

(2011) 01 P&H CK 0406

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 114 of 2010

Vijay Kumar Bansal

APPELLANT

Vs

The Advisor to The Administrator
and Others

RESPONDENT

Date of Decision: Jan. 18, 2011

Acts Referred:

- Capital of Punjab (Development and Regulation) Act, 1952 - Section 9

Citation: (2011) 162 PLR 560

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Judgement

Ranjit Singh, J.

The house of the Petitioner No. 2246, Sector 20-C, Chandigarh, was resumed on 8.6.1971 u/s 9 of the Capital of Punjab (Development and Regulation) Act (for short, "the Act") due to misuse for running a Karyana Shop.

2. This house was allotted to Sh. Ram Rakha Aggarwal on 30.11.1953. It was transferred to the Petitioner on 20.12.1968. The resumption order passed on 8.6.1971 was endorsed to the Petitioner but as stated by the Petitioner, there is no record of dispatch of this order as per the information obtained by him under the Right to Information Act. Rather, it is disclosed that original signed copy meant for the Petitioner is still lying in the file of the Estate Officer.

3. Reference is made to a hand written note, reading "no action is called for and may be filed" at the foot of the resumption order. The same endorsement was made on 3.7.1971. It is averred that Section 9 of the Act was struck down by the Hon'ble Supreme Court and the judgment in this regard is reported as Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others, . Section 8-A has now been enacted on 27.8.2007.

4. The Petitioner applied for inspection of the file. Thereafter, he applied for supply of copy of the resumption notice on 28.8.2007. The copy was received on 4.10.2007. The Petitioner filed an appeal against the same before the Chief Administrator on 10.10.2007. The Petitioner pleaded that he learnt about the order on 4.10.2007 and accordingly had filed the appeal. The Petitioner would plead that there is no misuse existing at present. Inspection was conducted on 26.8.2008, when a report is made that the Petitioner is residing with his family and there is no misuse. The appeal, however, has been rejected by observing that it can not be accepted that the copy of the order was not received by the Appellant. Aggrieved against the same, the Petitioner filed a revision before the Advisor to the Administrator, which is also dismissed on 2.12.2009. The Petitioner accordingly has filed this writ petition to make a grievance that resumption order has been passed without affording any opportunity of being heard to the Petitioner and has not been given effect to ever since the date same was passed in the year 1971 and is kept lying unactioned in the file alone.

5. Reply on behalf of the Union Territory is filed. It is stated that the Petitioner has raised disputed questions of facts and can not be heard after passage of 40 years of the passing of the order. As per the Respondents, the fact whether this order was served upon the Petitioner or not would be a disputed question of fact and so should not be gone into in exercise of writ jurisdiction. The counsel for the Respondent-Union Territory, however, was fair enough to concede that at present there is no misuse.

6. I have heard the counsel for the parties.

7. I am of the considered view that the Petitioner did not get any opportunity to be heard when the impugned order of resumption was passed. If this order had been served to the Petitioner, it is not understood as to how it has not been acted upon. There is an evidence available on record in the form of an endorsement made on the resumption order that no action is called for and that it may be filed. It appears that because of this, no action was taken on the resumption order. The Petitioner certainly would deserve an opportunity of hearing where he can plead all the grounds available to him, including the aspect that Section 9 of the Act, under which this order was passed, has since been struck down.

8. The impugned orders passed by the Chief Administrator and the Advisor, thus, can not be sustained simply on the ground that the Petitioner did not get any opportunity of hearing when the respective orders were passed and, thus, the orders were in complete violation of natural justice. The impugned orders are, thus, quashed and the case is remanded to the Chief Administrator, Chandigarh, for hearing the appeal of the Petitioner against the impugned order of resumption on merits.

9. The writ petition is accordingly disposed of. The parties, through their counsel, are directed to appear before the Chief Administrator on 11.2.2011.