In the High Court of Punjab and Haryana at Chandigarh

CWP No. 32193 of 2018 (O&M)
Reserved on: 4.9.2024
Date of Decision: 18.9.2024

Akhil Jain and another ......Petitioners

Versus

Chief Administrator, Union Territory, Chandigarh and others ......Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Sudhir Sharma, Advocate and
Mr. Vishesh Jain, Advocate
for the petitioners.

Mr. Aman Bahri, Advocate
for the respondents-U.T., Chandigarh.

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SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners have sought the quashing of the impugned order 12.1.2010 (Annexure P-26) passed by the respondents authorities, whereby the allotment of the site bearing SCF No. 26, Sector 22-D, Chandigarh (CP-36) was ordered to be resumed. Further, the petitioners have also sought the quashing of the order dated 16.11.2015 (Annexure P-28), whereby the appeal filed by them against the impugned order (Annexure P-26) became disposed of but with a direction to the Estate Officer concerned, that in case the petitioners produces any document displaying the granting of permission to them for conversion of SCF into SCO, thereupon the resumption order, as made in respect of their site shall stand revoked subject to the payment of misuser charges. The petitioners have also sought the quashing of the impugned order dated 4.9.2018

(Annexure P-32), whereby the revision petition preferred by them against the order (Annexure P-28), became dismissed.

Brief facts of the case

2. It is averred in the instant petition, that a freehold commercial site bearing SCF No. 26, Sector 22-D, Chandigarh was allotted to M/s Delhi Cloth and General Mills Limited vide Allotment letter dated 46838/CP-36 dated 13.10.1953 (Annexure P-1). After the entire payment was made by the allottee concerned, the conveyance deed was duly executed on 19.2.1958 (Annexure P-2). It is further averred thereins, that SCF Nos. 26 and 27 were the subject matters of a Scheme of Arrangement under the Companies Act, 1956 which became approved, endorsed and sanctioned by the Delhi High Court in Company Petition No. 5 vide order dated 16.4.1990. As per the said scheme reveals that shop on the ground floor portion of Plot No. 26 and SCF No. 27 Sector 22-D, Chandigarh fell to the share of DCM Industries Ltd. (now know as DCM Shriram Consolidated Ltd.). The Estate Officer concerned, transferred 65% share of the entire SCF's comprising 2½ floors from Delhi Cloth Mills to DCM Shriram Consolidated Ltd., who subsequently sold its 65% share to M/s Phoenix Overseas Ltd. vide sale deed dated 15.1.2000 (Annexure P-4). Subsequently, M/s Phoenix Overseas Ltd. sold 65% share of SCF No. 26, Sector 22-B, Chandigarh to one Narinder Kumar Sachdeva and others vide sale deed dated 20.4.2007 (Annexure P-7). The said purchasers after obtaining NOC for sale from the Estate Office, Chandigarh further sold the said 65% share which comprises the entire ground floor to one Kamal Kant Jain, Veena Jain, Mandeep Jain and petitioner No. 1 vide sale deed dated 5.10.2000 (Annexure P-9). On the basis of the said sale deed, the Estate Officer concerned transferred 65%

share in SCF No. 26 in favour of Kamal Kant Jain and others. It is further averred in the instant petition, that by virtue of a Memorandum of Family Arrangement/family settlement dated 9.9.2004 (Annexure P-11), the aforesaid SCF fell into the share of petitioner No. 1. Subsequently, petitioner No. 1 gifted the same to his wife, namely, Pooja Jain vide gift deed dated 19.1.2005 (Annexure P-12). The Estate Officer concerned, transferred 65% share in the SCF (supra) in favour of Pooja Jain vide transfer letter dated 15.2.2005 (Annexure P-13). It is further averred thereins, that due to some matrimonial discord between petitioner No. 1 and Pooja Jain, the same resulted in divorce by way of mutual consent, and, as per the settlement arrived between the both, 65% share in SCF No. 27 had fallen to petitioner No. 1, and, accordingly Pooja Jain executed a registered Transfer Deed dated 23.2.2017 (Annexure P-14) in respect of 65% in the SCF in question, and petitioner No. 1 became the absolute owner thereof. It is also averred that the upper floors i.e. Flat portion of SCF No. 26 and SCF No. 27 fell to the share of M/s DCM Ltd. (formerly known as M/s Delhi Cloth and General Mills). The said 35% share comprising of 1st and 2nd floor of SCF 26 was purchased by Shanti Ram Maji and others vide registered sale deed dated 8.7.2004 and the said 35% share was also transferred in his favour. It is further averred that the vide letter dated 2.6.1956 (Annexure P-16-A), issued to the owners of SCFs in Sectors 16, 22-D and 23 regarding additions and alterations to the SCFs concerned. Vide letter dated 20.12.1956 (Annexure P-16-B), the Estate Officer, Chandigarh had allowed glazing behind the concrete jalli of SCFs in Sectors 16, 22 and 23. In the year 1957, the then Estate Officer concerned, had issued show cause notices to all the owners/allottees of all SCFs. Being aggrieved from the above show cause notices, the owners/occupiers of the SCFs had made various representations to the then Govt. of Punjab. The Secretary to Govt. of Punjab, Capital Project, vide order dated 24.8.1961 (Annexure P-17) had permitted the use of upper floors of the SCFs from residential purposes to commercial use. In pursuance to the office order dated 24.8.1961, it was decided that such permission to use the upper floors of SCFs for commercial purposes would not attract levy of any additional charges or fee. It is further averred in the instant petition that in the instant case, the Assistant Estate Officer while exercising the powers of Estate Officer, U.T., Chandigarh had issued show cause notice dated 18.10.2007 on the ground that the site is being used for the purpose other than specified i.e. 1st and 2nd floor is being run as shop.

Submissions of the learned senior counsel for the petitioners

3. The learned senior counsel for the petitioners has argued before this Court, that the respondent authorities have completely misconstrued the provisions of law and have misapplied the same to the case at hand. He rests the above submission upon Annexure P-17, the relevant contents whereof become extracted hereinafter.

> *"4. In the case of the misuse of the residential portion of shop-cum-flats for offices etc., no action need be taken, against the defaulters because it has now been decided that the residential portion of such shop-cum-flats should be made available for commercial purpose."*

4. On anvil of the said annexure, it is contended, that since a part of the disputed building became permitted to be converted from residential purpose(s) to commercial purpose(s), therefore the upper floor of the disputed building did not require the makings of apposite levies thereons, nor required the imposition(s) of any mis-user levies/charges.

5. The learned senior counsel has further argued, that since the allotment letter and conveyance deed of the SCF, makes it clear that the building was allotted as a commercial building and not as a commercial-cum-residential building. Therefore, the conveyance deed(s) hence became executed considering the site as a commercial site, and, thus the thereons raised entire building including the upper floors but were exclusively meant for commercial use. The learned counsel has further argued, that as per the letters dated 24.8.1961 the, Estate Officer cannot charge conversion fee with regard to use of residential portion for commercial purposes and thus the resumption order on account of misuse, as alleged by the Estate Officer concerned, is liable to be set aside and the site in question deserves to be restored. In addition, he has argued that there is no change in the interior portion of the SCF. Furthermore, he has argued that no permission for conversion in respect of the upper floors of the SCF concerned, was required to be taken. Therefore, it is prayed that the impugned orders be quashed and set aside.

Submissions of the learned counsel for the respondent-U.T., Chandigarh

6. The learned counsel for the respondent-U.T.has argued before this Court, that as per clause 6 of the allotment letter, the apposite fragmentation rather was not permissible, as the disputed site and the thereons raised disputed building, thus became unamenable for being used for any purpose other than, the construction of a shop-cum-flat, as depicted in the drawings supplied to the Government. He has further argued that the memo dated 24.8.1961 (Annexure P-17) issued by the Secretary to Government of Punjab read with press note Annexure P-19, envisaged the filing of an application to the Estate Office concerned, with plans showing

the required additions/alterations in the disputed building. However, since compliance vis-a-vis Annexure P-17 was not made by the petitioners therebys the change of user or the alteration, as made to the disputed building rather from a shop-cum-flat thus to a commercial building but was unauthorized. Therefore, he submits that the impugned orders are required to be maintained and affirmed. In addition, the learned counsel has argued, that after the issuance of a show cause notice dated 1.12.2007 and before passing the resumption order (supra), 35% co-owners vide letter dated 30.7.2009 expressed their willingness to deposit the conversion charges and also deposited a bank draft of Rs. 50,000/- as token amount to show their bona fide seeking conversion of the SCF into a shop. However, since 65% of co-owners did not agree for conversion of the SCF into SCO/shop, thereupon the application of 35% of co-owners could not be processed. Thus, the petitioner(s), who to the extent of 65% are co-owners, vis-a-vis the disputed building rather deliberately were not willing to get the SCF concerned, converted into a SCO/shop, despite the fact that 35% of co-owners was/were willing to get the said conversion done.

Inference of this Court

7. The policy decision taken by the then Government of Punjab, on 24.8.1961 is carried in Annexure P-17. The contents of Annexure P-17 are ad verbatim extracted as under:-

> *"Memorandum:-*
>
> *The following instructions are being used for guidance as regards the stoppage of misuse of site.*
>
> *2. Government have decided that action may not be taken against doctors and lawyers for carrying on their practice, on residential houses. Similarly, no action for the present should be taken against Schools/Colleges/Presses functioning in residential*

building. It is considered that the misuse of these trades can be overlooked for sometime, as they do not create insanitary conditions.

It is, however, felt that trades, which create insanitary conditions, should not be allowed to function in residential houses. For example on inspection of residential buildings on 3rd August, 1961, it was found by the Deputy Minister for Public Works that in one house opposite the Hindi Motors behind the first line of houses, a soap factory, Dhobi Ghat and a laundry were functioning. The owner had made small tanks in the back courtyard of the house and these were unauthorized constructions. The Deputy Minister for Public Works ordered that the owners should be served with a notice to show cause why the house should not be resumed, as it was being misused for offensive trades. Secondly, during inspection, it was found that some offices have been located at the upper floors of some houses, such as the Chit Fund Private Ltd., Food Purchasing Agents and so on. These occupants had displayed large sign boards which looked very ugly. The Deputy Minister for Public Works agreed that such professions should not be allowed to be carried on in residential houses. Broadly speaking, Govt. have decided that Doctor, Lawyers, Colleges, Schools and Presses should not be disturbed but other professions should not be allowed to be carried on in residential houses and notices should be served on these occupants who create insanitary conditions.

If the defaulters do not heed the notices and stop the misuse as decided above, you should resume the sites.

3. In cases in which you have already resumed the property, you should go ahead, with eviction proceedings in order to make the resumptions effective.

4. <u>In the case of the misuse of the residential portion of shop-cum-flats for offices etc., no action need be taken, against the defaulters because it has now been decided that the residential portion of such shop-cum-flats should be made available for commercial purpose.</u>

5. x x x x"

8. Undisputedly, the disputed premise, as unfolded by Annexure P-1 was allotted to the successful auction bidder. However, in terms of

clauses 6 and 7 embodied thereins, clauses whereof become extracted hereinafter, a successful auction purchaser or his/its successors-in-interest, were required to construct a building on the vacant place, strictly in accordance with standard design which was to be supplied by the Government. Subsequent to the allotment of the disputed commercial plot, being made through Annexure P-1, vis-a-vis M/s Delhi Cloth and General Mills Limited, the latter executed certain deeds of conveyance with the vendees concerned. All the deeds of conveyance, which became entered into post the execution of Annexure P-1 are respectively appended to the instant writ petition as Annexures P-4, P-7 and P-9.

> "*6. Fragmentation of the site shall not be permitted nor shall it be permissible to use the site for any purpose other than the construction of shop-cum-flat/booth as shown in the drawings to be supplied by Government.*
>
> *7. You shall pay al general and local buildings in strict accordance with the standard design, which will be supplied by Government. Slight internal xxx (illegible) in the design can be made with my previous approval in writings.*"

9. Be that as it may, the conditions embodied in the above extracted clause, as becomes carried in the letter of allotment (Annexure P-1) required completest adherence thereto being made at the instance of the transferees concerned. Tritely put, unless the construction raised on the plot was raised in terms of the sanctioned plan. Moreover, in case the construction raised on the plot was so raised strictly in terms of the zoning regulations concerned, therebys alone the construction raised on the commercial plot rather was not amenable for resumption. Contrarily, the same became amenable for resumption only when there was a breach of clause 7 (supra), besides on breach being done, to the zoning regulations

appertaining to the region where the disputed plot occurs.

10. Initially it is relevant to bring to the light the fact, that in the apposite sanctioned drawings, as became supplied by the present petitioners to the competent authority concerned, rather the disputed building was contemplated to be used for residential-cum-commercial purposes. The said drawings were in tandem with condition Nos. 6 and 7 (supra), as become carried in the allotment letter (Annexure P-1), and, was also required to be adhered to by the subsequent allottees concerned. However, detraction or digression therefrom has occurred rather through the petitioners converting the entire disputed building into a commercial premises, and, that too without seeking the ordained statutory permission from the statutory authorities concerned. Resultantly therebys, as declared in the impugned order (Annexure P-26), the disputed building became amenable for resumption.

11. Though, the learned senior counsel for the petitioners has vigorously argued before this Court, that in terms of the above underlined portion of Annexure P-17, there is a bar against action takings against the defaulters, who changed the designated user of the disputed building from Shop-cum-Flat, to thus theirs carrying thereins mercantile activities. However, the above underlined clause, as carried in Annexure P-17 though does prima facie support the argument raised by the learned senior counsel for the petitioners. However, the said clause, as carried in Annexure P-17 rather is not clothed with any statutory force but is only an executive order which but obviously, unless it became preceded by an amendment, thus being made qua the relevant rules, as carried in the relevant statute, thereupon it holds no force and sanctity in law. The requisite amendment is

however not placed on record whereupon Annexure P-17 remains only an executive order. Consequently, it has no effectivity for any purpose(s) whatsoever.

12. Moreover, even when assumingly the said underlined clause 4 carried in Annexure P-17, thus has some force, yet when the condition (supra) for allotment becomes the *sine qua non* relating to the user of the disputed sites, and, also to the subsequent thereto user of the building raised thereons. Therefore, when the said condition became accepted by the allottees, and, also became accepted by the subsequent allottees/transferees through the apposite deeds of conveyance becoming executed. Resultantly, the said executed deeds of conveyance concerned, do create an estoppel against the petitioners from theirs resiling from the condition (supra), as becomes incorporated in the apposite deeds of conveyance.

13. Moreover, when the said condition became also acquiesced by all the allottees concerned through the relevant drawings becoming supplied to the Government, whereins, the disputed building became designated to become used as shop-cum-flat, therebys the said made acquiescence also create an estoppel against the present petitioners from theirs reneging from the said condition. In summa, no reliance whatsoever can be placed upon the above underlined condition in Annexure P-17.

14. Be that as it may, a reading of the impugned order (Annexure P-28) unfolds, that the present petitioners were permitted to place on record the document suggesting that the authorities concerned, had stricto sensu sensu permitted the conversion of the disputed premise from SCF into SCO. The revision petition filed by the petitioners against the said order was also dismissed through the making of the impugned order (Annexure P-32).

However, yet the instant petition has been filed before this Court by the petitioners, wherebys a challenge is made to the imposition of the conditions (supra) in the letter of allotment. Any challenge to the imposition of the said conditions in the letter of allotment is extremely weak and fragile, especially when the initial allotment as made through Annexure P-1, thus was made in the year 1953, and, was succeeded by constructions being raised on the vacant plot, and, subsequently also since the transfers of constructed building took place, through the execution of sale deeds which are respectively appended to the instant writ petitions as Annexures P-4, P-7 and P-9. Therefore, the initial allottee of the vacant plot i.e. M/s Delhi Cloth and General Mills Limited was required to be making a challenge to the validity of existence of the above extracted clause in the letter of allotment, thus on the ground, that the same was unconscionable or breached the fundamental right to property, besides breached his fundamental right of practicing his/its business or profession. However, the said grievance never became raised by the initial allottee of the disputed premises. Therefore, the successors-in-interest of the initial allottee also therebys becomes bound by the said condition (supra), as carried in allotment letter (Annexure P-1).

15. In other words, reiteratedly the petitioners are estopped to challenge the existence of conditions (supra). Resultantly, they were not required to, without seeking and obtaining permission, thus for the relevant conversion taking place, rather alter or change the building from SCF to SCO. Since the said permission for conversion from SCF to SCO rather apparently has not been obtained, therefore, the impugned order (Annexure P-26) whereby the resumption of the disputed premise was made, thus prima facie appears to be valid.

16. In any case, if any prejudice or injustice did purportedly ensue to the present petitioners, therebys as apparent on a reading of the operative part of the impugned order (Annexure P-28), since an opportunity was granted to the petitioners to produce the order relating to the apposite conversion taking place, thereupon the impugned order appears to be neither arbitrary nor oppressive.

Final Order

17. The result of the above discussion, is that, this Court does not find any merit in the instant petition, and, is constrained to dismiss it. Consequently, the instant petition is dismissed. The impugned orders are maintained and affirmed.

18. However, the petitioner is directed to, within two weeks hereafter, produce the asked for documents for conversion before the authorities concerned, whereby the authorities concerned shall pass lawful orders. If the said documents remain unproduced, thereupon the order of resumption be ensured to be promptly effectuated.

19. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 18th, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No