

Khushi Ram Vs Union Territory and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 14, 1999

Citation: (1999) 122 PLR 8 : (1999) 3 RCR(Civil) 31

Hon'ble Judges: Iqbal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Ram Saran Dass, for the Appellant; K.K. Gupta, for the Respondent

Final Decision: Allowed

Judgement

G.S. Singhvi, J.

Residential site No. 406-P, Sector 46A, Chandigarh was jointly allotted to the petitioner and Meena Rani on Lease Hold

Basis on 30.3.1989 for a premium of Rs. 8,25,000/-. On 8.8.1991, the Assistant Estate Officer issued notice under Rule 12(3) of the Chandigarh

Lease Hold of Sites and Building Rules, 1973 (hereinafter referred to as "the 1973 Rules") requiring the allottees to deposit the amount of second

instalment together with interest and penalty amounting to Rs. 20,000/- within period of 3 months i.e., by 11.11.1991. Due to the failure of the

lessees to deposit the required amount, proceedings for cancellation of the site were initiated under the 1973 Rules. By an order dated

18.11.1992, the Assistant Estate Officer, exercising the powers of the Estate Officer, Union Territory, Chandigarh cancelled the lease and forfeited

10% of the premium plus ground rent and interest. The appeal filed by the petitioner u/s 10 of the Capital of Punjab (Development and Regulation)

Act, 1952 was disposed of by the Chief Administrator on 31.1.1994 on the basis of an agreement arrived at between the parties in the Lok

Adalat. The operative portion of the order passed by the appellant authority reads as under:-

The appellant undertakes to pay outstanding amount by 28.2.1994. In view of this undertaking, I set aside the impugned order restore the site to

the owner subject to the condition that the entire outstanding amount paid by 28.2.1994. Since the payment is being made by 28.2.1994, no

amount of forfeiture shall be charged. Penalty of second and third instalments shall be waived.

2. On 24.2.1994, the petitioner and his co-allottee tendered Rs.3,50,000/- towards the amount due. They also submitted application Annexure

P.7 before the Estate Officer to let them know the amount of interest. However, the latter did not accept the amount deposited the allottees and

returned the same along with letter Annexure P-8 dated 28.3.1994.

3. It appears that in the meantime, the allottee filed revision petition under Rule 22(4) of 1973 Rules. The same was disposed of by the Adviser to

the Administrator, Union Territory, Chandigarh on 29.6.1994. The relevant portion of that order reads as under:-

After hearing the parties and going through the recommendations of the Presiding Officer of the Lok Adalat, one thing is very much clear that the

Presiding Officer of the Lok Adalat did not mention the exact amount due from the petitioners while making recommendations to the Chief

Administrator. There is thus force in the contention of the learned counsel for the petitioners that due to non-intimation of the exact amount due,

they could not deposit the same and to comply with the order of the Chief Administrator. Obviously, there is a need to intimate the exact amount

due at the time of making recommendations by the Presiding Officer of the Lok Adalat. Giving benefit of doubt, I set aside the impugned order,

restore the site to the owners subject to the condition that the entire outstanding amount is paid within 30 days from today failing which the order of

the Estate Officer shall become operative. The penalties already imposed on 2nd and 3rd instalment shall be waived off but forfeiture of 10%

already imposed shall stand and be payable within the aforesaid period of 30 days. Failure to pay the aforesaid forfeiture shall also result in the

operation of the impugned order.

4. A bare reading of the order passed by the revisional authority shows that the petitioner's plea regarding non-communication of the amount due

has been accepted and on that ground the order of resumption has been set aside subject to the condition that the entire outstanding amount is paid

within 30 days. However, at the same time, the revisional authority ordered that the forfeiture of 10% of the premium shall stand and be payable

within a period of 30 days.

5. On our asking, the learned counsel appearing for the respondents stated that after the passing of order Annexure P.9 by the revisional authority,

the petitioner deposited Rs.3,86,452/- and this is in full satisfaction of the order passed by the revisional authority except the amount of forfeiture.

6. The petitioner has challenged the revisional order in so far as it upholds the forfeiture of 10% of the premium primarily on the ground that after

having accepted his plea regarding non-communication of the amount of arrears in pursuance of the order of the appellate authority, the revisional

authority did not have the jurisdiction to maintain the forfeiture which stood cancelled by the appellate authority.

7. After hearing Shri Ram Saran Dass and Shri K.K. Gupta the counsel for the petitioner is right in contending that after having accepted his plea

that delay in the deposit of the amount in terms of the order passed by the appellate authority was not intentional and was caused due to the failure

of the concerned authority to communicate the details of the outstanding dues, the revisional authority did not have the jurisdiction to uphold

forfeiture of 10% of the premium, as ordered by the Assistant Estate Officer. Once the appellate authority ordered the restoration of site subject to

the condition of payment of the outstanding amount and declared that the forfeiture shall not be charged, the revisional authority could not have

restored the punitive action taken by the Assistant Estate Officer to forfeit a part of the premium ignoring the fact that the petitioner was not to be

blamed for delay in the deposit of the outstanding dues. Therefore, the impugned order of the revisional authority upholding the forfeiture of the

premium deserves to be set aside.

8. In the result, we allow the writ petition and quash the order Annexure P.9 in so far as it relates to forfeiture of 10% of the premium.

9. Learned counsel for the respondents stated that the petitioner has not paid the amount of ground rent since 1995. If that be so, the respondents

are free to take appropriate action for recovery of the ground rent and/or penalty.