

(2013) 07 P&H CK 0676

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 6471 of 1989

Paramjit Kaur Kang

APPELLANT

Vs

The Adviser to The
Administrator, Union Territory

RESPONDENT

Date of Decision: July 12, 2013

Citation: (2013) 172 PLR 185

Hon'ble Judges: Satish Kumar Mittal, J; Mahavir S. Chauhan, J

Bench: Division Bench

Advocate: M.L. Sarin and Mr. Natin Sarin, for the Appellant; Sanjay Kaushal, Senior Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

Satish Kumar Mittal, J.

In the present writ petition, the petitioner is praying for quashing of the order dated 23.02.1981 (Annexure P-2) passed by the Estate Officer, U.T., Chandigarh, whereby the SCF No. 35, Sector 23-C, Chandigarh, was ordered to be resumed on the ground of misuse of the first and second floor by the tenant; order dated 16.02.1982 (Annexure P-4) passed by the Chief Administrator, Chandigarh, and the order dated 22.02.1989 (Annexure P-8) passed by the Adviser to the Administrator, U.T., Chandigarh, whereby the appeal as well as the revision filed by the petitioner against the order of resumption, had been dismissed. In the present case, the site for SCF No. 35, Sector 23-C, Chandigarh, was originally allotted to one Smt. Daya Wanti vide allotment letter dated 23.05.1955. Later the said Daya Wanti with the permission of administration, transferred the said SCF site in favour of the petitioner. The petitioner built the shop-cum-flat on the said SCF site and let out the first and second floor to the tenant with a clear stipulation that he will use the rented portion of the SCF for residential purpose only and not for any other purpose. But subsequently, contrary to the clear stipulation, the aforesaid tenant started using the first and second floor of the SCF for running a school/college

without the oral or written consent of the petitioner.

2. Since the above misuse was contrary to the provisions of the Capital of Punjab (Development & Regulation) Act, 1952, (hereinafter referred to as "the Act") she filed a civil suit for injunction against the tenant in the year 1979, for restraining him from running a school/college on the first and second floor of the said SCF. During the pendency of the said suit, the Chandigarh Administration issued notice dated 31.07.1980 u/s 8A of the Act calling upon the petitioner to show cause as to why the said SCF should not be resumed on account of above misuse. The petitioner took the stand that the tenant, contrary to his instructions, had started misusing the premises by running a school/college and in this regard, the petitioner had already taken appropriate legal proceedings against him. In spite of the said stand taken by the petitioner that the alleged misuse by the occupier/tenant is beyond the control of the petitioner, the Estate Officer passed the order of resumption on 23.02.1981 (Annexure P-2) and also ordered for forfeiting 10% of the price of the plot.

3. Feeling aggrieved against the said order, the petitioner filed an appeal u/s 10(i) of the Act before the Chief Administrator, Chandigarh-respondent No. 2. The said appeal was also dismissed on 16.02.1982 (Annexure-4) though a specific observation has been made in the order that "Although the appellant had taken active steps to get the misuse stopped yet the same is continuing and its continuance is wholly attributable to the tenant alone".

4. It is pertinent to mention here that when the appellate order was passed, the civil suit filed by the petitioner for permanent injunction was still pending. It was decreed vide the judgment and decree dated 27.02.1982 (Annexure P-5), whereby the tenant was restrained from carrying on the business of running of academy/school/college in the first and second floor of SCF No. 35, Sector-23C, Chandigarh. In spite of the said injunction, the tenant did not stop the misuse of the premises.

5. Feeling aggrieved against the appellate order, the petitioner filed a revision petition before the Advisor to the Administrator, U.T., Chandigarh, and brought to the notice of the revisional authority about the injunction granted by the Civil Court against the tenant for misusing the first and second floor of the SCF in question. But without properly appreciating the contents of the petition, the revision petition was dismissed on 22.02.1989 (Annexure P-8) by the revisional authority.

6. Meanwhile, the appeal filed by the tenant against the judgment and decree passed by the trial Court was also dismissed on 29.10.1982 (Annexure P-6).

7. During the pendency of the writ petition, Regular Second Appeal No. 72 of 1983 filed by the tenant against the decree dated 29.10.1982, was dismissed on 03.02.1997 (Annexure A-1). Even the SLP filed by the tenant against the aforesaid decision was also dismissed vide order dated 10.03.1997 (Annexure A-2).

8. In spite of the clear injunction granted by the Civil Court, the tenant though stop the misuse but remained in possession of the demised premises. Then the petitioner filed the ejectment application against the tenant on 11.10.2003 under the provisions of East Punjab Urban Rent Restriction Act, 1949 on the ground of failure to occupy the premises. The said ejectment application was allowed on 06.03.2007 (Annexure A-3). The tenant did not challenge the said order. In compliance of the said ejectment order, the possession of the first and second floor of the SCF, in question, was handed over to the petitioner on 30.03.2007 (Annexure A-4).

9. The petitioner while moving application, i.e., CM. No. 7097 of 2007, has placed on record the aforesaid orders and prayed that now the misuse of the premises, which according to the petitioner, was beyond her control, has been stopped, therefore, the order of resumption be set aside.

10. Under the order of the Court, now the premises, in question, has been inspected by the respondent and an inspection report dated 03.03.2011 has been placed on record, according to which, the first and second floors are lying vacant and locked and the same are in possession of the petitioner. Counsel for the respondents does not dispute the fact that the misuse of the premise in question has now been stopped.

11. In the light of the aforesaid facts, the learned counsel for the petitioner, while referring to Para 81 of [Dheera Singh Vs. UT Chandigarh Admn. and others](#), Full Bench judgment of this Court, argued that the alleged misuse of the premises by the tenant, which now has been stopped, was not willful and deliberate on the part of the petitioner. It was the misuse done by the tenant contrary to the conditions of rent agreement, which was beyond the control of landlord. The tenant started misusing the premises, the petitioner had initiated legal proceedings against the tenant, and in those proceedings, the tenant was restrained from using the premises contrary to the provisions of the Act. In these circumstances, the counsel argued that the resumption order is liable to be set aside.

12. We have heard counsel for the parties and perused the records.

Para 81 of the aforesaid judgment is reproduced below:-

81. The doctrine of proportionality as ruled in [Teri Oat Estates \(P\) Ltd. Vs. U.T., Chandigarh and Others](#), is now an integral part of Section 8A to protect an allottee against unreasonable or arbitrary action by the Authority under that provision. It necessarily means and the respondents cannot be heard to say otherwise except that the power of resumption can be invoked as a last resort and the action of the Estate Officer is required to be judged on the touch-stone of Article 14 of the Constitution. It implies that the Estate Officer before passing a resumption order shall be obligated to determine whether the breach of terms and conditions of allotment or violation of any building byelaw by the allottee is "willful" and

"deliberate" or it has occurred for the reasons beyond his control? In the case of the latter category it shall not be possible to invoke the power mechanically and resume the property. For example, if an allottee indisputably rents out his residential premises to a tenant for residential purposes only and the tenant in utter defiance to the terms of tenancy starts misusing the premises for commercial purposes against whom the landlord, without any inordinate delay, initiates eviction proceedings under the East Punjab Urban Rent Restriction Act, 1949 (as applicable to UT Chandigarh) *inter alia* on the ground of misuse of the premises, how can the allottee be held guilty of willful and deliberate violation of the building byelaws? The only recourse in such an eventuality available with the Estate Officer shall be to keep the resumption proceedings in abeyance till the eviction proceedings are decided though he must keep track of the status of eviction proceedings from time to time. Any attempt to deviate from such like *fait accompli* conditions shall vitiate the action rendering the resumption proceedings to nothing but a colourable exercise and/or abuse of power by the Estate Officer. Similarly, the first or stray violation(s) can hardly justify the impaling effect of "resumption" and any such casual attempt with a bureaucratic approach deserves serious view in exercise of power of judicial review.

13. It is not disputed before us that in the present case, the alleged misuse was beyond the control of the petitioner and this case is fully covered by the illustration given in the aforesaid Full Bench judgment. In view of the said factual and legal position, the writ petition deserves to be allowed as today, there is no misuse of the premises. Thus, the resumption order dated 23.02.1981 (Annexure P-2) passed by the Estate Officer, U.T., Chandigarh, order dated 16.02.1982 (Annexure P-4) passed by the Chief Administrator, Chandigarh, and the order dated 22.02.1989 (Annexure P-8) passed by the Adviser to the Administrator, U.T., Chandigarh, are hereby set aside. At this stage, counsel for the respondents argued that penalty should have been imposed for part misuse, under Rule 9A of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. But it has been admitted that no notice in this regard has been given to the occupant/tenant. In view of this fact, we give liberty to the respondents to recover misuse charge, if permissible, under the provisions of law, against the occupier/tenant for the alleged misuse.