(2012) 09 P&H CK 0379

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 41 of 2012 (O and M)

The Advisor to the Administrator, U.T. Chandigarh and others		APPELLANT
	Vs	
Gursharan Singh and others		RESPONDENT

Date of Decision: Sept. 27, 2012

Acts Referred:

- Capital of Punjab (Development and Regulation) Act, 1952 - Section 10(4), 8A
- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 3
- Constitution of India, 1950 - Article 142, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 151

Citation: (2013) 169 PLR 599 : (2012) 4 RCR(Civil) 755

Hon'ble Judges: Rameshwar Singh Malik, J; Jasbir Singh, J

Bench: Division Bench

Advocate: K.K. Gupta, for the Appellant; Chetan Mittal with Mr. Vishal Garg, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Rameshwar Singh Malik, J.

CM. No. 92 of 2012

1. After hearing counsel for the parties, application is allowed. Delay of 41 days in re-filing the appeal stands condoned.

CM. No. 93 of 2012

2. The application has been filed for condonation of delay of 400 days in filing the appeal.

3. Reply to the application has been filed.

4. After hearing counsel for the parties, we are satisfied that delay in filing the appeal has been explained. There are sufficient reasons to condone the delay.

5. Accordingly, the application is allowed for the reasons stated therein.

6. Delay stands condoned.

Letters Patent Appeal No. 41 of 2012

7. The instant Letters Patent Appeal is directed against the impugned order dated 19.5.2010 passed by the learned Single Judge of this Court, thereby allowing writ petition of the respondents filed against the resumption order dated 19.11.1979, appellate order dated 14.12.1982 and order dated 17.5.1989, dismissing the revision filed u/s 10(4) of the Capital of Punjab (Development and Regulation) Act, 1952.

8. Before addressing the issue involved, it would be appropriate to refer to the factual background of the case. After considering his application dated 12.3.1953, the competent authority allotted one residential plot bearing No. 32, Sector 15-C, Chandigarh, in favour of Late Sh. Kartar Singh, vide allotment letter dated 19.1.1954, as stated by learned counsel for the appellant. The allottee took the possession of the plot on 9.2.1955, as depicted in Annexure P-1. As per terms and conditions of the allotment, the allottee was required to complete the construction within a period of five years but the construction was not made within the stipulated period. After expiry of the period of five years, the allottee namely Sh. Kartar Singh moved an application dated 12.5.1959 requesting therein that his son Sh. Avtar Singh may also be recorded as coowner, although no share was defined. However, the application was allowed by the competent authority and with the original allottee-Sh. Kartar Singh, his son-Avtar Singh was also made co-owner of the plot.

9. Despite having been granted repeated extensions in time, up to 31.3.1970, vide Annexure P-2, for raising the construction, both the co-owners, named above, failed to raise the construction on the plot. During this period, Sh. Kartar Singh died on 12.7.1969 and the same was intimated by Avtar Singh on 27.9.1970, vide Annexure P-3. In response to the above said letter dated 27.9.1970, the Estate Officer, Chandigarh Administration, Chandigarh, vide letter dated 21.10.1970 (Annexure P-4), requested Sh. Avtar Singh to submit the death certificate of Late Sh. Kartar Singh along with affidavits of all the legal heirs, so that plot in question could be transferred in his name. The communication dated 21.10.1970 (Annexure P-4) was replied, vide letter dated 14.11.1970 (Annexure P-5), by Avtar Singh intimating that he was in the process of collecting the desired affidavits from all the legal heirs of Late Sh. Kartar Singh and the same would be submitted as soon as received by him. After waiting for more than ten years even after the death of original allottee-Sh.

Kartar Singh, show cause notice for resumption of the plot was issued, vide letter dated 6.1.1979 (sic) 6.11.1979 (Annexure P-6). It was replied by Avtar Singh, vide letter dated 12.11.1979 (Annexure P-7), seeking extension for further two years on account of his alleged illness.

10. When the allottee failed to raise construction, the resumption order was passed by the competent authority, vide order dated 19.11.1979 (Annexure P-8). The appeal dated 14.4.1981 (Annexure P-9), was filed against the above said resumption order dated 19.11.1979 and written arguments dated 22.12.1981 were also submitted, vide Annexure P-10. However, the appeal came to be dismissed, vide order dated 14.12.1982 (Annexure P-11). Thereafter, Sh. Avtar Singh filed his revision petition dated 31.5.1983, vide Annexure P-12, which also did not find favour with the competent authority and it was dismissed, vide order dated 17.5.1989 (Annexure P-13).

11. Dissatisfied with the above said resumption order, appellate order as well as the order passed by the revisional authority, Sh. Avtar Singh filed civil writ petition No. 8540 of 1989. During the pendency of this writ petition, Sh. Avtar Singh also died on 22.12.2005 and his legal representatives-respondents herein, came to be impleaded by way of application under Order 22 Rule 3 read with Section 151 Cr.P.C. The above noted writ petition was allowed by the learned Single Judge, vide his order dated 19.5.2010.

12. Feeling aggrieved against the above said order dated 19.5.2010 passed by the learned Single Judge, the appellants have approached this Court by way of instant Letters Patent Appeal. That is how, this Court is seized of the matter.

13. Notice of motion was issued.

14. Learned counsel for the appellants vehemently contented that the impugned order suffers from patent illegality because no plausible reason has been assigned, while passing the impugned order. He further submits that since the original allottee-Late Sh. Kartar Singh and his son-Sh. Avtar Singh, who later on became co-owner in the year 1959, have miserably failed to complete the construction on the plot which was allotted as far back as on 19.1.1954, the competent authority did not commit any illegality, while passing the resumption order after almost 26 years. It shows that allottee was not a bonafide allottee, who did not even show his inclination to start construction, during all these 26 years, what to talk of completion thereof within the stipulated period of five years. It is next contended that since the resumption order dated 19.11.1979 has been set aside by the learned Single Judge after a gap of more than 30 years, the impugned order is neither justified in the fact situation of the present case, nor the same was sustainable in law.

15. Learned counsel for the appellants concluded by submitting that the impugned order may be set aside and the present appeal be allowed. To substantiate his arguments, learned counsel for the appellants relies upon the two judgments of the

Hon''ble Supreme Court in Municipal Corp., Chandigarh and others v. Vipin Kumar Jain dated 20.9.2007 passed in Civil Appeal No. 4450 of 2007 and Municipal Corporation, Chandigarh and others v. M/s Chandigarh Corporate Guides Ltd., dated 4.9.2009 passed in Civil Appeal No. 6055 of 2009 and one passed by a Division Bench of this Court in Sub. Major Ram Kumar (Retd.) v. Notified Area Committee, Mani-majra and others dated 9.8.2005 passed in CWP No. 16702 of 2004.

16. Per contra, learned counsel for the respondents submits that the impugned order passed by the learned Single Judge is not only fully justified on the facts of the case but the same is sustainable in law, as well. He further submits that it was beyond the control of the respondents to raise construction. Initially their predecessor-in interest, Late Sh. Kartar Singh who was the original allottee, could not raise the construction within the stipulated period of five years. Thereafter, Sh. Avtar Singh, next predecessor-in-interest of the respondents became co-owner of the plot in question in the year 1959. Sh. Avtar Singh died on 22.12.2005, during the pendency of the writ petition. He also could not raise the construction for the reasons beyond his control. He had been making efforts during this period for getting the plot transferred in his name, after seeking requisite affidavits from various legal heirs of the original allottee. The plot could not be transferred in his name and in the absence thereof, his building plan could not be sanctioned. To put the controversy of succession to an end, civil suit No. 555 of 2008 was also filed and the same came to be decided by the learned court of competent jurisdiction on 1.2.2010, that is during pendency of the writ petition. Learned counsel for the respondents also submitted that since the impugned order passed by the learned Single Judge does not suffer from any illegality or perversity, the present appeal was without any merit and the same was liable to be dismissed. He relies upon the Division Bench judgment of this Court in James Hotels Ltd. Vs. Union Territory and Others, .

17. We have heard the learned counsel for the parties and with their able assistance, have gone through the record of the case. Having given our thoughtful consideration to the rival contentions raised on behalf of both the parties and also in view of the peculiar fact situation of the present case, we are of the considered opinion that the impugned order dated 19.5.2010, passed by the learned Single Judge, is not sustainable in law and the same is liable to be set aside. Keeping in view the facts and circumstances of the present case, we are unable to persuade ourselves to endorse the view taken by the learned Single Judge. We say so for more than one reasons, being recorded hereinafter.

18. Firstly, it is an admitted position on record that the allotment of plot No. 32, Sector 15-C, Chandigarh, was made in favour of Late Sh. Kartar Singh as far back as on 19.1.1954. Possession of the plot was also taken by the allottee on 9.2.1955. The appellants kept on granting extension after extension to the allottee but he failed to raise construction within the stipulated period of five years, which was sufficiently a

long time to complete construction. The request dated 12.5.1959 made by the allottee-Sh. Kartar Singh to include his son-Sh. Avtar Singh as co-owner was also accepted. None out of the two above said co-owners, made any sincere effort even to start the construction much less completion thereof. During this period, Late Sh. Kartar Singh died on 12.7.1969. Thereafter, Sh. Avtar Singh again did not make any effort to get the plot transferred in his name nor the construction was started. Having been left with no other option, the competent authority passed the resumption order dated 19.11.1979, after issuing show case notice dated 6.11.1979, which was duly received and replied by Avtar Singh, vide his letter dated 12.11.1979 (Annexure P-7).

19. It is pertinent to note here that despite receiving the show cause notice for resumption, Sh. Avtar Singh did not appear before the competent authority to avail the opportunity of hearing. However, appeal dated 14.4.1981 (Annexure P-9) would also show that no plausible reason or explanation was given by Sh. Avtar Singh either for non construction or for not getting the plot transferred in his name, during this inordinate long period of more than 27 long years. Despite the appeal being barred by time, it was still not dismissed as time barred but the competent authority discussed and appreciated each and every aspect of the matter on merits of the case, before passing a reasoned and speaking order dated 14.12.1982, dismissing the appeal.

20. Still further, Sh. Avtar Singh filed a revision petition, against the appellate order dated 14.12.1982. Due opportunity of being heard was granted. After hearing the parties, the competent authority, vide its legally justified order dated 17.5.1989 (Annexure P-13), dismissed the revision petition. The relevant part of the order, reads as under:-

As mentioned above and may be repeated here even at the risk of repetition that Shri Kartar Singh deceased and the petitioner Shri Avtar Singh were the co-owners in the plot and on the death of Shri Kartar Singh, the petitioner undertook to submit the death certificate of Shri Kartar Singh alongwith affidavits of legal heirs, but he failed to do so for a period of about 9 years and the Estate Officer was thus left with no option but to serve a fresh show cause notice on the petitioner alone. Since the petitioner had failed to raise the construction on the site, he choose to remain absent from the proceedings before the Estate Officer so that he may later on attack the order of the Estate Officer on this ground. It is well settled that no one can be allowed to take advantage of his wrongs. No where duty is caste on the Estate Officer to contact the legal heirs of a deceased allottee to bring their names on record. It is for the legal heirs to take steps in this regard. After all petitioner is the son of Shri Kartar Singh deceased. In all fairness he should have brought his brothers and sisters on the record and new after a period of about 35 years of the allotment of the plot the resumption order passed on the failure of the allottee to raise the construction on the site cannot be set aside merely on the ground that the

legal heirs of one of the co-owner have not been brought on the record. In this view of the matter I do not find any material irregularity or illegality in the exercise of jurisdiction by the Ld. Chief Administrator. There is thus no mis-carriage of justice so as to call for interference by this Court in the revisional jurisdiction.

For the reasons recorded above, this revision petition fails and is accordingly, dismissed.

21. After a careful and combined reading of the resumption order dated 19.11.1979 (Annexure P-8), appellate order dated 14.12.1982 (Annexure P-11) and revisional order dated 17.5.1989 (Annexure P-13), we have no hesitation to conclude that these were the only orders which could have been passed and have been very rightly passed, under the given circumstances of the case.

22. Secondly, the learned Single Judge has not adverted to the above said glaring facts of the present case before passing the impugned order. The predecessors-in-interest of the respondents, have miserably failed to explain this inordinate delay of about 26 years, for not raising the construction before passing the resumption order. Even the respondents have also failed to take the desired interest in the matter, during the pendency of the writ petition. Even if the argument of the learned senior counsel for the respondents about filing of the civil suit is accepted, still it is an admitted position on record that no steps were taken by the respondents, to bring that fact to the notice of this Court, during the pendency of the writ petition, in spite of the fact that a compromise decree had been passed on 1.2.2010, by the learned civil court. The respondents were always at liberty to bring that fact to the notice of this Court at any relevant point of time. The casual approach and inaction on the part of the respondents all through this period, clearly indicates that respondents and their predecessors-in- interest, had never been interested even to start raising the construction to establish their bonafide, so as to make every endeavour for claiming this relief, at the hands of this Court.

23. Keeping in view the peculiar facts of the case, this Court is of the considered view that it is not the scope of writ jurisdiction of this Court, under Article 226 of the Constitution of India, to set aside the resumption order after more than 30 long years, particularly when it was passed by the competent authority while exercising its legitimate right, after granting repeated opportunities to the allottee. Further, validity of the resumption order had been considered and upheld by the appellate as well as revisional authority passing well reasoned and speaking orders. Having said that, it is unhesitatingly held that the resumption order dated 19.11.1979, appellate order dated 14.12.1982 and revisional order dated 17.5.1989, passed by the authorities concerned, deserve to be upheld. We say so because the learned Single Judge has set aside above said orders, while not discussing the merits or validity of these three impugned orders or assigning any convincing and cogent reasons.

24. Thirdly, the carelessness on the part of original allottee, namely Late Sh. Kartar Singh, his son Sh. Avtar Singh who later on became co-owner, and thereafter the present respondents who represent the third generation leave them totally disentitled for the relief claimed. It goes without saying that present respondents have stepped into the shoes of their predecessor-in- interest, namely Sh. Avtar Singh, who became co-owner of the plot in question way back in the year 1959 and died on 22.12.2005. Although the respondents were not entitled for any sympathy, yet the learned Single Judge has shown the unwarranted sympathy. The line has to be drawn somewhere. The respondents were to blame themselves or their predecessors-in-interest, for not taking even the least expected interest in the matter, during this long drawn litigation.

25. The view taken by us also finds support from the judgment of the Hon''ble Supreme Court in Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, Their Lordships of the Hon''ble Supreme Court observed as under:-

SYMPATHY:

36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.

37. As early as in 1911, Farewell L.J. in Latham v. Richard Johson & Nephew Ltd., (1911 13 AER 117) observed:

"We must be very careful not to allow our sympathy to affect our judgment with the infant plaintiff. Sentiment is a dangerous will O'' the wisp to take as a guide in the search for legal principles." (See also Ashoke Saha Vs. State of West Bengal and Others,

38. In Sairindhri Ddolui v. State of West Bengal, 2000(2) S.C.T 441: (2000) 1 SLR 803, a Division Bench of the Calcutta High Court wherein (one of us Sinha, J. was a Member), followed the aforementioned dicta.

39. This Court also in C.B.S.E. and Another Vs. P. Sunil Kumar and Others, rejecting a contention that great injustice would perpetrate as the students having been permitted to appear at the examination and having been successful and certificates had been issued in their favour, held:

... We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High

Court on misplaced sympathy in favour of the students...

26. The above said law laid down by the Hon''ble Supreme Court was reiterated in an identical situation, wherein that allotment was made in the year 1996, but the allottee failed to comply with the terms and conditions of the allotment, while not making the payment. As a result thereof, the allotment was cancelled in June, 2002 i.e. after about six years. The matter went up to the Hon''ble Supreme Court in Vipin Kumar Jain''s case (supra) and the Hon''ble Supreme Court while allowing the appeal, vide order dated 20.1.2007, observed as under:-

It has been submitted on behalf of the respondent that during the aforestated period he had to undergo bypass operation and financial difficulties and therefore delay in depositing be condoned. In our view ample opportunities were given to the respondent to make payment and therefore there was no question of condoning the delay. It is important to bear in mind that when the respondent offers to pay interest and principal after years it amounts to pegging of the price which cannot be allowed.

Lastly, number of orders of this court were shown to us where delay in payment has been condoned. We find no merit in the said contention. Firstly, the said orders were on facts of each case. Secondly, even in the orders cited we have a judgment of this Court in the case of Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, in which Sinha J. speaking on behalf of the Division Bench has observed vide para 57 as follows.

We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted to. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8A can be taken recourse to.

Accordingly, for the above reasons we set aside the impugned judgment and allow the civil appeals filed by the Corporation. The Corporation will invite fresh bids and hold the Auction afresh at the earliest. In that auction the respondent herein would be entitled to offer his bid. There is some doubt as to whether Corporation is in possession as to date. The Corporation would be entitled to take steps for recovery of possession before a fresh auction is held, if it is not in possession as of date. If the possession is with the respondent herein, he shall hand over possession to the Corporation on or before 31st October 2007. On getting back possession the Corporation will refund the amounts which the respondent has paid to the Corporation after deducting 10% as per the Auction Conditions. Balance if any shall be refunded by the Corporation with interest at the rate of 12% from the date of the filing of the writ petition in which the impugned judgment is passed by the High

Court.

Accordingly, the civil appeals herein are allowed with no order as to costs.

27. Similarly, in the case of M/s Chandigarh Corporate Guides Line''s (supra), the Hon''ble Supreme Court observed as under: -

We have heard learned counsel for the parties. In our view, the procedure adopted by the High Court for disposing of the writ petition is wholly unknown to law. When the order for cancellation of lease was challenged, the High Court was duty bound to decide whether the order passed by appellant No. 2 i.e. Assistant Commissioner, Municipal Corporation, Chandigarh was legally correct. The High Court should also have examined and adjudicated upon the legality of the conditions imposed by the appellate and revisional authorities for restoration of the site to the respondent. Since, the impugned order has been passed without examining the vital issues raised by the parties, the same cannot be sustained.

Accordingly, the appeal is allowed, impugned order is set aside and the matter is remitted to the High Court for deciding the writ petition afresh in accordance with law after giving opportunity of hearing to the parties. Needless to say that we should not be misunderstood to have expressed any opinion one way or the other in relation to the merits of the writ petition filed by the respondent.

28. In the case of Sub. Major Ram Kumar (Retd) (supra), a plot was allotted on 4.4.1979 and the allottee failed to complete the construction within the stipulated period. The plot was resumed vide order dated 21.9.1989. Revision filed against the resumption order was also dismissed. Resumption order as well as revisional order were was challenged before this Court. While deciding CWP No. 16702 of 2004, a Division Bench of this Court has held as under: -

The narration of the facts above reveals that the petitioner had failed to comply with the terms of the allotment letter dated 4.4.1979 and had failed to raise construction on the allotted site within the stipulated period/extended period. Therefore, the petitioner is not entitled to any relief in this writ petition.

This view of ours finds support in the order dated 31.1.2002 passed in CWP No. 14289 of 1999 by the Hon''ble Division Bench of this Court, in which also a plot was allotted to the petitioner in the year 1978 and the construction was to be completed by him within the period of one year from the date of allotment. On the failure of the allottee notice was served on him in the year 1992 and the time was extended for a period of six months for completing the construction, but the allottee had failed to complete the building and, therefore, the plot was resumed. The writ petition filed by the allottee against the order of resumption was dismissed by this Court vide order dated 31.1.2002.

In the present case the petitioner had failed to complete the building in the stipulated period/extended period in spite of repeated notices.

In view of the discussion held above, we find no merit in the writ petition. Dismissed.

29. In view of the above, this Court is of the considered opinion that since no illegality in the impugned resumption order, appellate order as well as in the revisional order, has been noticed by the learned Single Judge, the impugned order allowing the writ petition is not sustainable in law. The judgment cited by the learned counsel for the respondents in M/s James Hotels Ltd'' case (supra) is of no help to the respondents. There is no dispute about the law laid down in the cited judgment but the same is distinguishable on facts.

30. In the present case, since the allottee did not raise construction even after the lapse of an inordinate long period of about 26 years, the resumption order was rightly passed, vide order dated 19.11.1979. In such a situation, we are of the considered view that the resumption order ought not to have been set aside after a gap of 30 long years, vide order dated 19.5.2010 passed by the learned Single Judge whereas the plot was allotted in 19.1.1954. In this view of the matter, we are unable to subscribe to the view taken by the learned Single Judge. Considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is unhesitatingly held that the resumption order dated 19.11.1979 (Annexure P-8), order dated 14.12.1982 (Annexure P-11) passed by the appellate authority as well as order dated 17.5.1989 (Annexure P-13), passed by the revisional authority were rightly passed and the same do not suffer from any patent illegality or perversity. Consequently, the impugned order dated 19.5.2010 passed by the learned Single Judge is set aside.

Resultantly, the Letters Patent Appeal stands allowed, however, no order as to cost.