

**(2014) 01 P&H CK 0089**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** CWP No. 22525 of 2010 (O and M)

Hari Pal

APPELLANT

Vs

Chandigarh Administration

RESPONDENT

**Date of Decision:** Jan. 29, 2014

**Acts Referred:**

- Capital of Punjab (Development and Regulation) Act, 1952 - Section 22, 8-A

**Citation:** (2014) 4 RCR(Civil) 106

**Hon'ble Judges:** Surya Kant, J; Amol Rattan Singh, J

**Bench:** Division Bench

**Advocate:** M.L. Sarin, Senior Advocate and Alka Sarin, Advocate for the Appellant; Sanjay Kaushal, Sr. Standing Counsel and Vikas Cuccria, Advocate for the Respondent

**Final Decision:** Dismissed

**Judgement**

Surya Kant, J.

The principal question that arises for consideration in this case is whether the petitioners can take the benefit of Rule 21-B of the Chandigarh Leasehold Sites and Building Rules, 1973 and seek reallocation of their resumed site, notwithstanding the decision of Hon'ble Supreme Court in Babu Singh Bains etc. Vs. Union of India and others etc., or that of the Full Bench of this Court in Dheera Singh Vs. UT Chandigarh Admn. and others, With a view to appreciate the controversy in its right perspective, it may be mentioned that the petitioners were allotted SCO site No. 218, Sector 37 C&D, Chandigarh on 29.10.1981 through an open auction on 99-year leasehold basis. The allotment letter was issued on 17.12.1981 (Annexure P1). The petitioners deposited 25% of the premium but admittedly failed to deposit the instalments towards 75% of the balance allotment price.

2. The Estate Officer, UT Chandigarh, consequently served the petitioners with a show cause notice under Rule 12(3) of the Chandigarh Leasehold Sites and Building Rule, 1973 (in short, "the 1973 Rules") and gave them opportunities of being heard

on 21.03.1983, 07.04.1983 and 03.05.1983 so as to enable them to deposit the balance instalments. Since the petitioners failed to do so, the subject-allotment was cancelled and 10% of the premium was forfeited vide order dated 20.07.1983 (Annexure P2).

3. The statutory appeal preferred by the petitioners was conditionally allowed by the Chief Administrator, Chandigarh vide order dated 11.06.1985 (Annexure P3) subject to the condition that they shall "make payment of all the three instalments of premium, interest thereon and the amount of forfeiture of premium within a period of three months reckonable from the date of issue of this order".

4. The petitioners, however, could not do so. Yet they preferred a revision petition before the Advisor to the Administrator, Chandigarh, who too vide order dated 25.09.1991 (Annexure P4) permitted them to clear the dues in three monthly instalments. The petitioners did not comply with that order. Interestingly, their review application was also partially accepted and they were permitted to clear the outstanding dues within one month from the date of despatch of the review order passed on 08.04.1992. The petitioners did not opt to avail the benefit of that concession also.

5. The petitioners after about four years filed CWP No. 4829 of 1996 but this Court vide order dated 07.11.1997 upheld the order of resumption and consequential appellate and revisional orders though with liberty to the petitioners to apply for the re-purchase of the resumed site in terms of the enabling provision of 1973 Rules as it existed at that time.

6. The relentless petitioners, instead of availing the suggested option, went before the Hon"ble Supreme Court but their SLP was dismissed on 30.08.1999. The resumption order in this manner attained finality.

7. It may also be mentioned at this stage that allotment and cancellation or resumption of sites in Chandigarh is principally regulated by the Capital of Punjab (Development and Regulation) Act, 1952 or the Rules framed in purported exercise of the powers vested u/s 22 of that Act.

8. While the Chandigarh (Sale of Sites and Buildings) Rules, 1960 regulate the allotment of freehold sites, the Chandigarh Leasehold of Sites and Building Rules, 1973 (in short, "the 1973 Rules") do so for the sites allotted on lease-hold basis. In the instant case also, the resumed site was allotted to the petitioners on leasehold basis in accordance with the 1973 Rules.

9. It is noteworthy to mention here that the above-mentioned 1960 and 1973 Rules were amended by the Chandigarh Administration w.e.f. 04.10.1979 and a pari materia provision i.e. Rule 11-D (in 1960 Rules) and Rule 21-B (in 1973 Rules), were added. Rule 21-B of 1973 Rules was to the following effect:--

"21-B(1) In case lease of any site has been cancelled under rule 12 or 20 of the Chandigarh Lease-Hold of Sites and Buildings Rules, 1973 for any reasons, the Estate Officer may on an application, retransfer the site to the outgoing transferee, on payment of an amount equal to 10% of the premium originally payable for such property or one-third of the difference between the price originally paid and its value at the time when the application for retransfer is made whichever is more.

Provided that xxx xxx xxx"

10. It may thus be seen from the above-reproduced Rule that an allottee could seek re-allotment/re-transfer of the resumed site subject to the compliance of conditions contained therein. Hundreds of allottees have, as a matter of fact, been going on dragging the Chandigarh Administration in Courts against the resumption orders and if they turned unsuccessful, they would hide behind Rule 11 -D or Rule 21 -B so as to get the resumed site re-allotted.

11. Rule 11-D of the 1960 Rules faced the wrath of Hon'ble Supreme Court in Babu Singh Bains case (*supra*) and was nearly struck down holding as follows:--

"It would be a constant sprout of corruption and abuse of Rule 11-D for diverse reasons which in the interest of smooth administration need to remove the irritant. However, we need not dwell upon it any further as it is not necessary for the purpose of deciding the question in this case. Suffice it to state that Rule 11-D is only an enabling provision to make an application. The Estate Officer has discretion to re-grant the land or building which stood already resumed and vested in the State. Of course, he cannot arbitrarily reject the petition; he has to give reasons in support thereof as contemplated in Rule 11-D itself."

12. The doubt, if any, left with regard to the lack of propriety or legitimacy behind enacting a provision like Rule 11-D, was further removed by the Supreme Court in Chandigarh Administration through the Estate Officer, Union Territory Vs. M/s. Johnson Paints and Varnish Co., holding that:--

"Once the original allotment stands cancelled and the resumption becomes final, the allottee has no right in the allotted site. Rule 11-D deals with only discretionary power given to the Estate Officer. The only right the erstwhile outgoing transferee had was to make an application. On making the application, he has to satisfy the criteria laid down under the Rule. We doubt the very bona fides in introducing Rule 11-D to provide a back door entry from the lost rights. But on the facts in this case, it is not necessary to go into the wisdom of introducing Rule 11-D. Suffice it to state that it does not clothe him with any right to the allotment as of right. It being a discretionary benefit sought to be given to the outgoing transferee in the language of the rule, the outgoing transferee must, in fact and in reality, be the real, genuine and bona fide transferee and for him alone the benefit may be given for consideration under Rule 11."

13. The Chandigarh Administration, for the reasons best known to it, have taken 10 long years to delete Rule 11-D and Rule 21-B from the Rule Books of 1960 and 1973 w.e.f. 31.01.2007.

14. The petitioners, after losing the legal battle on 30.08.1999 with the dismissal of their SLP, are said to have applied for reallocation/re-transfer of the site in July, 2000 (Annexure P8). Their application was rejected on 06.11.2002 (Annexure P9). They challenged that order in an appeal which was dismissed on the ground of non-maintainability on 12.03.2003 (Annexure P11). The petitioners went before the Revisional Authority who vide order dated 05.12.2003 (Annexure P13) remanded the case to the Chief Administrator i.e. the Appellate Authority to take a decision on merits.

15. The Appellate Authority vide its order dated 27.09.2006 set aside the order dated 16.10.2002 of the Estate Officer whereby the petitioners' application for re-transfer of the site was rejected, with a further direction to the Estate Officer to decide that application by passing a speaking order.

16. As noticed above, the Chandigarh Administration, meanwhile, vide notification dated 31.01.2007 (Annexure P15) deleted Rule 21-B of 1973 Rules and thus the very basis of petitioners' claim for re-transfer of the site vanished.

17. The Estate Officer vide order dated 26.03.2007/16.04.2007 (Annexure P17) consequently, dismissed the petitioners' application for re-transfer of the site observing that there existed no such provision under the Rules. The petitioners' appeal has also been dismissed vide order dated 22.09.2009 on somewhat similar grounds.

18. The above-stated orders are under challenge in these writ proceedings.

19. Equally apt would be at this stage to notice that the power of resumption embodied in Section 8-A of the 1952 Act was unsuccessfully challenged before a Full Bench of this Court in Ram Puri, Chandigarh Vs. Chief Commissioner, Chandigarh and Others, A similar attempt made before the Hon'ble Supreme Court in Babu Singh Bains case (supra) also failed. The Full Bench in Ram Puri referred to and observed Rule 11-D of the 1960 Rules as a source of tampering the rigour and softening the strictness of power of resumption. After the deletion of Rule 11-D w.e.f. 31.01.2007, the issue of constitutionality of Section 8-A was again raked up and the matter was placed for adjudication before a Full Bench in Dheera Singh's case (supra). The Full Bench in Dheera Singh in which one of us (Surya Kant, J) was a member, upheld Section 8-A of the 1962 Act even without the aid of Rule 11-D, as the said provision had since been upheld by the Supreme Court on its own strength.

20. Dheera Singh considered the status of Rule 11-D and Rule 11-B and after referring to the decisions of the Supreme Court in Babu Singh Bains and M/s. Johnson Paints cases, ruled that:--

"We are, however, unable to reconcile as to how the time clock could be reversed by retransferring the property to a person who breached the terms and conditions of allotment and violated the building Byelaws? There would be some logic attached to prescribing a penalty minor than "resumption" for imposition on a violator of building laws so that the penultimate power of "resumption" continues to remain the last civil sanction, to be invoked in a rare case. However, if the circumstances so warranted that a resumption order had to be passed, it would be totally absurd to clothe the Estate Officer with an implied power to review, modify or dilute his previous order (which might have attained finality up to the Highest Court) and retransfer the site to the same allottee at a higher price."

21. The Full Bench in Dheera Singh also held that Rule 11-D/Rule 21-B were in conflict with the legislative policy and the objects for which 1952 Act was enacted and that such like provisions were alien to the rule-making power conferred by Section 22 of the 1952 Act (please see para 96 of the judgment). The Full Bench, in no uncertain terms, further held that the above-stated Rule(s) did not confer any legally-vested right in favour of the ex-allottee and at best it gave rise to some expectations.

22. Dheera Singh indubitably concluded that Rule 11-D or Rule 21-B lost both their legitimacy and existence, immediate on the delivery of the Supreme Court verdicts rendered in the year 1996 in the cited decisions. Hence no benefit could be drawn on the premise that the aforesaid Rules were retained in the Rule-Book or were in existence when the petitioners had applied or that the concessional benefit under these Rules cannot be withdrawn retrospectively. The Full Bench thus concluded as follows:--

"Keeping these principles in view, we have no reasons to doubt that Rule 11-D neither did nor could it give rise to any legitimate expectation in favour of the petitioners promising them that irrespective of the violations under the 1952 Act, their resumed sites shall be re-transferred. The Rule, while in existence at the best kindled a hope that the applications moved by the petitioners for the concession of re-transfer were maintainable and shall be considered. Such a ray of hope was mere brutum fulmen which never materialized into a right enforceable through a court of law. We, however, hasten to add that Rule 11-D has not been deleted retrospectively as the orders of re-transfer of the resumed sites passed before 31.01.2007 have not been recalled."

(Emphasis applied)

23. It is equally pertinent to mention at this stage that in most of the cases decided by Full Bench in Dheera Singh, the writ petitioners had applied for re-transfer of their respective sites much before Rule 11-D or 21-B were deleted w.e.f. 30.01.2007. These facts have been duly noticed in para 4 to 9 of the report.

24. The SLP No. 4582 of 2013 preferred by some of the aggrieved ex-allottees against the Full Bench decision in Dheera Singh's case was dismissed by the Hon'ble Supreme Court vide order dated 04.03.2013 giving its seal of approval to the views taken therein.

25. The petitioners, in this backdrop, while seeking quashing of the orders dated 26.03.2007 and 09/22.09.2009 (Annexures P17 & P21) whereby their application for re-transfer of the site under Rule 21-B was rejected and appeal against that order was also dismissed, seek a further direction to implement the notification dated 31.01.2007 "with prospective effect" and consequently, consider their above-stated application on merits.

26. The only question that arises for consideration is, whether all those ex-allottees who had applied for re-allotment/re-transfer of a site under Rule 11-D or Rule 21-B, as the case may be, before these Rules came to be deleted w.e.f. 31.01.2007, are entitled to the benefit of these Rules or the subsequent deletion of the Rules would have the effect of rejection to their claims as well?

27. We have no reason to doubt and unhesitatingly hold that the above-noticed issue is neither res integra nor does it require any debate and has been squarely answered against the ex-allottees by the Full Bench in Dheera Singh's case (supra).

28. We say so for the reason that contention No. (x) raised on behalf of the petitioners (ex-allottees) in Dheera Singh was that "Rule 11-D cannot be deleted retrospectively to take away the benefits accrued in favour of the allottees to whom sites were allotted before 31.01.2007 or those who had applied for re-transfer of resumed sites before its deletion". The Full Bench in para 66 of its judgment referred to the observations made by Supreme Court on Rule 11-D in M/s. Johnson Paints and Varnish Co. or in Babu Singh Bains and held that those remarks were neither obiter dicta nor sub silentio. The Full Bench discussed as to how extensively the Supreme Court deliberated on the validity of that Rule and then found the said Rule "tainted with notable impropriety and unguided discretionary power and potential to seep in corruption for its illogical and absurd reward to an allottee who was found guilty of misusing the site and/or breach of the conditions of allotment".

29. Similarly, the Full Bench while considering "THE STATUS OF RULE 11-D OR RULE 21-B", turned down the plea that before the deletion of these Rules any right accrued in favour of the ex-allottees on mere submission of application for re-allotment. This explicit conclusion finds mention in paras 96 to 101 of judgment, a part of which have been reproduced in para-23 of this order. In fact, the plea of discrimination pleaded by the writ petitioners to seek the benefit of Rule 11-D was also turned down in so many words observing "the fact that an illegal benefit was availed by many defaulters for a pretty long period does not strengthen the petitioner's plea of "discrimination" within the meaning of Article 14 which must always be founded upon legal and positive considerations".

30. The Full Bench in Dheera Singh's case, thus took a conscious view that the mere submission of applications under Rule 11-D or Rule 21-B before it came to be deleted, did not clothe the ex-allottees with an indefeasible right to seek re-transfer of the resumed sites nor could they plea discrimination on this count. The deletion of the rule was, however, held to be not retrospective in the sense that the orders of re-allotment/re-transfer passed before 31.01.2007 were not reopened or recalled.

31. Having said that, there can be no escape but to hold that the petitioners' claim in the instant writ petition is totally misplaced, unmerited and deserves rejection following the dictum in Dheera Singh's case (supra).

32. However, in all fairness, Mr. Sarin, learned senior counsel to the petitioners has cited the decision dated 03.07.2013 rendered by a Division Bench of this Court in Usha Kohli and others v. Chandigarh Administration and Ors., CWP No. 16728 of 2001 wherein the Full Bench decision in Dheera Singh's case as well as the judgment of the Supreme Court in M/s. Johnson Paints have been duly cited and referred to. The Division Bench in fact quoted at length Dheera Singh and has understood the Full Bench decision in the following manner:--

"As regards the contention that Rule 21B of the 1973 Rules permitting retransfer of lease hold sites has been deleted vide notification dated 31.01.2007 (Annexure R-1) and that being so the Estate Officer is not competent to retransfer the booth site in favour of the petitioners, suffice it to refer to a Full Bench judgment of this Court in the case of Dheera Singh Vs. UT Chandigarh Admn. and others, This case deals with the provisions of Rule 1 ID of the 1960 Rules but in para 22 of the judgment, it is specifically observed that Chandigarh Leasehold of Sites and Building Rules, 1973 are also notified u/s 22 of the Act. Rule 21-B of these Rules added on 04.10.1979 was in pari materia to Rule 11 -D of the 1960 Rules and it has also been deleted with effect from the same date i.e. 31.01.2007 on which date, Rule 11-D of the 1960 Rules was deleted. The only distinction between the two sets of Rules is that while 1960 Rules deal with the transfer of a building or site by way of sale or allotment on freehold basis, the 1973 Rules regulate the leasehold properties. As regards the effect of deletion of Rule 11-D of the 1960 Rules and 21-B of the 1973 Rules, the Full Bench has held as under:--

(x) Rule 11-D cannot be deleted retrospectively to take away the benefits accrued in favour of the allottees to whom sites were allotted before 31.01.2007 or those who had applied for retransfer of resumed sites before its deletion - One of the principal contention is that the existing rights under a Statute ought to be determined according to its provisions prevailing and applicable at the time when such rights accrued. The amendment or repeal of the Statute cannot take away the rights which had accrued before such amendment or repeal. The same principle governs the subordinate legislation as well. It was argued that the benefit of Rule 11-D or Rule 21-B, as the case may be, shall remain available to those allottees to whom sites were allotted before 31st January, 2007 as "right to re-allotment" shall be deemed to

be one of the terms and conditions of their allotments. Alternatively, the petitioners are said to have applied for retransfer of the resumed sites under Rule 11-D or Rule 21-B before these Rules were omitted from the Rule Book on 31st January, 2007, their applications deserve to be entertained and decided on the assumption that the aforesigned Rules were still in force. The effect of deletion thus cannot be applied retrospectively to take away the right to seek re-transfer accrued in favour of the applicants when the Rule(s) were operative"

(Emphasis applied)

33. With utmost respect at our command, we may mention here that the above-reproduced part of the Full Bench decision in Dheera Singh relied upon by the co-ordinate Bench in Usha Kohli's case (supra), is not the findings returned or the views expressed by the Full Bench. These were only the contentions raised on behalf of the writ-petitioners as noticed in para-33(x) of Dheera Singh decision. The findings returned by the Full Bench on the validity of Rule 11-D/Rule 21-B or on the question of the retrospective effect of the notification dated 31.01.2007 whereby these Rules were deleted, are firstly recorded in paras 66, 67 and thereafter in paras 96 to 101 of the judgment. With all humility, we respectfully hold that the Division Bench in Usha Kohli's case, for want of fair assistance, misread the Full Bench in Dheera Singh and inadvertently drew a wrong conclusion of that decision which was in fact only an outrightly rejected argument of the writ-petitioners. This Court in Usha Kohli's case was not taken through that part of the judgment in Dheera Singh's case where the Full Bench minutely dealt with different contentions and expressed its views on each one of them. Unfortunately, lack of proper assistance led this Court to misread and misconstrue the ratio decidendi of the Full Bench decision in Dheera Singh's case (supra) as regard to the validity and/or retrospectivity of the deletion of Rule 11 -D and Rule 21-B.

34. Reinforcing the doctrine of stare decisis, the Hon'ble Supreme Court in Government of Andhra Pradesh and Others Vs. A.P. Jaiswal and Others, summarized that "consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy". The value and importance of the principle of stare decisis has been reiterated in Arasmeta Captive Power Company Private Limited and Another Vs. Lafarge India Private Limited, . In Medley Pharmaceuticals Ltd. Vs. The Commissioner of Central Excise and Customs, Daman, also, it was ruled that Courts including the Supreme Court should follow its own earlier decision that withstood changes in time.

35. Following the above-cited principles, we are of the considered view that the Full Bench decision in Dheera Singh case, is a binding precedent. It has been duly upheld by the Supreme Court. We, therefore, regretfully express our inability to

follow the decision in Usha Kohli's case as it has been rendered due to incorrect reading and understanding of the binding precedent(s). To remove any sort of doubt, we reiterate what the Full Bench in Dheera Singh has held that no right ever accrued in favour of an applicant to seek retransfer/re-allotment of a site merely on the ground that such ex-allottee had applied before the Rule 11-D or Rule 21-B, as the case may be, were deleted w.e.f. 31.01.2007. We further clarify and reiterate that such an ex-allottee cannot plead discrimination only because another resumed site was re-allotted or re-transferred before 31.01.2007. For the reasons afore-stated, there is no merit in this writ petition which is accordingly dismissed.