

(1999) 01 P&H CK 0025

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5928 of 1994

Sat Pal Bansal

APPELLANT

Vs

Union of India (UOI)
and OthersRESPONDENT

Date of Decision: Jan. 14, 1999**Acts Referred:**

- Chandigarh Lease Hold of Sites and Buildings Rules, 1973 - Rule 13

Citation: (1999) 122 PLR 194 : (1999) 3 RCR(Civil) 54**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:** Dismissed

Judgement

G.S. Singhvi, J.

This petition has been filed for quashing the orders Annexures P.1, P.3 and P.4 passed by the Assistant Estate Officer, the Chief Administrator and the Adviser to the Administration, Union Territory, Chandigarh under Rules 13(iii) and 22 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short "the Rules").

2. The petitioner and his co-bidder were allotted commercial site No. 61 on 17.9.1980 by the Chandigarh Administration on lease hold basis for a premium of Rs. 1,84,000/- in view of the highest bid given by them at the auction held on 3.8.1980. In terms of clause 5 of the letter of allotment, they were required to pay ground rent at the rate of Rs. 4,600/- per annum along with instalments of premium. After taking possession of the site by paying 25% of the premium, the petitioner and his co-allottees constructed the building. They paid other dues but did not pay ground rent for the years 1988, 1989, 1990, 1991 and 1992. Therefore, proceedings under Rule 13(ii) of the Rules were initiated against them by the competent authority. Public notices were issued on 9.7.1992, 20.7.1992 and 5.8.1992 in the newspapers ("Indian Express" and "The Tribune") calling upon the

lessees to deposit the amount of ground rent by 15.8.1992. They were also warned that proceedings for imposition of penalty will be initiated if the due amount of ground rent is not paid by the appointed "date. Notices dated 16.9.1992, 16.10.1992 and 4.11.1992 were personally served upon the lessees to pay the arrears of ground rent and to show cause against the imposition of 100% penalty under Rule 13(iii) of the Rules. The lessees (including the petitioner) neither deposited the due amount of ground rent nor they filed reply or appeared in person to show cause against the proposed action. Ultimately, respondent No. 3 passed order Annexure P.1, the operative portion of which reads as under-

"Therefore, in exercise of the powers vested in me under Rule 13(iii) of Lease Hold of Sites and Building Rules, 1973 read with Section 8 of the Capital of Punjab (Development and Regulation) Act, 1952 as amended by Act No. 17 of 1973, I.P.S. Aujla, PCS hold the default wilful and hereby impose 100% penalty on due amount of ground rent which shall be recovered as arrears of land revenue u/s 8 of the Capital of Punjab (Development and Regulation) Act, 1952, if the same is not paid within 15 days from the date of despatch of this order.

A sum of Rs. 23,000/- as 100% penalty. Thus the total amount of Rs. 46,000/- is due.

Sd/-

Asstt. Estate Officer,
Exercising the powers of the Estate Officer,
Chandigarh."

3. The appellate authority upheld the order passed by the respondent No. 3. The revisional authority too expressed its concurrence with the conclusions recorded by the Assistant Estate Officer and the Chief Administrator but reduced the penalty to 50% on the ground that the lessees had deposited the due amount of ground rent after passing of the order Annexure P.1. The relevant extracts of the appellate and the revisional orders are reproduced below:-

"Appellate order dated 17.8.1993

After hearing the parties and going through the provisions of Rule 13(iii) of Chandigarh Lease-Hold of Sites and Buildings Rules, 1973, I find that if the ground rent is not paid by the due date, the lessee shall be liable to pay penalty not exceeding 100% of the amount due which may be imposed and recovered in the manner laid down in Section 8 of the Capital of Punjab (Development and Regulation) Act, 1952 as amended by Act 17 of 1973. I do not see any infirmity in the order passed by the Estate Officer, which may call for interference in appeal. Consequently, the appeal merits no consideration and is hereby dismissed.

Announced. Parties be communicated.
Chandigarh,

Sd/-

Dated : The 17th August, 1993

Chief Administrator
Chandigarh Administration

Revisional order dated 5.1.1994

I have considered the arguments of both the counsels. Since the petitioner has already paid the ground rent in respect of the above site, the 100% penalty imposed by the Estate Officer is towards higher side. Keeping in view the request of the petitioner and the circumstances of the present case, the penalty is reduced to 50%. The present revision petition is partly accepted.

Announced. Parties be communicated accordingly.

Chandigarh, Dated
the 5th January, 1994

Sd/-
(V.K. DUGGAL)
Advisor to the Administrator
Union Territory, Chandigarh

4. Feeling aggrieved by the imposition of penalty, the petitioner has invoked writ jurisdiction of this Court for invalidation of the impugned orders on the following grounds:-

- (i) the impugned orders have been passed in violation of the principles of natural justice;
- (ii) Rule 13(iii) of the Rules is liable to be declared unconstitutional because it confers unbridled and unguided power upon the competent authority to impose penalty upto 100% of the unpaid amount; and
- (iii) the imposition of penalty on the petitioner is discriminatory because in other cases lesser penalties have been imposed by the competent authority.

5. Before dealing with the grounds of attack, we deem it necessary to mention that the petitioner has not explained as to how he alone can maintain this petition, although order Annexure P.1 was passed after giving notices to all the lessees and the appeal as well as the revision were filed jointly by all of them. However, on this account alone, we are not inclined to non-suit the petitioner.

6. Taking the last ground of challenge as the first, we may straight-away observe that the petitioner has failed to discharge the primary burden which lays upon him to prove the charge of discrimination. He has not given particulars of any case in which the competent authority has, in exercise of its power under Rule 13(iii) of the Rules, imposed less than 100% penalty. In the absence of such particulars, it is not possible to record a finding of fact that the petitioner has been discriminated vis-a-vis similarly situated persons.

7. The petitioner's plea of violation of the principles of natural justice deserves to be rejected because the statement of fact contained in the order Annexure P.1, which has remained uncontroverted, shows that notices dated 9.7.1992, 20.7.1992 and 5.8.1992

were got published in the newspapers ("Indian Express" and The Tribune") calling upon the lessees to pay the due amount of ground rent with a clear indication that their failure to do so will result in initiation of proceedings for imposition of penalty. Thereafter, three notices were served upon them for depositing the amount of ground rent and to show cause against the proposed penalty. In the writ petition, it has not been averred that the notices sent by the Assistant Estate Officer were not received by the petitioner. Therefore, there is no basis to support the petitioner's plea that the order of penalty is vitiated due to violation of the rule of audi alteram partem.

8. In support of the third ground of attack, Shri Ram Saran Dass argued that Rule 13(iii) of the Rules should be declared ultra vires to Article 14 of the Constitution of India because it vests unlimited and uncontrolled power in the competent authority to impose penalty upto any extent. Learned counsel pointed out that no guide-lines or yard stick can be spelt out from the scheme of the Rules for exercise of power to impose penalty and it is left to the sweet-will and choice of the concerned authority to impose any amount of penalty. He relied on the observations made by the Supreme Court in [Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others](#), .

9. Section 8 of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as "the Act") and Rule 13(iii) of the Rules, which provide for imposition of penalty and mode of recovery of arrears, read as under:-

"Section 8 of the Capital of Punjab (Development and Regulation) Act, 1952.

8(1) Imposition of penalty and mode of recovery of arrears.- Where any transferee makes any default in the payment of any rent due in respect of any lease of any site or building or both, as the case may be u/s 3, or where any transferee or occupier makes any default in the payment of any fee or tax levied u/s 7, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.

Provided that no such direction shall be made unless the person affected thereby has been given a reasonable opportunity of being heard in the matter.

(2) Where any person makes any default in the payment of any amount, being the arrears and penalty directed to be paid under sub-section (1), such amount may be recovered from the transferee or occupier, as the case may be, in the same manner as an arrears of land revenue."

"Rule 13(iii) of the Rules.

13. Rent and consequences of non-payment. In addition to the premium, whether in respect of site or building, the lessee shall pay rent as under:-

(iii) If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100 per cent of the amount due which may be imposed and recovered in the manner laid down in Section 8 of the Capital of Punjab. (Development and Regulation) Act, 1952, as amended by Act No. 17 of 1973."

10. A bare reading of the provisions quoted above, shows that the principles of natural justice have been statutorily engrafted in the scheme of the Act and the Rules. This, in our opinion, is a sufficient safeguard against the arbitrary exercise of power by the competent authority. The maximum penalty which the competent authority can impose in the case of non-payment of rent is 100% of the amount due but this does not mean that in each and every case the maximum penalty will necessarily be imposed on the defaulter. Rather, each case will have to be decided on its facts and merit. Therefore, the rule cannot be declared unconstitutional simply because it authorises imposition of 100% penalty.

11. Section 9 of the Act, of which constitutional validity was successfully challenge in Jagdish Chand Radhey Shyam"s case (supra), empowered the Estate Officer to resume, the site or building and also to forfeit whole or any part of the money paid by the lessee. After the decision of the Supreme Court in Jagdish Chand Radhey Shyam"s case (supra), the Act was amended and Section 8-A was inserted authorising the Estate Officer to order resumption of the site or building or both in the event of the transferee"s failure to pay the consideration money or any instalment thereof or on his committing breach of any of the conditions of sale. The constitutional validity of Section 8-A of the Act was challenged in Ram Puri v. Chief Commissioner, Chandigarh and Ors. (1982)84 P.L.R. 388. A Full Bench repelled the challenge to the constitutional validity Order Section 8-A of the Act. In the majority judgment, it has been observed that the judgment of the Supreme Court in Jagdish Chand Radhey Shyam"s case (supra) cannot be regarded as a good law in view of the later decision of their Lordships in [Maganlal Chhaganlal \(P\) Ltd. Vs. Municipal Corporation of Greater Bombay and Others](#), . Some of the observations made in the majority judgment, which have bearing on the contention urged by Shri Ram Saran Dass for challenging the vires of Rule 13(iii) of the Rules, read as under: -

"It is manifest that the attack on Section 8-A on the basis of Article 14 is only a hang over of the striking down of the earlier Section 9 of the Act by their Lordships of the Supreme Court in [Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others](#), . On the analogy of the observations made therein it was still sought to be suggested that the present provision of Section 8-A continued to suffer from the same vice, despite the deletion of Section 9 from the statute and the amendments made in Sections 3 and 8 of the Act as also the insertion of the present provision therein.

That the aforesaid tenuous submission is now wholly untenable is manifest from a bare reference to the observations of their Lordships in [Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others](#), itself. Therein Section 9 was struck down basically on the ground that there were two procedures available to the authority - the one being more

drastic than the other and no guideline had been provided for resort to either one of them. It was observed-

"... This feature that the Government can proceed either under the ordinary law of the land or under the 1952 Act shows that there is discrimination. There is nothing in the statute to guide the exercise of power by the Government as to when and how one of the methods will be chosen."

It is obviously that in essence the unconstitutionality was plainly rested on the ratio of [Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another](#), which still held the field.

At the very outset it may be noticed that the Northern Indian Caterers case was specifically overruled by their Lordships in [Maganlal Chhaganlal \(P\) Ltd. Vs. Municipal Corporation of Greater Bombay and Others](#). Consequently that line of reasoning is no longer valid and the very corner stone on which the alleged unconstitutionality of the earlier Section 9 rested has vanished.

Now apart from the above the subsequent amendments introduced in Sections 3 and 8 as also the deletion of Section 9 altogether and its substitution by Section 8-A of the Act was designed to and has undoubtedly cured the infirmities which their Lordships had discerned in the previous provisions in [Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others](#). By these legislative changes the charge on the transferred site has been abolished and similarly the clog on the transfer to the third party stands removed. Further there are no in-built guarantees and safeguards provided in Section 8-A itself by ensuring a reasonable opportunity to show cause against any proposed resumption or forfeiture. A further limitation that forfeiture in no case shall exceed 10 per cent of the total amount of consideration money has been itself laid down therein. The Estate Officer is obliged to record his reasons after giving adequate opportunity including the right to lead evidence to the transferee before passing an order adverse to his interest. Further the statute and the rules thereunder provide for an appeal and revision against such orders. Therefore, it is now vain to contend that Section 8-A suffers from the vice of discrimination or in any way violates the equality clause under Article 14 of the Constitution."

12. The majority judgment has been approved by the Supreme Court in *Babu Singh Bains etc. v. Union of India and Ors.* (1997)115 P.L.R. 250 S.C. Paragraph 14 of the decision of the Supreme Court in that case reads as under: -

"Accordingly, the Full Bench had held that Section 8-A was brought on statute with a view to bring it in conformity with the purpose of the Act seeks to subserve. Learned counsel for the appellant relied upon the minority judgment of learned Judge. It would, however, appear that the learned Judge, with due respect, sought to set the clock back to the Amendment by constructing the meaning of the words "forfeiture" and "resumption" and

the consequential effect on general principles of law without giving needed effect to the object of the Amendment. Once the statute occupied the field and gave power to resume the land or building subject to the conditions mentioned therein, the general principles of resumption and other principles considered therein absolutely remained no more relevant. The majority judgment has rightly focussed the question in the correct perspective and had held that Section 8-A is valid in law and, therefore, not violative of Article 14. In [Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another](#), this Court had held that when there are two modes of procedure, one being more drastic and harsher than the other without any guide-lines, invocation of the former was violative of Article 14 which was reversed by a larger Bench in [Maganlal Chhaganlal \(P\) Ltd. Vs. Municipal Corporation of Greater Bombay and Others](#), knocking the bottom of the plea of constitutional invalidity of Section 8-A on the anvil of Article 14. Though softer course u/s 15 was available, Section 8-A does not become invalid on that score. Section 9 has been deleted and procedural safeguards have been provided in Section 8-A. Therefore, Section 8-A, having provided fair procedure, does not become arbitrary and violative of Article 14."

13. In view of these decisions, it must be held that Rule 13(iii) cannot be declared arbitrary and unconstitutional, more so because the principles of natural justice form an integral part of the scheme of Section 8 of the Act and Rule 13(iii) of the Rules. The opportunity of hearing envisaged in these provisions, as already mentioned above, operates as complete safeguard against the arbitrary exercise of power. That apart, the remedies of appeal and revision available to the aggrieved party also provide ample protection against the arbitrary exercise of power by the competent authority. The very fact that in case of the petitioner also, the revisional authority reduced the amount of penalty to 50% shows that the exercise of power by the competent authority is subject to sufficient checks and balances. This, in our considered view, is sufficient to negate the plea that the impugned rule confers unbridled and unguided powers upon the competent authority to impose penalty on the defaulter.

14. No other point has been argued.

15. For the reasons mentioned above, the writ petition is dismissed. The petitioner shall pay costs of Rs. 2,500/- to the respondents.