

(2014) 04 P&H CK 0010

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 939 of 2013 [O&M]

Ajit Singh

APPELLANT

Vs

Chandigarh Administration

RESPONDENT

Date of Decision: April 7, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 14
- East Punjab Urban Rent Restriction Act, 1949 - Section 15

Hon'ble Judges: Surya Kant, J; Lisa Gill, J**Bench:** Division Bench**Advocate:** Puneet Bali, Sr. Advocate and Mr. Tushar Sharma, Advocate for the Appellant;
A.P. Setia, Advocate for the Respondent**Final Decision:** Disposed Off

Judgement

Surya Kant, J.

The petitioners impugn the orders dated 17.08.1979, 25.03.2009, 24.08.2009 and 25.05.2012 [P-4, P-19, P-21 and P-23 respectively] whereby SCO No. 94-95, Sector 17-C, Chandigarh was resumed and the appeal/revision petitions etc. were also dismissed.

2. In the light of the subsequent events, it may not be necessary to refer to the facts in detail and/or to pass a lengthy order.

3. Suffice it to observe that the subject site was resumed on account of misuse of a part of it by the tenants/occupiers. Since certain alterations were made contrary to the sanctioned building plans and there was thus an apparent misuse of the premises, the action initiated by the authorities was fully justified. It is, however, equally true that the resumption of a site has to be the last resort as ruled by the Full Bench of this Court in [Dheera Singh Vs. UT Chandigarh Admn. and others](#), laying down that:-

81.....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 bye-law 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 bye-laws? 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.

(87). It is well known that mere possibility of abuse of power or its arbitrary exercise is no test for determining the reasonableness of the restriction imposed by law nor shall it vitiate such law. If, however, the statutory power or discretion is shown to have been abused by the authority, the person aggrieved is entitled to approach the appropriate forum against the illegal order but that would be no ground for invalidating the Statute itself. Nonetheless, we direct that "resumption" being the last resort, the Estate Officer shall not henceforth initiate proceedings u/s 8A unless the wrongdoer has been penalized to the maximum firstly u/s 15 or under the Rules framed u/s 22 of the Act and every such action shall have to be expressly disclosed in the show cause notice for initiating the resumption proceedings.

4. It was in this back-drop that on 17.02.2014 following order was passed on the statement made on behalf of the petitioners:-

It is contended on behalf of the petitioners that misuse of the basement was at the instance of the tenant, against whom eviction proceedings were initiated and during pendency of the same, the tenant/sub-tenant have vacated the premises. It is further stated that the misuse of the part of the basement has since been stopped.

Let the respondents re-visit the site and submit a status-report giving details of the alleged misuse, if any, and whether the same is compoundable?

5. In deference thereto the Assistant Estate Officer, exercising the powers of the Estate Officer, UT, Chandigarh, has filed an affidavit along with Site Inspection Report. The same is taken on record.

6. The above-stated Report shows that there are still a few compoundable and non-compoundable violations. The report reads as follows:-

Ground Floor:-

[i] There is shop by the name of M/s. Singla Unisex Salons. There is a mezzanine floor made by the occupant and used as ladies section. This mezzanine floor is not sanctionable.

[ii] There is an electronics shop at the front portion of SCO No. 95 which is sanctionable.

[iii] There is a Cloth Shop by the name of Gulati Stores. This shop has 2 nos. mezzanine floor which are more than 25% of the total area. The mezzanine floor is sanctionable to the extent of 25% of the shop area.

BASEMENT:-

There is a cloth shop by the name of Gulati Saree and Suits. The Habitable use is required to be obtained from the Estate Office by paying requisite fee. Revised Building Plans are also required to be got approved with the provision of an additional stair case as per building bye-laws.

First Floor:-

[i] There are numbers of partitions in the floors which are sanctionable through Revised Building Plans as per building bye-laws after keeping passage width 7'-6", size of cabin 8'-0"x8'-0" minimum and adhering to light and ventilation norms.

[ii] At first floor, in the rear side, bigger size window glasses have been fixed which are against the Architectural Control, and required to be replaced by undulatory glazing as per the Architectural control of City Centre, Sector 17, Chandigarh.

Second and Third Floor:-

There are number of partitions at both the floors. These partitions are sanctionable through revised building plans subject to the approval of Plan Approval Committee [Lower] after keeping passage width 7'-6", size of cabin 8'-0"x8'-0" minimum and adhering to light and ventilation norms.

7. Faced with this, learned counsel on instructions, undertakes that the petitioners shall submit a Revised Building Plan within one month to meet with all the objections. In case the petitioners do so, we direct the Competent Authority that on

consideration of the Building Plan, it shall identify the sanctionable and non-sanctionable violations with reference to the report, reproduced above. The petitioners shall be required to deposit the requisite charges for the "sanctionable violations" within one month from the date of communication of such charges.

8. As regard to the non-sanctionable violations, learned counsel for the petitioners, on further instructions, undertakes that the same shall be removed within a period of three months from the date of receipt of certified copy of this order. We, thus, allow this writ petition subject to the condition that if the petitioners submit the Revised Building Plan; deposit the due charges for the sanctionable violations; and remove the non-sanctionable violations within the stipulated period, the resumption, appellate and revisional orders shall be deemed to have been set aside. However, if the petitioners fail to do so, the respondents shall be at liberty to initiate further action against them based upon these very impugned orders.

9. Disposed of. Dasti.