
(2000) 12 P&H CK 0158

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1172 of 1995

Ajit Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Dec. 20, 2000

Citation: (2001) 1 CurLJ 480 : (2001) 1 PLJ 3063 : (2001) 2 PLR 94 : (2001) 3 RCR(Civil) 691

Hon'ble Judges: G.S.Singhvi, J and K.S.Kumaran, J

Advocate: Mr. Subhash Goyal, Advocate, Mr. Ram Saran Dass, Advocate., Advocates for appearing Parties

Judgement

G.S. Singhvi, J.

In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing the notice Annexure P2 dated 24.7.1991 issued by the Assistant Estate Officer (exercising the powers of the Estate Officer, Union Territory, Chandigarh) under Rule 12(3) of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973 (for short, the "Rules"); the orders Annexure P3 dated 1.7.1992 passed by the Assistant Estate Officer, Annexure P4 dated 14.9.1993 passed by the Chief Administrator and Annexure P5 dated 13.7.1994 passed by the Advisor to the Administrator, Union Territory, Chandigarh under the Rules for resumption of the site and payment of dues of instalments, ground rent, penalty etc. He also prayed for quashing of the order Annexure P6 dated 16.11.1992 passed by the Land Acquisition Officer exercising the powers of Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, the "1971 Act") and the appellate order Annexure P7 dated 7.5.1994 passed by the District Judge, Chandigarh.

2. A perusal of the record shows that the commercial site No. 392, measuring 96.25 square yards, Sector 44D, Chandigarh for the premium of Rs. 11,55,000/ was allotted to the petitioner in 1990 subject to the conditions embodied in the allotment letter Annexure P1 dated 24.4.1990. By virtue of clause 4 of the allotment letter, the amount already deposited by the petitioner was adjusted against 25% of

the premium and in terms of clause 5, he was required to pay the remaining 75% price in three equated instalments with interest at the rate of 7% per annum with an option to pay the entire amount without interest within a period of 30 days. The petitioner did not opt for lumpsum payment of balance price. Therefore, he was required to pay the remaining amount in these instalments with interest at the stipulated rate. The petitioner took possession of the site, raised construction over it and leased out portions of the building to different tenants, but did not pay first instalment which fell due on 25.2.1991. This led to the initiation of proceedings under Rule 12 of the Rules. After issuing notice Annexure P2, the Assistant Estate Officer passed the order for resumption of the site and forfeiture of a part of the premium. The Chief Administrator, Chandigarh did not disturb the findings recorded by the Assistant Estate Officer on the issue of default in the payment of instalments of price and the ground rent together with interest, but he accepted the petitioner's prayer for grant of an opportunity to pay the outstanding dues and restored the site subject to the condition of payment of the outstanding dues along with 10% forfeiture. The operative part of the appellate order dated 14.9.1993 reads as under :

"After hearing the parties and going through the record of the Estate Officer, I find that the Estate Officer has imposed the penalty vide his order dated 24.7.1991 on the delayed nonpayment of first instalment by the due date and thereafter by another order cancelled the lease of the site on the ground of nonpayment of first instalment. Since the appellants are ready and willing to pay the outstanding amount in case an opportunity is given, I am inclined to afford them an opportunity of doing so. Consequently, I set aside the impugned, order and restore the site to the appellants subject to the condition that outstanding amount along with 10% forfeiture is paid within two months reckonable from the despatch of the order of the Estate Officer shall become operative. As per law both penalties and forfeiture cannot be imposed. Consequently, I order the waiving off the penalty by maintaining forfeiture which is to be paid within the said stipulated period."

3. The petitioner did not deposit the amount in terms of the order dated 14.9.1993. Instead, he challenged that order by filing revision petition under Section 10(4) of the Capital of Punjab (Development and Regulation) Act, 1952 and Rule 22 of the Rules. During the course of arguments before the Revisional Authority i.e. the Advisor to the Administrator, Union Territory, Chandigarh, the counsel appearing for the petitioner made a statement that his client was ready and willing to deposit the outstanding amount and sought reasonable time for this purpose. The Revisional Authority accepted his prayer and passed the order dated 13.7.1994, the operative portion of which reads as under :

"After hearing the parties and going through the submissions made before me, I am convinced that the petitioners are willing to pay the outstanding amount in case an opportunity is given. Consequently, I set aside the impugned order and restore the

site to the petitioners subject to the condition that they shall pay the entire outstanding amount along with forfeiture amount within six months from the date of despatch of this order in three equated instalments, the first instalment is payable after two months of the despatch of this order and remaining two instalments at the end of every two months, failing which the order of the Estate Officer shall become operative. However, the penalty already imposed shall stand waived off."

4. In the meanwhile, the proceedings under the 1971 Act were initiated and by an order dated 16.11.1992, the Land Acquisition Officer exercising the powers of the Estate Officer under the said Act ordered the petitioner's eviction from the site in question. The appeal filed by the petitioner against that order was dismissed by the learned District Judge, Chandigarh on 7.5.1994.

5. We have heard learned Counsel for the parties and perused the record.

6. The facts of the case show that the petitioner is guilty of highly contumacious conduct of persistently committing default in the payment of instalments of price and the ground rent together with interest. He not only violated the conditions of allotment, but also showed scant respect for his own undertaking given before the Chief Administrator and the Adviser to the Administrator by refraining from depositing the outstanding dues in pursuance of the concessional orders passed by them. In view of this, we would have refrained from granting any further indulgence to him, but keeping in view the fact that while issuing notice of motion on 23.1.1995, a Coordinate Bench had taken note of the statement made by the counsel for the petitioner about his client's willingness to pay the price along with interest within three months and the fact that a part of the amount has already been deposited, we deem it appropriate to accept the oral prayer made by Shri Ram Saran Dass for grant of more time to the petitioner to pay the outstanding amount together with interest payable in terms of Rules 12(3) and 13(3A) of the Rules and dispose of the writ petition in the following terms :

(1) Within one month from today, the Estate Officer/Assistant Estate Officer, Chandigarh shall furnish a statement of the outstanding amount of instalments of price and ground rent together with interest calculated in accordance with Rules 12(3) and 12(3A) of the Rules to the petitioner's Advocate Shri Ram Saran Dass.

(2) Within next one month of the receipt of such statement, the petitioner may file objections against the calculation made by the Estate Officer.

(3) Within next one month, the Estate Officer cum Deputy Commissioner, Chandigarh shall decide the objection petition, if any, after hearing the petitioner or his representative and communicate the order to him giving an indication of the time schedule for payment of the entire amount due.

(4) The petitioner shall pay the amount mentioned in the order of the Estate Officer within the time stipulated therein, failing which the order of resumption passed by the Assistant Estate Officer on 1.7.1992 shall stand automatically revived and the competent authority shall be entitled to take possession of the site.

(5) The petitioner shall not be entitled to challenge the order of the Estate Officer or the consequential action for taking possession of the site by filing a fresh petition under Article 226 of the Constitution of India or by filing civil suit.

7. The Bench Secretary is directed to give attested copies of this order to the counsel for the parties.