

Before S. J. Vazifdar, CJ & Harinder Singh Sidhu, J.

SANJIV BHAGAT AND ANOTHER—Petitioners

versus

UNION TERRITORY, CHANDIGARH AND OTHERS—
Respondents

CIVIL WRIT PETITION No.25947 of 2012

November 6, 2017

***Chandigarh Lease Hold of Sites and Building Rules, 1973—
Rule 14(1)(2), 13(iii)/14(i)—Non Payment— Resumption—
Installments not paid as per schedule—No show cause notice under
Rule 14(2) by the Estate Officer for cancellation of lease—Notice
under Rule 12(3) and 13(iii)/14(i) for non-payment only—
Resumption set aside— Petitioners directed to pay balance within
four weeks of intimation of dues.***

Held that reference is only to sub-rule (1) and not to sub-rule (2) of Rule 14. Rule 14(1) merely provides that after payment of 25% premium, the lessee shall execute a lease deed as directed within the stipulated period. It is important to note that the show cause notice was not under sub-rule (2) of Rule 14. It is sub-rule (2) that provides that if the lessee fails to execute a lease deed in accordance with sub-rule (1), the Estate Officer may, inter alia, cancel the lease. However, the proviso expressly states that before cancelling the lease, the Estate Officer shall afford the lessee a reasonable opportunity of being heard. Admittedly, no opportunity of being heard regarding cancellation of the lease was ever afforded to the petitioners. This is not a mere technicality. The notice to show cause against a proposed cancellation of the lease was, therefore, never given indicating that the respondents had not decided to cancel the lease, but only to seek recovery of the amounts due thereunder.

(Para 18)

Further held that in these circumstances, the impugned orders resuming the property are quashed and set aside. The balance amount due, if any, shall be paid within four weeks of the respondents intimating the petitioners of the same in writing. There shall be no order as to costs.

(Para 23)

Puneet Bali, Senior Advocate
with Tushar Sharma, Advocate
for the petitioners.

Vikas Chatrath, Advocate
Rakesh Sobti, Advocate
Rajanjeet Singh, Advocate
Mandeep Kaur, Advocate
Shalini Verma, Advocate
for the respondents.

S.J. VAZIFDAR, CJ.

(1) Respondent No. 1 is the Union Territory, Chandigarh through Adviser to the Administrator. Respondent Nos. 2 and 3 are the Chief Administrator and the Assistant Estate Officer, U.T, Chandigarh.

(2) The petitioner seek a writ of certiorari to quash the orders dated 30.05.2007 passed by respondent no. 3; an order dated 23.04.2009 passed by the appellate authority, namely, respondent No.2 dismissing an appeal against the order dated 30.05.2007 and an order dated 22.10.2012 passed by the revisional authority, namely, the Adviser to the Administrator, U.T, Chandigarh dismissing the revision application against the order dated 23.04.2009.

(3) The petitioners' bid at an auction held on 11.12.1998 was accepted by the respondents who pursuant thereto issued a Letter of Allotment (LoA) dated 08.02.1999. The petitioners were granted a lease in respect of a commercial site for 99 years at a premium of Rs. 1.85 crores and annual rent. Rs. 46.25 lacs was paid as on the date of the LoA. Clauses 3, 5, 8, 8-A, 29 and 30 thereof read as under:-

“3. The lease shall be governed by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 as amended upto date and the rules framed there under from time to time.

5. The lease shall be deemed to have commenced from the date of auction. In case, it is intended to pay the premium in installments, the balance of 75% of the premium together with interest thereon @ 10% per annum shall be payable in three equated annual installments, the first installment being payable at the expiry of the one year from the date of auction. Interest shall accrue from the date of offer of

possession. In case the installment of premium and ground rent are not paid on due date, interest @ 24% per annum or at any other rate as may be enhanced by the Administration from time to time shall be payable from the due date to the date of actual payment. However, no interest shall be payable if the said 75% balance of the premium is paid in full within 30 days of the date of auction. In the former case, the following shall be the schedule of payment of installments of premium:-

Sr. No. of installment	Due date of payment	Date upto which payment should be made	Amount of equated installment including 10% interest
Ist installment	11.12.1999	10.01.2000	Rs. 55,79,276/-
2 nd installment	11.12.2000	10.01.2001	Rs. 55,79,276/-
3 rd installment	11.12.2001	10.01.2002	Rs. 55,79,276/-
Annual ground rent for ist 33 years			Rs. 4,62,500/-

8. In the event of non-payment of any installment of premium rent by the 10th of the month following the month in which it falls due or such extended period as may be allowed by the Estate Officer, but no exceeding three months in all from the date on which the installment originally due, the Estate Officer, may issue a notice to the lessee calling upon him to show cause as to why the lease may not be cancelled and the amount already paid forfeited to the Government.

8-A. After considering the cause, if any, shown by the lessee in pursuance of the aforesaid notice, the Estate Officer may either allow payment of installment with penalty which may extend upto 10% of the amount due and interest @ 24% p.a. for the delayed period, or order cancellation of lease and forfeit the whole or part of the amount already paid.

29. The terms and conditions of this allotment letter shall be (sic) in addition to the provisions of Capital of Punjab

(Development and Regulation) Act, 1952 and the Rule made there under binding on the lessees.

30. A booklet containing the Capital of Punjab (Development and Regulation) Act, 1952, the Punjab Capital (Development and Regulation) Building Rules, 1952, the Chandigarh Lease Hold of Sites and Building Rules, 1973 can be had on payment from the office.”

(emphasis supplied)

(4) The petitioners admittedly did not pay the installments as per the schedule stipulated in the LoA. That as on date the petitioners have paid almost the entire premium is a different matter.

(5) The respondent No. 3 - Assistant Estate Officer by a letter dated 15.02.2001 stated that the first, second and third installments of Rs. 1,11,58,552/- and ground rent of Rs. 4,62,500/- had not been paid by the date on which they were payable. The subject and the last paragraph of the letter are of vital importance and are, therefore, reproduced verbatim as under:-

“Subject: Notice under Rule 12(3) and 13(iii) of the Chandigarh-Lease Hold of Sites and Building Rules, 1973.

Now, therefore, you are hereby called upon to pay the amount of installment with ground rent and interest @ 24% p.a. for the defaulted period within 15 days and also show cause as to why a penalty upon 10 (Ten) percent of the due amount of installment(s) and 100% of the due amount of ground rent be not imposed and recovered from you under the provisions of the Rules.

You are hereby given an opportunity of being heard in the matter on 12.03.2001 at 11.00 A.M. In case you fail to show cause and appear in person on the above said date and time it will be presumed that you have nothing to say in the matter and it will be decided exparte.”

(emphasis supplied)

(6) The petitioners were, therefore, called upon to pay the said amounts with interest at 24% per annum for the defaulted period within fifteen days. The subject of the letter states: “Notice under Rule 12(3) and 13(iii) of the Chandigarh-Lease Hold of Sites and Building Rules, 1973”. It would be noticed that the petitioners were only called upon to

show cause as to why penalty be not imposed and recovered under the provisions of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (in short the 1973 Rules). The petitioners were not called upon to show cause why the lease ought not to be cancelled.

(7) The petitioners in their reply dated 01.08.2001 furnished the reasons for the delay in payment and non-payment of the amounts as per the LoA. The petitioners, therefore, requested respondent No. 3 to withdraw their demand and to re-schedule the installments on account of the loss caused to them as a result of the alleged breaches on the part of the respondents. As the show cause notice dated 15.02.2001 did not refer to a proposed action of resumption, the petitioners understandably did not state anything in their eply in regard thereto.

(8) Respondent No. 3 passed an order dated 22.11.2001 in respect of the proceedings relating to the show cause notice. After setting out the above facts, the order called upon the petitioners to pay the amount of installments, the ground rent and interest together with penalty of Rs.10,90,855/- by 31.01.2002. The last paragraph of the order states:-

“Take notice that in case the above said payment is not made of within the said period, the undersigned shall be constrained to take necessary proceedings for the cancellation of the lease of the site.

Balance of Ist & 2 nd installment:	1,09,08,552.00
10% penalty	10,90,855.00
Total	1,19,99,407.00

(9) It is important to note that the last paragraph was part of an order on the show cause notice dated 15.02.2001. As Mr. Puneet Bali, the learned senior counsel appearing on behalf of the petitioners rightly pointed out it was not a notice calling upon the petitioners to show cause why the lease ought not to be cancelled. It merely stated that upon the failure of the petitioners to pay the amounts, respondent No. 3 would be constrained to take necessary proceedings for the cancellation of the lease. The order does not state that on failure to pay the amounts, the lease would stand cancelled. Indeed, it could not have been so in view of the provisions of law which we will refer to after narrating the facts.

(10) This brings us to the impugned order dated 30.05.2007 passed by respondent No. 3 – Assistant Estate Officer. The order is not

preceded by a show cause notice. As we noted earlier, the show cause notice dated 15.02.2001 was processed and dealt with finally by the order dated 22.11.2001. The order dated 30.05.2007 after setting out the above facts stated that despite repeated opportunities, the petitioners neither cleared the arrears, nor produced cogent reasons for not doing so. The order noted that an amount of about Rs.93,46,526/- was due and that the petitioners were not coming forward to clear the same. The order, however, concluded as follows:-

“In view of the above facts and circumstances, I am left with no option but to cancel lease of the site in question, therefore, I, Amit Talwar, PCS, Assistant Estate Officer, Exercising the Power of Estate Officer, U.T., Chandigarh hereby cancel the lease of SCO No. 60-61, Sector 34, Chandigarh with immediate effect under the rule ibid as a last resort. Now coming to the forfeiture, penalty @ 10% on installments and @ 100% on ground rent has already been imposed, hence, no forfeiture is ordered.”

SDO(E) will furnish the list of occupants of the premises/site and will put up to the E.O. P.P. Act, U.T, Chandigarh for evicting unauthorised occupants from the premises through concerned branch immediately.”

(emphasis supplied)

(11) The petitioners challenged the order in appeal. In the memorandum of appeal, the petitioners specifically pleaded that no order of resumption can be passed without issuing a notice under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (in short the 1952 Act) and as such without affording the petitioners an opportunity of being heard and that, therefore, the order of resumption was null and void. The reference to Section 8-A appears to be incorrect. It is possibly on account of the reference to Section 8-A of the 1952 Act in Rule 12(5) of the 1973 Rules which we will refer to later. What is important to note is that the petitioners expressly contended that they had not been given an opportunity of being heard and that they had not been served with a notice under the 1952 Act and had not been granted a hearing against the order of resumption. The appellate authority i.e. respondent No. 2 by an order dated 23.04.2009 dismissed the appeal on the ground of delayed payment and non-payment of the entire amount despite repeated opportunities without considering the contention that the order dated 30.05.2007 is void as no

notice had been issued and that the petitioners had not been granted an opportunity of being heard on the question of resumption. The appellate authority did not deal with the issue that the order of resumption could not have been passed without a show cause notice for the same.

(12) The petitioners filed a review application before the respondent No. 1 in which they once again contended that no order of resumption could have been passed without first issuing a notice for the same. The petitioners again referred to Section 8-A of the 1952 Act but did contend that the respondents had wrongly invoked both Rules 12(3) and 12(3-A) of the 1973 Rules for the same default.

(13) The revisional authority by an interim order dated 25.08.2010 stated that the matter was partly heard. The statement on behalf of the petitioners that they had cleared the entire premium alongwith contractual interest was recorded. The order also recorded the petitioners' statement that they were ready to deposit their dues to show their bona-fides despite the breaches on the part of the respondents and that the petitioners had presented a bank draft in the sum of Rs.75 lacs. The order further recorded the statement on behalf of the Estate Officer that as on date an amount of Rs. 1,11,00,000/- was payable. The revisional authority, therefore, directed the petitioners to deposit the outstanding amount within a week and adjourned the hearing to 08.09.2010.

(14) By the final order dated 22.10.2012, the revision petition was dismissed. The revisional authority also did not deal with the contention that the order of resumption could not have been passed as the procedure for the intended resumption had not been followed. No notice as required with respect to resumption was issued.

(15) Mr. Bali's submission that the three impugned orders resuming the premises are contrary to the LoA and to the following provisions of the 1952 Act and the 1973 Rules is well founded.

(16) Sections 2(k), 3, 8, 8-A and 22(2)(a) of the 1952 Act read as under:-

Definitions.— In this Act, unless the context otherwise requires:—

(k) “transferee” means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act, and includes his successors and assigns.

3. Power of State Government in respect of transfer of land and building in Chandigarh.—

(1) [Subject to the provisions of this section, the Central Government may] sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may, subject to any rules that may be made under this Act, think fit to impose.

(2) The consideration money for any transfer under sub-section (1) shall be paid to the [Central Government] in such manner and in such installments and at such rate of interest as may be prescribed.

[(3) Notwithstanding anything contained in any other law for the time being force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-section (1) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government].

8. Imposition of penalty and mode of recovery of arrears.—

(1) Where any transferee makes any default in the payment of any rent due in respect of any lease of any site or building, or both, as the case may be, under section 3, or where any transferee or occupier makes any default in the payment of any fee or tax levied under section 7, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty;

Provided that no such direction shall be made unless the person affected thereby has been given a reasonable opportunity of being heard in the matter.

(2) Where any person makes any default in the payment of any amount, being the arrears and penalty directed to be paid under sub-section (1), such amount may be recovered from the transferee or occupier, as the case may be, in the same manner as an arrears of land revenue.

8-A. Resumption and forfeiture for breach of conditions of transfer.—

(1) If any transferee has failed to pay the consideration money or any installment thereof on account of the sale of any site or building, or both, under section 3, or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both should not be made.

(1) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building, or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1) of the whole or any part of the money paid in respect of such sale.]

22. Power to make rules.—

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the terms and conditions on which any land or building may be transferred by the [Central Government] under this Act.

(17) Rules 12(3), 13(iii) and 14 of the 1973 Rules read as under:-

12. Payment of premium and consequences of non-payment or late payment: –

(3) In case any instalment is not paid by the lessee by the date on which it is payable, a notice may be served on the lessee calling upon him to pay the instalment within a period of 3 months together with a penalty which may extend upto 10 per cent of the amount due.

If the payment is not made within the said period, the Estate Officer may cancel the lease and/or forfeit the whole or any part of the money if paid in respect thereof which, in no case, shall exceed 10 per cent of the total amount of the consideration money, interest and other dues payable in respect of the lease:

Provided that forfeiture will not be made in addition to penalty:

Provided further that no order of cancellation or forfeiture shall be made without giving the lessee a reasonable opportunity of being heard. If the order of cancellation is for non-payment of penalty, the lessee may show cause why the penalty should not have been levied.

13. Rent and consequences of non-payment. –

(iii) If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100% on the amount due which may be imposed and recovered in the manner laid down in section 8 of the Capital of Punjab (Development and Regulation) Act, 1952, as amended by Act No. 17 of 1973.

[Provided further that in the case of allotment of land to private institutions (including educational, religious, social, charitable, cultural institutions etc.), if the rent for six years is paid by the lessee in lump sum at the time when the first year's ground rent is due, the lessee shall not be required to pay rent for the period of 33 years.

Provided further that in case a lessee is a Government department or a Government Body/Organization, the deposit of ground rent for the period of 12 years in lump sum at the time when the first year's ground rent is due, shall be deemed to be the ground rent for the entire period of 99 years.]

14. Execution of lease deed. –

(1) After payment of 25% premium [or such higher percentage as prescribed under rule 9(2)] the lessee shall execute a lease deed in form "B" or "C" as the case may be, in such manner as may be directed by the Estate Officer within six months of the date of allotment/auction or within

such further period as the Estate Officer may, for good and sufficient reasons, allow.

(1) If the lessee fails to execute a lease deed in accordance with sub-rule of this rule, the Estate Officer may cancel the lease and forfeit a sum upto 25% of the premium:

(2) Provided that before taking action under sub-rule (2) of this rule, the Estate Officer shall afford a reasonable opportunity to the lessee of being heard.

(18) By virtue of clauses 29 and 30 of the LoA, the provisions of the 1952 Act and the 1973 Rules are applicable to the parties. Under Section 3, the Central Government may lease a property on such terms and conditions as it may think fit to impose subject to any rules made under the 1952 Act. Thus, the terms and conditions in the LoA would be subject to the 1973 Rules. The provisions of the LoA are consistent with the statutory provisions. In any event, clauses 29 and 30 of the LoA do not indicate that the 1952 Act and the 1973 Rules would be subject to the terms and conditions of the LoA even assuming that there is any conflict between the 1952 Act and the 1973 Rules on the one hand and the terms and conditions of the LoA on the other.

(19) Clause 8 of the LoA provides that in the event of non-payment of any installment, the Estate Officer “may issue a notice to the lessee calling upon him to show cause as to why the lease may not be cancelled and the amount already paid forfeited to the government”. Further, clause 8-A provides that after considering the cause shown by the lessee, the Estate Officer may either allow payment to the extent mentioned therein “or order cancellation of lease and forfeit the whole or part of the amount already paid”. Thus, the LoA entitles the respondents to cancel the lease in the event of the lessee failing to pay the lease amount, but requires the respondents to follow the procedure prescribed in clauses 8 and 8-A thereof of issuing a notice and granting the lessees i.e. the petitioners an opportunity of showing cause against a proposed cancellation of the lease for non-payment of rent.

(20) The terms and conditions of the LoA are consistent with the 1973 Rules. Sub-rule (3) permits the respondents to cancel the lease for failing to pay the lease amounts. However, the second proviso to Rule 12(3) expressly states that no order of cancellation or forfeiture shall be made without giving the lessee a reasonable opportunity of being heard. The obligation to serve upon the lessee a notice to show cause against cancellation is a necessary intendment of the second proviso to Rule

12(3) that “no order of cancellation or forfeiture shall be made without giving the lessee a reasonable opportunity of being heard”. The notice must of necessity indicate that the respondents intend cancelling the lease on account of the allegations stated therein.

(21) Lastly, the provisions of the LoA and the 1973 Rules are consistent with the 1952 Act. Clauses 29 and 30 of the LoA make the lease subject to the provisions of the 1952 Act and the 1973 Rules. Section 8 deals with leases, whereas Section 8-A deals with the sale of properties. Section 8 provides that where a transferee makes any default in the payment of rent due in respect of any lease under Section 3, the Estate Officer “may” direct recovery thereof in addition to the amount of arrears. Section 8 does not refer to a power to cancel the lease for non-payment of the rent or other dues. The power to cancel the lease can, however, be traced to the other provisions of the 1952 Act and the 1973 Rules, namely, Section 22(2)(a) and Rule 12(3). The power to cancel the lease can also be traced by reading these provisions with clause 8 of the LoA. Section 22 contains the power to make rules. Sub-section (2) provides that without prejudice to the generality of the foregoing power such rules may provide for all or any of the matters stated therein. Sub-clause (a) of sub-section (2) of Section 22 contains the power to make rules for the terms and conditions on which the land or building may be transferred by the Central Government. The term “transferee” is defined in Section 2(k) to mean a person to whom a site or building is transferred in any manner whatsoever. This would include a transfer by way of lease. Thus, the Central Government has the power to make rules that provide for the terms and conditions on which the land or building may be transferred including by way of a lease. Rule 12(3) provides that in case any installment is not paid by the lessee, a notice may be served calling upon him to pay the amount within three months together with penalty. Rule 12(3) further provides that if the payment is not made within that period, the Estate Officer may cancel the lease. Thus, the power to cancel the lease is contained on a conjoint reading of Sections 2(k) and 22(2)(a) and Rule 12(3). This of course is subject to the second proviso to Rule 12(3) that no order of cancellation shall be made without giving the lessee a reasonable opportunity of being heard.

(22) Thus, under the provisions of the 1952 Act, the 1973 Rules and the terms and conditions of the LoA, the power to cancel the lease, inter alia, for non-payment of the amounts due thereunder is vested in the respondents. The power in each case is subject to the aforesaid

procedure which includes serving upon the lessee a notice to show cause against a proposed cancellation of the lease and granting the lessee an opportunity of showing cause.

(23) The position, therefore, is this. By the show cause notice dated 15.02.2001, the Assistant Estate Officer merely called upon the petitioners to pay the amounts mentioned therein and to show cause why penalty be not imposed and recovered under the 1973 Rules. The notice did not call upon the petitioners to show cause why the lease ought not to be cancelled. The petitioners replied to the notice. Respondent No. 3 – Assistant Estate Officer disposed of that show cause notice finally by the order dated 22.11.2001 by calling upon the petitioners to pay the amounts due. The last paragraph of the order was strongly relied upon by the respondents to contend that the petitioners had been put to notice that the lease would be cancelled in the event of the petitioners failing to make the said payment. The last paragraph, however, only put the petitioners to notice that in the event of their not making the payment mentioned therein, respondent No. 3 would be constrained “to take necessary proceedings for the cancellation of the lease of the site”. The plain language indicates that the proceedings for cancellation of the lease had not been taken, but would be taken for the cancellation of the lease. This is clear from the words “shall be constrained to take necessary proceedings for the cancellation of the lease of the site”. This is understandable for the order disposed of the show cause notice which, as we mentioned earlier, was not for a proposed cancellation of the lease. It was an order in respect of a show cause notice and not a notice to show cause. Thus, the respondents had at no stage served a notice upon the petitioners to show cause against a proposed cancellation of the lease. The impugned order of the Assistant Estate Officer dated 30.05.2007 cancelling the lease is, therefore, illegal. The impugned orders of the appellate and the revisional authorities are also illegal for the same reason.

(24) Mr. Chatrath then submitted that the respondents had also issued other notices for cancellation of the lease in terms of the LoA and in terms of the 1952 Act and the 1973 Rules. He sought to rely upon various documents which were not on record. To ensure that the matter is not decided by default, by our order dated 18.09.2017, we granted the respondents permission to file a further affidavit alongwith documents, although the matter had already been heard fully. Mr. Chatrath thereupon filed the affidavit of the Assistant Estate Officer,

U.T., Chandigarh dated 25.09.2017. Several documents had been annexed to this affidavit.

(25) The further affidavit and the documents annexed thereto do not carry the petitioners' case further. Mr. Chatrath relied upon a notice dated 13.12.2002. In the subject, there is a reference to Rules 12(3) and 13(iii) as well as to Rule 14(1). The subject reads as follows:-

“Subject: Notice under Rule 12(3) and 13(iii)/14(i) for non payment in respect of (sic) SCO site No. 60-61 Sec. 34, Chandigarh.”

(26) The reference is only to sub-rule (1) and not to sub-rule (2) of Rule 14. Rule 14(1) merely provides that after payment of 25% premium, the lessee shall execute a lease deed as directed within the stipulated period. It is important to note that the show cause notice was not under sub-rule (2) of Rule 14. It is sub-rule (2) that provides that if the lessee fails to execute a lease deed in accordance with sub-rule (1), the Estate Officer may, inter alia, cancel the lease. However, the proviso expressly states that before cancelling the lease, the Estate Officer shall afford the lessee a reasonable opportunity of being heard. Admittedly, no opportunity of being heard regarding cancellation of the lease was ever afforded to the petitioners. This is not a mere technicality. The notice to show cause against a proposed cancellation of the lease was, therefore, never given indicating that the respondents had not decided to cancel the lease, but only to seek recovery of the amounts due thereunder.

(27) As rightly pointed out by Mr. Tushar Sharma, the learned counsel appearing on behalf of the petitioners and who addressed us in rejoinder extensively, the subsequent documents annexed to the additional affidavit are merely reminders of the earlier notices and reminders to the petitioners to appear before the Assistant Estate Officer, U.T., Chandigarh in respect thereof. None of these notices refer to any proposal or intention to cancel the lease. Similar notices were issued right upto 27.04.2007 (Annexure R-1/24).

(28) There is, however, an undated notice (Annexure R-1/23) addressed by the Assistant Estate Officer. Although Annexure R-1/23 was not relied upon by Mr. Chatrath, we noticed it while dictating the judgement. The annexure itself is undated. The index states that it is dated 13.04.2007 which as we will shortly indicate is incorrect. The subject of the notice reads: “Execution of Lease Deed in respect of SCO/Booth Site No. SCO 60-61, Sector 34, Chandigarh”. The notice

states that as per Rule 14(1) of the 1973 Rules, the petitioners were bound to execute the lease deed within a period of six months from the date of allotment/auction after payment of 25% of the premium and that the failure to do so would attract the penal provisions of sub-rule (2) of Rule 14. The notice concludes by stating that before any penal action on account of non-execution of the lease deed is taken, the petitioners were given another chance to get the lease deed executed within a period of fifteen days from the date of dispatch of the notice. The petitioners were also directed to appear before the Assistant Estate Officer on 23.08.2006 at 11.00 AM (this would indicate that the date given in the index as 13.04.2007 is incorrect) failing which necessary action to cancel the lease would be taken under the provisions of the 1973 Rules. On 03.11.2017, we drew the attention of the learned counsel to this document and invited their submissions in respect thereof.

(29) Though in the rejoinder, Mr. Tushar Sharma referred to the record as it originally stood once again and rightly submitted that the orders impugned in this writ petition are not on the basis of this notice. They are not on the basis of nonexecution of the lease deed either. We agree with Mr. Tushar Sharma that that solitary notice under Rule 14(2) cannot by itself sustain the validity of the impugned orders cancelling the lease.

(30) The record does not indicate the steps taken pursuant to the said undated notice. We, therefore, do not express any opinion regarding this notice or anything that may have been done pursuant thereto. The rights of the parties in this regard are kept open.

(31) In these circumstances, the impugned orders resuming the property are quashed and set aside. The balance amount due, if any, shall be paid within four weeks of the respondents intimating the petitioners of the same in writing. There shall be no order as to costs.

Shubreet Kaur