representing U.T. Chandigarh submits that as per Clause(s) 12 and 22 of the Terms and Conditions of the allotment letter at Annexure P-1, construction on the plot was required to be completed within a period of three years from the date of auction in accordance with the Punjab Capital (Development and Regulation) Building Rules, 1952 as well as the provisions of the Frame Control and Architectural Control and the Zoning Plan (wherever applicable). Since petitioners did not construct within the prescribed/extended time, show cause notice dated 27.04.2006 under Rule 20 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (hereinafter to be referred to as 'the 1973 Rules') was served for cancellation of lease and forfeiture of premium etc. After hearing the petitioners, lease of the plot was cancelled by a detailed order dated 28.03.2007 (Annexure P-11). The appeal as also the revision preferred by the petitioners have not found favour. It is submitted that the petitioners could not even start construction over about 21 ½ years from the date of auction and it is after following due procedure that the action of cancellation

of the lease has been taken and which does not suffer from any legal infirmity. Dismissal of the writ petition is prayed for.

At this stage, it would be apposite to take note that the instant petition had come up for preliminary hearing on 21.05.2009 and while issuing notice of motion, the following order had been passed:

“Notice of motion for 24.7.2009.

Meanwhile, subject to the petitioners' depositing the extension fee along with interest, if any, within a period of one month from today, status quo regarding subject plot shall be maintained.

To be listed before the Registrar (Judicial)-II for completion of service and pleadings.”

Subsequently, on 17.12.2013, a Division Bench of this Court passed the following orders:

“Counsel for the respondents seeks time to have instructions to sanction the building plan and to give a particular period for construction, in view of the fact that under the interim order passed by this Court, the extension fee has been paid upto the year 2009 and further, the petitioner is ready to pay the subsequent extension fee till date.

Adjourned to 14.01.2014.”

In this regard, it has been asserted that the petitioners deposited a sum of Rs.6,15,000/- vide banker's cheques towards extension fee with the Estate Officer, U.T., Chandigarh. No receipts were, however, issued. It is submitted that the petitioners had made several requests to provide them the details regarding the amount of subsequent extension fee but no response had come forth. Thereafter, petitioners had received a communication dated 20.11.2014 (Annexure P-19) to get the banker's cheques deposited in the year 2009 re-validated. Categorical assertion is that the banker's cheques were

re-validated and re-submitted on 04.12.2014. Based on such chain of events and circumstances, learned senior counsel would contend that much water has flown even subsequent to the order of cancellation of the lease and an extension fee having been deposited under the interim orders passed by this Court, the impugned orders of cancellation deserve to be set aside and the petitioners be afforded a reasonable time to effect construction. In such regard, it is submitted that the petitioners would readily deposit the upto date extension fee as may be determined by the respondent/authorities.

Counsel for the parties have been heard at length and pleadings on record have been perused.

In the first instance, it would be imperative to set out the factual premise of the case in the correct perspective.

An impression was sought to be conveyed to the Court that it was the Chandigarh Administration which had delayed the possession of the plot in question and as such, the petitioners could not have been penalized on account of non-construction. Pleadings, however, indicate otherwise. Undisputedly, the petitioners had participated in an auction held on 11.07.1985 for the residential site. The bid having been accepted, the letter of allotment was issued on 29.08.1985 (Annexure P-1). Clause 11 of the letter of allotment was in the following terms:

“The letter authorizing you to take possession of the site leased to you is enclosed.”

Even though, the petitioners have placed on record the letter of allotment but the letter carrying even date i.e. 29.08.1985 and as referred to in Clause 11 seems to have been deliberately withheld. The same however has been placed on record as Annexure R-1 (colly) along with the reply filed

on behalf of the respondents. Such communication dated 29.08.1985 which was enclosed along with the letter of allotment was issued by the Estate Officer, Chandigarh Administration, Chandigarh and addressed to the Executive Engineer, C.P. Division No.3, Chandigarh and a copy was even forwarded to Svtantarbir Singh Batra (petitioner No.2 herein) and para 2 thereof, would be relevant and reads as under:

“2. He should please obtain possession of the plot on any working day from the Executive Engineer, C.P. Division No.3, Chandigarh on production of this letter alongwith the allotment letter. Possession can be obtained either personally by the allottee or through an authorized representative, an authority in simple will do.”

In para 5 of the written statement, the categoric stand taken is that inspite of the petitioners having been offered possession of the plot in terms of communication dated 29.08.1985 at Annexure R-1 (colly), the petitioners did not respond and had approached the concerned authority viz. Executive Engineer, C.P. Division No.3, Chandigarh for taking physical possession of the site '*for the first time*' in September, 1992. Accordingly, possession letter was issued to the petitioners on 01.09.1992 (Annexure P-2) by the Executive Engineer. There is no rebuttal at the hands of the petitioners as regards the enclosed communication dated 29.08.1985 along with allotment letter as also to the averments made in para 5 of the written statement. That apart, there is no averment or document placed on record by the petitioners for this Court to infer that the respondent/authorities had at any point of time been approached prior to the year 1992 for taking physical possession of the plot and inspite of a stipulated obligation in the allotment letter dated 29.08.1985 that erection of building on the site shall have to be

completed within three years from the date of auction. In the considered view of this Court, the submission raised on behalf of the petitioners attributing delay to the Administration as regards possession of the site is without merit.

Equally, frivolous is the plea taken that extension fee was not deposited as varying demands at different points of time had been raised. Such aspect stands clarified by the Administration in para 9 of its reply and which reads as follows:

“9. In reply to para 9, it is submitted that the petitioners vide their letter dated 27.03.2002 (Annexure R-4) received on 9.4.2002 requested for grant of extension in time limit for construction from 1.4.2002 to 31.3.2003. The request was considered and the petitioners were asked to deposit an amount of Rs.191,749/- as Extension Fee for the said period vide letter dated 19.6.2002 (Annexure P-5) as per Rules. In response to said letter, the petitioners deposited only a sum of Rs.50,000/- on 25.10.2002. The remaining amount of Rs.141,749/- was thus demanded from the petitioners vide letter dated 27.12.2002 (Annexure P-6). The petitioners, however, did not deposit the remaining amount. Accordingly, letter dated 24.9.2004 (Annexure P-8) was issued to them demanding a sum of Rs.2,26,533/- as Extension Fee calculated upto 31.3.2005. A reminder dated 11.5.2005 (Annexure P-9) was also issued. However, the petitioner did not respond to the same. Accordingly show cause notice 27.4.2006 (Annexure P-10) was issued and subsequently the lease of the auctioned site was cancelled vide a detailed order dated 28.3.2007 (Annexure P-11) passed by the then Assistant Estate Officer after affording opportunity of hearing to the petitioners.”

Even to such stand, there is no rebuttal.

Next issue that arises for consideration is whether in the facts

and circumstances of the case the action of cancellation of lease of the site was justified?

Certain conditions contained in the allotment letter dated 29.08.1985 issued to the petitioners would be relevant and are reproduced hereunder:

“Reference your bid at the auction held on 11.7.85 for a Residential Site.

2. Residential Site details whereof are given below is hereby allotted to you on lease hold basis on the terms and conditions mentioned hereinafter:

<i>Sector</i>	<i>Sr. No. of the plot</i>	<i>Area in Sq. yds & dimensions</i>	<i>Premium</i>	<i>Yearly rent for 1st 33 years</i>
<i>38B</i>	<i>1574</i>	<i>633.75 Sq. Yds.</i>	<i>3,47,000/-</i>	<i>Rs.8675/- p.m.</i>

3 to 10. xxx xxx xxx

11. The letter authorizing you to take possession of the site leased to you is enclosed.

12. The building on the site shall be constructed in accordance with the plans which must Conform to the Punjab Capital (Development & Regulation) Building Rules, 1952 and provisions of the Frame Control and Architectural Control and the zoning plan (wherever applicable).

13(a) and 13(b) to 15 xxx xxx xxx

16. The site and the building erected thereon shall be used only for the residential purposes for which it has been leased.

17. In the event of default, breach or non-compliance of any of the conditions of lease, the lease may be cancelled and the site resumed an the whole/part amount paid to Govt. towards the premium/rent of the site may be forfeited to Govt. after the cancellation of lease, it shall be the responsibility of the lessee

18 to 21. xxx xxx xxx

23. *The building can be actually occupied only after the Occupation Certificate' obtained."*

HARJEET KAUR
2022.06.02 12:29
I attest to the accuracy and
integrity of this document

impugned order dated 28.03.2007 (Annexure P-11) cancelling the lease, no steps had been taken by the petitioners even to commence construction.

In the case of **Shri Ram Puri (supra)**, a Full Bench of this Court had examined the scope and power of resumption under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952. While upholding the constitutionality of such provision, it had been observed that resumption in the sense of a divestiture of title would be the ultimate civil sanction in the armoury of the authorities to effectuate the twin purpose of a regulated and planned development as also the expeditious creation of the capital city in the State. While opining that resumption should be used as a weapon of last resort, it was also held that it would be necessary to grant such ultimate sanction in the hands of the authorities to resume the sites and buildings if the transferees recalcitrantly decline to conform to the ideal of a well planned and well regulated development. Relevant extract of para 40 of the judgment reads as under:

“The Master Plan of the town provided for residential, industrial, commercial and educational zoning and even within these zones specific buildings were earmarked for specific purpose. If such a planned city (the idea whereof was rather new in the country) was to be translated into reality, it was inevitable and necessary to give the ultimate sanction in the hands of the authorities to resume the sites and buildings if the transferees recalcitrantly refuse to conform to the ideal of a well-planned and well-regulated development, especially with regard to the need of quick urbanization. Even learned counsel for the petitioner had to half-heartedly concede that this object cannot be achieved but by resuming the sites on which the transferees either refuse or are unable to build within the prescribed time. It would thus appear that the ultimate sanction

of resumption (though it should be one of last resort) is a necessary power in the hands of the authority to achieve the larger social purpose. It appears that, in essence, the conflict herein is between the individualistic property rights and the larger public weal of planned and regulated urbanization. The head-on clash is between the doctrine of laissez faire against the somewhat urgent need of the welfare State to provide a planned and regulated urbanisation for its citizenry. Inevitably private interest must give way to public weal and the larger interest of social control must override the outmoded theories of laissez faire. I am inclined to the view that the ultimate sanction of the resumption may well be a necessary power for sound and planned urbanization and its selective use undoubtedly advances that purpose. ”

Adverting back to the facts of the present case, auction had been held on 11.07.1985. Possession offer communication was enclosed along with allotment letter dated 29.08.1985. In spite of a clear stipulation contained in the allotment letter to complete construction within a period of three years from the date of auction, the petitioners chose not to take possession till the year 1992. Even thereafter petitioners kept dilly-dallying, and did not even deposit the extension fee leviable on account of non-construction. The condition incorporated in the allotment letter to complete construction within three years was for a specific purpose. Such stipulation was to ensure not only a planned development but also a speedy and time bound development in the city. The petitioners have sat over the site over a period of more than 21 years. In the reply and in para 6 thereof, it has been averred that a show cause notice dated 22.01.1997 (Annexure R-2) under Rule 20 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 had been issued to the petitioners on account of non-construction. Petitioners did

not respond to the same. Ultimately, a show cause notice dated 27.04.2006 (Annexure P-10) was issued to them for cancellation of lease and forfeiture of the premium etc. In the peculiar facts and circumstances of the case, this Court would have no hesitation in concluding that the petitioners have wilfully and deliberately violated the stipulation obligating them to construct on the site within a period of three years from the date of auction. Such default on the part of the petitioners cannot be viewed as a minor infraction. A period of 21 years would be too long to overlook. The inevitable conclusion is that it was only by way of last resort that the Chandigarh Administration took recourse to the ultimate sanction of cancellation of the lease. Such action would be seen towards following the dictum laid down by the Full Bench in **Shri Ram Puri's case (supra)**.

The judgments placed reliance upon in **Teri Oat Estates (supra)** and **M/s James Hotels Ltd. (supra)** would not enure to the benefit of the petitioners. In the case of **Teri Oat Estates (supra)**, a commercial site in Sector-34, Chandigarh had been purchased on lease hold basis by the appellant in an open auction held on 13.03.1988. After entering into possession of the site, the appellant had constructed a six stories building including the basement floor. Lease of the site had been cancelled on 24.06.1992 i.e. within a period of four years from the date of allotment on the ground of there being a default in deposit the purchase consideration amount. In the case of **M/s James Hotels Ltd. (supra)**, a hotel site had been

auctioned on 01.08.1985. Lease had been cancelled as the petitioner/company had not deposited the due installment and ground rent within the stipulated time period. This Court had intervened on the observations that it would not advance any public or private interest if the order of resumption is upheld because huge expenditure had also been incurred on the hotel building which was near completion and it would be a sheer wastage as according to Rule 21 of the 1973 Rules, the whole building was to be razed and demolished and particularly when the construction had been raised after obtaining sanction of the site plans. In the case of **Teri Oat Estates (supra)** as also **M/s James Hotels Ltd. (supra)**, it was not a case of non-construction. Rather construction had been effected and the default was in deposit of the purchase amount/interest thereupon. The facts, as such, are clearly distinguishable and these two judicial precedents would have no applicability to the facts of the present case.

The reliance placed on behalf of the petitioners upon Notification at Annexure P-13 amending Rule 16 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 is wholly mis-placed. As per such Notification, it was the '*lessees*', who could not complete the building within the extended period upto 31.03.2007 were given another opportunity to complete the building subject to certain conditions. Such Notification contained the proviso to the effect that '*existing allottees*' who have not

completed the construction of the building upto 31.03.2007 shall be given last opportunity to complete the building by 31.03.2008 subject to deposit of certain extension fee. The Notification at Annexure P-13 was issued on 24.08.2007 whereas the lease of the site in question already stood cancelled prior in point of time vide order dated 28.03.2007. The petitioners on the date of issuance of the notification dated 24.08.2007 would not as such be covered by the expression '*existing allottees*'. The Notification would not have retrospective effect.

There is no merit in the contention raised by counsel as regards violation of the principles of natural justice. The allotment letter having been issued in the year 1985 and the petitioners having belatedly taken possession of the site in the year 1992 did not commence construction thereupon, Administration chose to issue a Notice dated 22.01.1997 (Annexure R-2 along with the reply) under Rule 20 of the 1973 Rules on account of non-construction. Such fact has not been denied. Petitioners chose not to respond to such Notice and did not even appear before the Estate Officer on the date that had been stipulated in the Notice. In spite thereof, the Administration had given a long rope and it is only in the year 2006 that another Notice dated 24.07.2006 (Annexure P-10) had been served upon the petitioners. The petitioners were duly heard by the Estate Officer prior to passing of the order dated 28.03.2007 (Annexure P-11) cancelling the lease. In the impugned order, it has been specifically observed that Svtantarbir Singh Batra, co-lessee, having appeared could not put forth any cogent reason for not starting construction over the site for a period of more than 21 years. That apart, the lessee had even failed to deposit the extension fee and having left with no

other option, the lease was being cancelled.

No submission has been advanced by counsel as regards there being any violation of the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 as also of the 1973 Rules.

In the considered view of this Court, petitioners cannot draw any mileage from the notice of motion order dated 21.05.2009 as also the subsequent order dated 17.12.2013 passed during the course of hearing of the instant petition. While issuing notice of motion, status quo regarding the subject plot had been directed subject to the petitioners depositing the extension fee along with interest. The clear purport of such direction and calling upon the petitioners to deposit the extension fee was only to ensure that the site in question is '*held over*' and during the pendency of the writ petition, the site be not sold/put to auction afresh by the Administration. Even as regards the order dated 17.12.2013 passed by this Court, wherein counsel for the respondents had sought time to complete instructions with regard to sanction of the building plan and to give out a particular period of construction, the same would not tantamount to this Court having expressed any opinion on the merits of the case. Matter had been adjourned to 17.12.2013 on the asking of the counsel for the respondents, but the Administration has held its ground as regards the decision of cancellation of the lease.

In such view of the matter and in the light of the discussion hereinabove, we do not find any patent infirmity or illegality in the action taken by the Administration in cancelling the lease of the site in question.

Petition is accordingly dismissed.

It is, however, directed that the amount towards extension fee deposited by the petitioners during the pendency of the writ petition would be refunded to them along with interest at the rate of 6% to be reckoned from the date banker's cheque(s) deposited by the petitioners had been duly encashed and upto the date of actual refund.

(TEJINDER SINGH DHINDSA)
JUDGE

(LALIT BATRA)
JUDGE

02.06.2022

harjeet

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|-----|----------------------------|-----|
| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |