Om Parkash Vs Union Territory of Chandigarh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: June 5, 1990

Acts Referred: Capital of Punjab (Development and Regulation) Act, 1952 â€" Section 8A
Capital of Punjab (Sale of Sites and Building) Rules, 1960 â€" Rule 11D
Constitution of India, 1950 â€" Article 226, 227
Evidence Act, 1872 â€" Section 115
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 â€" Section 5

Citation: (1990) 98 PLR 289

Hon'ble Judges: Jai Singh Sekhon, J

Bench: Single Bench

Advocate: M.L. Sarin and Sandeep Arora and Pankaj Sharma, for the Appellant; Ashok Bhan and Rakesh Garg, for the Respondent

Judgement

Jai Singh Sekhon, J.
This order will dispose of civil writ No. 2077 of 1980 directed by Om Parkash owner of godown site No. 180,

Grain Market, Chandigarh, against the order of its resumption and writ petition No. 6928 of 1986 preferred by Nohria Ram and another the

alleged tenants of a portion the godown site in dispute as the controversy in both these petitions relates to the same premises.

2. The facts relevant for the disposal of the present writ petition are that on 6-2-1972. Om Parkash petitioner purchased godown site No 180.

Grain Market, Chandigarh, in an open auction for a total price of Rs 85,600/-. Om Parkash paid 25% of the sale consideration. In accordance

with the terms and conditions of the sale the balance amount 75% along with interest accruing thereon was to be paid in three equated yearly

instalments, the first instalment being payable on 6-2-1973, the second instalment being payable in 6-2-1974 and third instilment on 6-2-1975.

The petitioner constructed a building on the site in question after spending about Rs. one lac. The petitioner failed to pay the first two instalments

due to financial stringency, which resulted in the resumption of the site in dispute vide order Annexure P-1 dated 11-2-1975 passed by the Estate

Officer, u/s 8-A of the Capital of Punjab (Development and Regulations) Act, 1952, (Chandigarh Amendment) Act, 1973 (hereinafter referred to

as the Act). The Estate Officer also forfeited 10% of the price of the site in question. Om Parkash petitioner then preferred an appeal before the

Chief Administrator, Chandigarh, u/s 10(1) of the Act, which was disposed of vide order Annexure P-2, dated 1-9-1975, directing the restoration

of the site in question to the petitioner subject to the condition that the entile amount towards the price and interest due was to be paid by the

petitioner by 31-10-1975 The amount of forfeiture was reduced to Rs. 200/- only. It was further directed that if the petitioner failed to make

payment of the entire amount within stipulated period, the order of the resumption of the site in dispute of the Estate Officer shall stand Om

Parkash, however, failed to deposit this amount due to financial hardship within stipulated period and resorted to filing of a revision petition u/s

10(4) of the Act, before the Chief Commissioner, Chandigarh. This revision petition was, however, rejected by the Chief Commissioner,

Chandigarh, tide order dated 20-12-1979. The possession of the godown site and building thereon was taken by the Estate Officer. Subsequently,

Om Parkash petitioner managed to arrange funds and vide letter dated 14-5-1980 Annexure P-3, sent a demand draft for a sum of Rs. 70,000/-

Annexure P-4, drawn on the Bank of Baroda, Chandigarh, towards the payment of instalments to the Estate Officer, with a request that he should

be intimated about the balance amount outstanding, so that the same may be deposited, with a view to secure possession of the site. On getting no

response from the Estate Officer, about the receipt of the said draft or regarding the balance amount outstanding against the petitioner, the latter

again sent a reminder dated 7.6.1980. Annexure P-5 to the Estate Officer. Ultimately, Om Parkash petitioner resorted to the filing of the present

writ petition on 17.6.1980 when he failed to get any response from the Estate Officer, contending that it was incumbent upon the Estate Officer to

account for the sum of Rs 70,000/ already paid by him through the demand draft Annexure P-4 and also to let the petitioner know the balance

price along with the interest, which is payable by the latter. The petitioner further avers that the respondents are bound to release the godown site

and the building raised thereon from resumption on payment of full amount and the interest thereon besides the amount of forfeiture and that since

the respondents have failed to discharge the statutory obligation, under the circumstances a writ of mandamus or any other appropriate writ was

sought to be issued to them to receive the balance amount of instalments alongwith interest towards the price of the godown site, from the

petitioner, after accounting for the forfeiture part of the price thereof, as ordered by the Estate Officer vide his order dated 11.2 1975 Annexure P-

1, and subsequently modified by the Chief Administrator vide order Annexure P-2, dated 1.9.1975.

3. The respondents contested this writ petition by filing a reply on 20.7.1982. inter alia maintaining that the resumption order of the site in dispute

was rightly ordered by the Estate Officer, Chandigarh, when Om Parkash petitioner failed to pay any of the instalments and further that the

petitioner did not comply with the order of the Chief Administrator Chandigarh, by depositing the amount of sale consideration of the plot and the

amount of forfeiture within stipulated period. It was also maintained that the Chief Commissioner, Chardigarh Administration, while rejecting the

revision petition had allowed the petitioner to avail the benefit of Rule 11-D of the Capital of Punjab (Sale of Sites and Building) Rules, 1960

(hereinafter referred to as the Rules) which allows the petitioner to repurchase the building on very easy terms Regarding tendering of the draft

Annexure P-4, for a sum of Rs. 70,000/, it was maintained that this tender was of no consequence as the site had already been resumed and the

only remedy available to the petitioner was to re purchase the site in question under Rule 11-B of the Rules. The petitioner can, however, ask for

the refund of this amount.

4. During the pendency of this petition, Om Parkash petitioner filed civil miscellaneous No 1875 on 17.8.1984 contending that he has recently

found that the godown site and the construction thereon are not being looked after properly by the respondents after taking its possession and a

third party has entered in its possession illegally. It was also maintained that after filing of the writ petition the petitioner had received letter

Annexure P-6, dated 24-3-1981 from the Estate Officer informing that the amount of Rs. 70,000/- had been duly accounted for and that a sum of

Rs. 25,750/- more was payable by the petitioner, with the reservation that the amount would be accepted from the petitioner without prejudice to

the contents of the writ petition. The petitioner also showed hit readiness to pay the aforesaid remaining amount to the Estate Officer and craved f r

delivery of possession of the godown site and the construction raised thereon. To save him from the avoidable waste and trespass, it waS also

requested by the petitioner that the Estate Officer be called upon to make clear as to what amount of interest or other charges were payable by the

petitioner.

5. This application was also resisted by the respondents contending that there were two tenants in the premises in dispute, namely, (i) M/s Central

Road Lines Corporation and (ii) M/s Indian Roadways Corporation. On vacation by one of the tenants, the portion occupied by him was taken

into possession and sealed in 1978 and before any action for the eviction of the other tenant could be taken, the latter in collusion with Om

Parkash petitioner, inducted Nohria Ram, against whom proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

(hereinafter referred to as the Public Premises Act), are in progress Thus, it was maintained the Nohria Ram is occupying the other half portion of

the site in duration illegally but he had not entered the same after breaking open the locks put by the Estate Officer or by demolishing any portion of

the beck wall Report Annexure R-1 of the Building Inspector which is duly endorsed by the Sub Divisional Officer (Buildings), dated 6-8-1985

was also annexed to the reply by the respondents, in suport of the above mentioned averments This miscellaneous application was disposed of by

S. S. Sodhi. J. on 12-8-1985 by issuing a direction to the Chandigarh Administration to expeditiously dispose of the eviction proceedings and also

to ensure that no avoidable damage or harm is caused to the building.

6. The other writ petition No. 6928 of 1986 preferred by Nohris Ram petitioner and the firm M/s Sadbu Ram Krishan Kumar, of which Nohria

Ram is one of the partners, arises out of the order Annexure P-3 dated 30-6-1986 of the Estate Officer, Chandigarh, when by eviction of Nohria

Ram was ordered from the portion of the godown in dispute, u/s 5 of the Public Premises Act as well as order of dismissal of his appeal u/s 9 of

the Public Premises Act, by the learned District Judge (exercising the powers of appellate authority, under the Public Premises Act) vide order

Annexure P-5, dated 1012 1986.

7. In this writ petition Nohria Ram etc. alleges having been inducted as tenants in the year 1971 in a portion of the site in question by its owner Om

Parkash, for running Bardana business, at a monthly rent of Rs 100/- Thereafter, some more portion was added towards front side of the building

in their tenancy and the rent was enhanced to Rs. 550/- per month They also maintained that the rent was being paid to the owner regularly. It was

further maintained that proceedings u/s 5 of the Public Premises Act could not be initiated against the tenants of the building in dispute without

issuing notice to the original owner regarding demolition of the building from the site in dispute as the Estate Officer had resamed the site in question

only and not the building existing thereon. Reliance in this regard was placed. In the Full Bench decision of this Court in Hari Parshad Gupta v.

Jitender Kumar Kaushik (1982) 84 P.L.R. 150. It was also maintained that the Estate Officer had misunderstood the import of the decision of the

Supreme Court in Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, and that the impugned order was wrongly passed by the Estate

Officer as well as by the Appellate Authority. It was further elaborated that the bidding constructed on the site in question would not become

public premises within the weaning of the Public Premises Act on the mere resumption of the site. Non issuance of notice u/s 4 of the Public

Premises Act to all the partners of the firm Sadhu Ram Krishna Kumar was also stressed.

8. This writ petition was resisted by the respondents contending that Nohria Ram was not inducted as tenant in the year, 1974 by Om Parkash the

original owner of the building in dispute. It was also maintained that the provisions of the Public Premises Act are attracted to the facts of the case

in hand and that the petitioners were not entitled to any protection as Nohria Ram petitioner was occupying the premises as trespasser. The factum

that the property was in possession of the firm M/s Sadhu Ram Krishan Kumar was denied but on the other hand, it was maintained that Nohria

Ram petitioner was only in occupation of the premises.

9. Om Parkash, owner of the site in dispute, in his return filed separately, also denied having rented out a portion of the sale to Nohria Ram or the

aforesaid firm or that he has even received rent. On the other hand he maintained that only M/S Central Roadlines Corporation and M/S Indian

Roadways Corporation, were the two tenants in the premises in dispute and that M/s Indian Roadways Corporation had inducted Nohria Ram in a

portion.

thereof.

10. In the replication, the petitioners reiterated their own stand while controverting that of the respondents. It was further maintained that the

respondents had waived the order of resumption of the site in dispute by accepting Rs. 70,000/- from Om Parkash the owner, after passing of the

said order.

11. I have heard the learned counsel for the parties besides persuing the record.

12. It is not diputed that Full Bench of this Court in Ram Puri v. The Chief Commissioner 1982) 84 P.L.R. 388 (F.B.) had over-ruled the decision

of the Division Bench of this Court in Amrit Sagar Kashyap v. Chief Commissioner, U.T. Chandigarh (1980) 82 P.L.R. 441, by holding that

resumption of the property u/s 8A means clearly the divestiture of a building or the site, as the case may be.

13. The Full Bench in Ram Puri''s case (supra) while upholding the Constitutional vires of Section 8-A of the Act as well as the rules framed

thereunder, had highlighted that resumption of the site or building u/s 8-A of the Act, should be used as last resort in order to ensure the

achievement of the object of the Act by observing as under :--

Adverting specifically to Section 8-A the restrictions for the exercise of the powers vested thereby exist not only in the express provision thereof,

but are equally discernable from the larger purpose of the Act, its preamble as also the other Sections thereof when read with the statutory rules

framed thereunder. The larger purpose of the planned development and regulation of the new capital city, as spelled out in the preamble of (he Act,

is the fixed polestar to which the ultimate exercise of the power of resumption u/s 18 A is bitched. What deserves highlighting herein is that this

power of resumption u/s 8-A is merely a discretionary and an enabling power. The statute does not lay down any mandate that it must necessarily

be exercised in a particular situation, in Sub-section (sic) thereof it is first in the descretion of the Estate Officer that he may issue a notice to show

cause why an order of resumption of site or building may not be made. Equally under Sub section (2) after considering the cause shown against

such a notice it is optional for the Estate Officer to order such resumption or not the word used in both the sub-sections is ''may'' and not ''shall''.

Mr. Anand Swaroop rightly pointed out that this power of resumption is indeed the last arrow in the quiver of a number of sanctions to enforce the

planned development and the regulation of she capital and to be only resorted to in a situation commensurate with its necessary exercise To put it

in plain language, it is not mandatory for the authority to order resumption, but only in extreme cases it enables it to do so when the other powers

and sanctions to enforce the purpose of the Act have failed, or in the circumstances it is the only remedial power which can be applied. Therefore,

it is farcical and imaginary to assume that the authority would necessarily use this power arbitrarily and whimsically and that they will use this

hammer to swap a fly. As Section 8-A now stands (in sharp distinction to the deleted Section 9) it mandatory requires a notice to show cause to

the person concerned whenever the exercise of this power is contemplated. Not only is such a person entitled to have a reasonable opportunity of

contesting such a notice, but the law in terms confers on him the power to lead evidence in support of his stand. The mandate as laid on the Estate

Officer is to record his reasons in case, he orders resumption. Apart from these in built safeguards u/s 8- A, it is the statutory rules which provide

for an appeal against the order of resumption by the Estate Officer to the Chief Administrator. It is thereafter that the rules zealously provide for a

revision to the Chief Commissioner who is the Executive head of the Union Territory. Obviously in a proper case, the right to approach the Court

under Article 226 of the Constitution of India is equally open"".

But the above referred view of the Full Bench is of no help to Om Parkash petitioner. In this case, admittedly the order of resumption Annexure P

1 was passed by the Estate Officer on 11-2-1975. It was an ex parte order as Om Parkash failed to join the proceedings after his appearance on

two occasions Thus, it cannot be said that he was not afforded any opportunity to lead evidence regarding unforceable circumstances which

rendered him incapable of making payments of the above referred two instalments He has failed to raise funds till 14-5-1980 and the usual financial

stringency cannot be said to be a valid ground to meet the proceedings regarding resumption of the property in dispute.

4. The Chief Commissioner, Chandigarh vide order Annexure P-2, dated 1-9-1975 had afforded an opportunity to Om Parkash to deposit the

entire amount by 31-10 1975. The forfeited amount was also reduced to a nominal amount of Rs. 200/- Om Parkash then fled a revision petition

u/s 10(4) of the Act, as he failed to arrange this money. This revision petition was dismissed on 20-12-1979. Nona of the parties had placed this

order of the Chief Commissioner, Chandigarh, on the file but from the return filed by the respondents, it is clear that the petitioner was allowed to

have recourse to Rule 11-D of the Rules for re-purchasing of this property on easy terms. This averment of the respondents remained unrebutted.

15. The question then arises whether the acceptance of Rs. 70,000/- through draft Annexure P 4 by the Estate Officer would amount to waiver of

the earlier order of resumption Annexure P-1 or the order of the Chief Administrator Annexure P-2 or the order dated 20.12.1979 of the Chief

Commissioner, Chandigarh, upholding the orders Annexures P.1 and P. 2. In this regard, it is worth noticing that after the lapse of about 5 years

from the order of resumption, the petitioner Om Parkash appears to have managed Rs. 70,000/- and sent a draft Annexure P 4 to the Estate

Officer along with a covering letter Annexure P-3 of the said date depicting that the draft amount was being sent towards instalments of the

property in dispute. On getting no response from the Estate Officer, the petitioner again sent a reminder Annexure P-5 dated 7 6 1980. Ultimately,

vide letter Annexure P 6, dated 24.3.1981 i.e. after the filing of the present writ Petition on 19.6.1980, the Estate Officer conveyed to Om

Parkash to deposit Rs. 25,750/- after taking into account Rs. 70,000/- with the reservation that this amount is being accepted without prejudice to

the contents of the writ petition.

16. In the original writ petition, Om Parkash has simply sought direction to the respondents to receive from him, the balance amount of instalments

along with interest towards the pries of the site in question and had not raised a specific plea of waiver. In the return filed by the respondents, it

was admitted that Rs. 70,000/- were received through a draft but it was maintained that it will have DO effect on the final order of the resumption

of the property and that the petitioner can get this amount refunded. It was further highlighted that the petitioner can only secure the plot in

accordance with Rule 11-D of the Rules as mentioned in the order of the Chief Commissioner, Chandigarh while rejecting his revision petition.

17. No doubt, the Estate Officer, in his reply, has not specifically taken up the plea that the above referred amount of Rs. 70,000/- was adjusted

towards premium originally payable for such properties as envisaged under Rule 11-D of the Rules, but all the same in view of lack of specific

pleadings of the petitioner in the writ petition regarding waiver it is not of much consequence especially when the Chief Commissioner, Chandigarh,

while dismissing the revision petition of the petitioner had specifically ordered that the petitioner should be allowed to repurchase the site in

question under Rule 11-D. Rule 11-D (1) in the Chandigarh (Sale of Sites and Buildings) Rules, 1960 has been inserted to read as under :--

11-D(1). Where a site has been resumed u/s 8-A of the Act No- XXVII of 1952 for any reasons, the Estate Officer made on an application,

retransfer the site to the out going transferee, on payment of an amount equal to 10% of the premium originally payable for such property or one

third of the difference between the price originally paid and its value at the time when the application for retransfer is made whichever is more:

Provided that such re transfer shall be permissible only if:--

(i) Where the site has been resumed on the ground of mis-user the misuser has stopped.

(ii) Where the site has been resumed for non-payment of price, all outstanding dies including forfeiture have been paid.

(iii) Where the site has been resumed for breach of any conditions of sale, the breach has been remedied and conditions fulfilled.

Notwithstanding anything contained in the proviso above, when the site has been resumed on ground of misuser or non completion of the building

on it within the stipulated period, the Estate Officer may allow the retransfer on the applicant agreeing to vacate or have the misuser vacated or the

building completed as the case may be, within such reasonable period as the Estate Officer may stipulate,

Explanation :--For the purposes of this rule, the expression ""Site"" does not include a vacant site. A vacant site is a site on which on the date of

issue of notice of resumption u/s 8-A of the Act, no super structure had been railed and it includes a site on which foundations had bf en laid but no

super structure had been raised above that level.

(2) The re transfer under Sub-rule (1) shall be in continuation of and subject to all subsisting conditions but without prejudice to all the proceedings

or liabilities or subsisting penalties levied in respect of such property before the date of the transfer.

(3) The prevailing price shall be assessed by the Estate Officer or such other authority as may be prescribed by the Chief Administrator and in

doing so the Estate Officer or such other authority shall give the applicant reasonable opportunity of being heard. The assessment made by the

Estate Officer shall be final.

(4) The applicant shall unless he refused to accept the retransfer deposit within 30 days, 25% of the consideration of the retransfer. The remaining

75% of the said consideration shall be paid in three annual equated instalments alongwith interest @ 7% per annum The first instalment shall

become payable after one year from the date of retransfer In case any instalment is not paid by the applicant by the due date it shall be deemed as

if no transfer had come into effect.

5. No application under Sub rule (1) shall be entertained unless it is presented within six months of the date of appeal, revision, as the case may be

:

Provided that in the case of an order of resumption passed earlier, the period of six months referred to above, shall begin to run from coming into

force of this rule.

Provided further that the Estate Officer may entertain an application after the expiry of six months if he is satisfied that there was good and sufficient

reason for not presenting the application within the said period of six months.

18. A bare perusal of the above rule leaves no doubt that for initiating proceedings under Rule 11-D(1) for the re-purchase of the site, which has

been resumed on account of non-payment of the price originally payable the owner has to deposit the entire sale consideration and thereafter the

Estate Officer shall fix the market price at the time, the owner applies for the repurchase under this rule and thereafter retransfer of the site in

dispute cat be ordered on payment of an amount equal to 10% of the premium originally payable for such property or 1/3rd of the difference

between the price originally paid and its value at the time when the application for retransfer was made, whichever is more, it is further provided in

Clause (4) that 25% of the consideration of the retransfer shall have to be deposited by the transferee within 30 days and the remaining amount of

75% shall be payable in three annual equated instalments alongwith interest at the rate of 7% per annum, and that the first instalment shall become

payable after one year from the date of retransfer. Thus it at pears that the Estate Officer had taken the draft amount as a step on the part of On

Parkash petitioner towards payment of the original consideration of the site in order to have resort to the provisions of Rule 11-D for re-purchase

of the property. In case of waiver of a right u/s 115 of the Evidence Act, the conduct of the party has to be taken into consideration to infer the

intention. While discussing waiver of the service of notice u/s 80 of the CPC on the part of the Government, a Division Bench of this Court in Salig

Ram and Another Vs. Shiv Shankar and Others, , had observed in paragraph 6 of the judgment as under :--

Moreover intention or waiver has to be inferred from admitted and proved facts. Intention is a purely subjective matter and, therefore, it is the

surrounding circumstances and the proved facts from which the Courts gather the intention of a party. Whether certain proved and admitted facts

in law amount to waiver or not has necessarily to be held to be a question of law. Intention has to be assumed, for the purpose of waiver, from the

conduct of the parties, and in this situation, the contention of Mr. Nehra must be repelled and it must be held that waiver is not a question of fact

Again in the latter portion of this paragraph, in the judgment, the Division Bench after referring to the decisions of the Supreme Court and the

earlier decisions of this Court reduced therein had remarked as under:--

We have already held that in the present case waiver was deliberate and intentional on the part of the State Government These decisions merely

say that the act of waiver has to be international and deliberate. Therefore, these decisions do not in any manner come in conflict with the view we

have taken of the matter.

The decision of the Punjab High Court in Mukesh Chand and Ors. v. Jamboo Pershad,6 holding that receiving of rent by the landlord from the

alleged sub-tenant who lived on the upper portion of the premises would amount to waiver of the right to get the sub-tenant ejected on the ground

of sub letting is also of no help to Om Parkash petitioner in the present case as from the covering letter Annexure P-3 it cannot be said that

accepting of Rs. 70,000/- by the Estate Officer from Om Parkash was not considered as payment of the entire original sale consideration of the

site in question for the purpose of the application of Rule 11-D (1) of the Rules.

19. Thus, from the proved facts of the case, mere acceptance of Rs. 70,000/- by the Estate Officer cannot be held to be a waiver of the earlier

order of resumption which had attained finality but on the other hand, it would necessarily imply that the Estate Officer had accepted this amount

towards payment of the entire original sale consideration in an attempt on the part of the owner to fulfil the prerequisites conditions of Rule 11-D of

the Rules, referred to above. This conclusion seems to be the only reasonable hypothesis on which the conduct of the Estate Officer can be

explained in accepting this amount, in view of the decision of the Chief Commissioner dated 20-12-1979 leaving an option to Om Parkash owner

to re-purchase the site under Rule 11-D of the Rules.

20. A question then arises whether Nohria Ram petitioner in C. W. P. No. 6928 of 198(sic) or the firm M/s Sadhu Ram Krishan Kumar of which

Nohria Ram is a partner, was induced as a tenant on the portion of the godown in dispute in the year 1974 by Om Parkash or that these persons

have committed trespass in a portion of the property in dispute after passing of the resumption order by the Fstate Officer i.e. after 11-2-1975. In

this regard it is noteworthy that no documentary evidence like the rent note or the entries in the accounts of the firm regarding payment of rent since

the year 1974 or the receipts of such payment of rent was brought on the file. A perusal of the order of the Estate Officer Annexure P-3 passed in

the proceedings u/s 5 of the Public Premises Act, reveals that Nohria Ram had also produced some photostat copies of the cheques Anaexures R-

1 to R-8 purported to have been handed over by him to Om Parkash landlord besides producing the registration certificate of the said firm under

the Sales-Tax Act, Annexure R-9. It is further mentioned that in the registration certificate, the firm has been styled as M/s Gian Chand Krishan

Kumar. Thus, the above referred registration certificate under the Sales Tax Act, is of no help to conclude that firm Sadhu Ram Krishan Kumar

had been carrying on its business since 1975 in the premises in dispute.

21. In the present writ petition no attempt had been made to produce any documentary evidence to the effect that the above referred cheques

were infact got encashed by Om Parkash landlord although the petitioners were in a position to lead documentary evidence in this regard from its

account in the Bank against which the cheques were issued. On the other hand it appears more probable that Om Parkash landlord, after

resumption of the property in dispute on 11-2-1975 by the Estate Officer, Chandigarh, had resorted to induct Nohria Ram and the said firm, as

tenant in a portion of the demised premises, just in order to create legal defence that the proceedings u/s 8-A of the Act regarding resumption of

the site in dispute are initiated due to non-service of notice upon the tenants, as held by the Full Bench of this Court in Brij Mohan v. Chief

Administrator (1980) 82 P.L.R. 621, that tenant of a building regarding which an order of resumption is sought to be passed, is entitled to be

heard.

22. Regarding the concept of dual ownership of the property, as laid down by the Full Bench of this Court in Hari Parshad Gupta v. Jitender

Kumar Khaushik (1982) 84 P.L.R. 150, it transpires that this rule is not applicable to the fats and circumstances of each case. In Hari Parshad

Gupta"s case the controversy before the Full Bench was whether a vacant site belonging to the Municipal Committee, leased out to a lessee, who

lateron constructed a building thereon would be exempted from application of the provisions of East Punjab Urban Rent Restriction Act, 1949, in

view of the State Government Notification dated Jute 3, 1959 exempting the application of the provisions of the Rent Restriction Act, to the

buildings and rented lands belonging to the Municipal Committee;;. While discussing this controversy, after elaborate discussion, besides relying

upon the ratio of the decision of the Supreme Court in Messrs Bhatia Cooperative Housing Society Limited"s case (supra) it was held that decisive

factors in this regard are the terms and conditions of the lease entered into between the parties. Thus, under the circumstances of that case, it was

held that the Municipal Committee the lesser of the plot is the owner thereof, while the lessee who had constructed a building thereon is the owner

of the building only. It was further held that since the controversy regarding ejectment of the building was between the lessee and the above

referred tenants, the Rent Controller had jurisdiction to go into the matter under the Rent Restrict on Act, 1949 and that this controversy was not

exempted by the above referred Notification of the State Government. Moreover, in that case a portion of the building in dispute was constructed

by the landlord on his own land and a portion thereof was constructed on the adjoining land, taken on lease from the Municipal Committee The

Full Bench had mainly relied upon the decision of the Supreme Court in K.A. Dhairyawan and Others Vs. J.R. Thakur and Others, , relating to the

consideration of a similar Notification under the provisions of Bombay Rents, Hotel and Lodging House Control Act, 1947. The following

observations of the Supreme Court were extracted in paragraph-6 of the judgment:--

Upon a proper construction of the lease there was a demise only of the land and not of the building and consequently the provisions of the Act did

not apply to the contract for delivery of possession of the building. The ownership in the building was with the lessees and in which the lessors had

no right while the lease subsisted. I here was DO absolute rule of law in India that what was affixed or built on the soil became part of it, and was

subject to the same rights of property.

Thereafter the Full Bench had dealt with the observations of the Supreme Court in Messrs Bhatia Co-oprative Housing Society"s case (supra) as

under ;

Yet in another case that is Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel, , the Supreme Court recognised and upheld the above

noted proposition of law that where a plot of land had been demised, the said plot can continue to belong to the lessor and the building or the

super structure raised by the lessee on that plot can belong to the latter. However, in the given facts and circumstances of that cast, it was held by

the Supreme Court that the building too belonged to the lessor Thus, it is abundantly clear from the above authoritative pronouncements that in law

there can be two distinct ownerships, that is, the lessor can be the owner of the plot and the lessese can be the owner of the building raised

thereon, and the matter essentially is dependent on the terms of the contract between the parties. The factum of consent or not consent by the

Municipal Committee or the local authority to the construction raised by the lessee on the demised municipal land is not decisive of the matter.

In view of the above legal position, it transpires that although on the resumption of the site in dispute, the ownership of the same will vest in the

Estate Officer, Chandigarh, but Om Parkash petitioner in C. W. P. No. 2077 of 1980 would still remain owner of the building material and before

getting the building demolished, the Estate Officer had to serve notice upon Om Parkash to remove the material of the building or to withstand the

costs of its demolition. Admittedly, no notice has been given in this regard so far to Om Parkash. But this conclusion is of no help to the firm

Messrs Sadha Ram Krishan Kumar or Nohria Ram, the alleged tenant in order to conclude that the provisions of the Public Premises Act, are not

applicable to the ejectment of Nohria Ram, especially when he has failed to prove his tenancy over a portion of the godown in dispute but on the

other hand appears to be a trespasser.

23. The observations of the Supreme Court in Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, , to the effect that

the Union of India, the lessor of the property should file a regular suit against the lessee for enforcement of the alleged right of re entry upon the

alleged forfeiture of the lease due to breach of its terms and conditions or that the provisions of Section 5 of the Public Premises Act, are not

attracted to the controversy in hand, are of no help to Om Parkash owner of the site or Nohria Ram, the alleged tenant as admittedly, Om Parkash

had failed to pay instalments towards the sale consideration of the site in dispute despite granting of adequate opportunity and as per terms and

conditions of sale, the Estate Officer was entitled to resume the site in dispute u/s 8-A of the Act and Nohria Ram or the aforesaid firm are not the

tenants of the property in dispute but are in unauthorised occupation thereof as trespassers, whereas in Indian Express Newspapers" case (supra)

there was a dispute of complicated nature between the parties regarding the breach of terms and conditions of lease.

24. Regarding grouse of Nohria Ram petitioner that proceedings u/s 5 of the Public Premises Act are vitiated due to non-service of notice on all

the partners of M/s. Sadhu Ram Krishan Kumar, it transpires that there is no documentary evidence on the file that the above referred firm was

carrying on its business in the premises in dispute, although such like evidence in the shape of partnership deed, the accounts of the firm and the

registration certificate issued under the Central Sales Tax Act, could have been easily available if actually this firm was carrying on business therein.

As already discussed, the registration certificate produced by Nohria Ram under the Central Sales Tax Act, pertained to some other firm in the

name and style of Gian Chand Krishan Kumar. Thus, there was no question of service of notice upon the said firm.

25. For the foregoing reasons, there is no merit in this writ petition as well as the writ petition 6928 of 1986 and the same are hereby dismissed bat

with no order as to costs. However, it is clarified that Om Parkash petitioner in the instant petition, if so advised, can still exercise the option for

repurchasing the site in dispute under the provisions of Rules 11-D of the Rules, and in that case the letter Annexure P-3 shall be deemed to be

such request.