

(FULL BENCH)

Before : S. S. Sodhi, V. K. Bali & V. K. Jhanji, JJ.

BAKSHISH KAUR SAINI,—*Petitioner.*

versus

UNION TERRITORY. CHANDIGARH AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4083 of 1993.

4th June, 1993.

Capital of Punjab (Development and Regulation) Act, 1952—Ss. 4(1), 5(1), 5(2), 15 & 22—Unauthorised construction in contravention of 1952 Act—Notice to alter or demolish such construction—S. 15 proviso (1) fixing 6 months' time for issuance of notice on owner from date of commencement or completion of the unauthorised construction—Delay in issuing notice—Construction cannot stand legalised by mere lapse of time.

Held, that a plain reading of the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder would show that while clear and imperative prohibitions are contained therein regarding the erection and construction of buildings in contravention thereof, there is no provision which provides for or can be construed as even an enabling provision, tending to legalise any unauthorised construction by mere lapse of time. It is, no doubt, true that in terms of the first proviso to S. 15 of the Act, a time limit has been imposed for the issuance of notice upon the owner for demolition of the alleged unauthorised construction and no such notice can, therefore, be issued after this time limit has expired, but, as pointed out earlier, issuance of such notice is but one of the three consequences that can flow from contravention of the provisions of the Act and the rules pertaining to erection of building. The defaulting owner's liability for action against him under Ss. 8A & 15, namely, resumption of the site forfeiture and fine would still subsist. It cannot, therefore, be said that by mere lapse of time, namely, six months after the completion of the unauthorised construction that it would stand legalised.

(Paras 16 & 18)

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(OVERRULED)

Held further, that it does indeed appear somewhat odd that such a time frame should have been fixed for the mildest form of action that could be taken against the defaulter. The Central Government

may, therefore, in its wisdom consider deleting altogether any time limit for the issuance of notice of demolition under the first proviso to S. 15 of the Act.

(Para 20)

Petition under Articles 226/227 of the Constitution of India praying that :

- (i) *a writ in the nature of certiorari/Mandamus or such other appropriate writ, order or direction be issued declaring the action of the Respondent No. 3 in proceeding to demolish the room/store, as illegal, arbitrary, malafide and violative of Article 14 of the Constitution of India;*
- (ii) *such other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper may also be issued in favour of the petitioner;*
- (iii) *filing of certified copies of the Annexures P-1 to P-4 may be dispensed with;*
- (iv) *issuance of advance notices to the Respondents may be dispensed with;*
- (v) *records of the case may be summoned for the kind perusal of this Hon'ble Court;*
- (vi) *costs of the writ petition may be awarded to the petitioner against the Respondents;*

It is further respectfully prayed that till the decision of this writ petition the demolition of rooms/stores may be stayed.

(This case was referred by the Division Bench consisting of Hon'ble Mr. Justice S. S. Sodhi and Hon'ble Mr. Justice V. K. Bali on 29th April, 1993 to Full Bench for deciding an important question of law.

The Full Bench consisting of Hon'ble Mr. Justice S. S. Sodhi, Hon'ble Mr. Justice V. K. Bali and Hon'ble Mr. Justice V. K. Jhansi decided the important question of law involved in the case,—vide judgment dated 4th June, 1993 and directed that as for as decision of the writ petition merits, the petition be fixed before a learned Single Judge.)

Ram Saran Dass, Advocate and Ashwani Kumar, Advocate, for the petitioner.

Ashok Aggarwal, Senior Advocate with Subhash Goyal, Advocate, for the respondent.

M. L. Sarin, Sr. Advocate with Miss Alka Sarin, Advocate, for the Court.

JUDGMENT

S. S. Sodhi, J.

In the context of Chandigarh being a planned city—And perhaps our country's most outstanding example of it—with strict rules and regulations regarding the area that can be built upon and the construction that can be made thereon, to say that an unauthorised construction would be mere lapse of time, namely six months from the date of its completion, stand legalised, if within this period no notice is served upon the owner to demolish it, would, indeed, sound startling and yet this is precisely what appears to have been held to be the law, by the Division Bench in *Chandigarh Administration v. Mrs. Harinder Pannu* (1). Doubts entertained with regard to the correctness of this view is what now impels its reconsideration by a larger Bench and hence this reference to the Full Bench.

(2) The rules and regulations governing the construction of buildings in Chandigarh trace their origin to the Capital of Punjab (Development and Regulation) Act 1952 (hereinafter referred to as the Act) more particularly to section 22 thereof which empowers the Government to make rules for carrying out the purposes of the Act. It is pertinent to note that these provisions (until the repeal of subsection (3) of this section 22 by the Punjab Re-organisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968) also provided for the laying before the State Legislature for a period of 14 days, all rules made thereunder. This as I.D. Dua, J., in *Daya Swarup Nehra v. The State of Punjab* (2), observed, "clearly suggests the importance and solemnity attached to them by the law maker. Such rules have in law the same effect as if contained in the Act and are so treated for all purposes of construction or obligation or otherwise. In case of conflict between one of such rules and a section of the Act, it is to be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with."

(3) Besides this, there is the power conferred upon the Central Government or the Chief Administrator under section 4 of the Act to issue directions in respect of erection of buildings. This provision of law reads as under:—

"4. Power to issue direction in respect of erection of building:—(1) For the purpose of proper planning or develop-

(1) 1991(1) P.L.R. 144.

(2) A.I.R. 1964 Punjab 533.

ment of Chandigarh, the Central Government or the Chief Administrator may issue such directions as may be considered necessary, in respect of any site or building, either generally for the whole of Chandigarh or for any particular locality thereof, regarding any one or more of the following matters, namely:—

- (a) architectural features of the elevation or frontage of any building;
- (b) erection of detached or semi-detached buildings or both and the area of the land appurtenant to such building;
- (c) the number of residential buildings which may be erected or any site in any locality;
- (d) prohibition regarding erection of shops, workshops, warehouses, factories or buildings of a specified architectural character or building of a specified architectural character or buildings designed for particular purposes in any locality;
- (e) maintenance of height and position of walls, fences, hedges or any other structural or architectural construction;
- (f) restrictions regarding the use of site for purposes other than erection of buildings."

(4) Contravention of these directions has been made a punishable offence under section 13 of the Act, with a recurring fine for continuing violations.

(5) The Central Government has also been empowered by subsection (2) of section 5 to make rules to regulate the erection of buildings and to provide for all or any of the following matters, namely :

- (a) the materials to be used, for external and partition walls, roofs, floors, stair-cases, lifts, fire places, chimneys and other parts of a building and their position or location or the method of construction;

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- (b) the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes;
 - (c) the ventilation in, or the space to be left about, any building or part thereof to secure a free circulation of air or for the
 - (d) the number and height of the storeys of any building; prevention of fire;
 - (e) the means to be provided for the ingress or egress to and from any building;
 - (f) the minimum dimensions of rooms, intended for use as living rooms, sleeping rooms, or rooms for the use of cattle;
 - (g) the ventilation of rooms, the position and dimensions of rooms, or projections beyond the outer faces of external walls of a building and of doors or windows;
 - (h) any other matter in furtherance of the proper regulation of erection, completion and occupation of buildings;
 - (i) the certificates necessary and incidental to the submission of building plans, amended plans and completion reports."

(6) A specific bar has been enacted by section 5(1) of the Act against erection or occupation of any buildings in Chandigarh in contravention of any building rules made under sub-section (2) of section 5.

(7) Further, power to make rules for carrying out the purposes of the Act also lies with the Central Government in terms of section 22, included there being rules to provide for :—

- (a) the terms and conditions on which any land or building may be transferred by the Central Government under this Act;
- (d) the terms and conditions under the transfer of any right in any site or building may be permitted;
- (e) erection of any building or the use of any site;

(g) the terms and conditions for breach of which any site or building may be resumed;

(h) the conditions with regard to the buildings to be erected on sites transferred under this Act;"

(8) As rightly pointed out by the Senior Counsel for the Chandigarh Administration Mr. Ashok Aggarwal, a reading of the provisions of the Act would show that contravention of the rules pertaining to buildings framed thereunder can lead to three different and district consequences. First being the issuance of a notice to the owner, in terms of the first proviso to section 15, calling upon him to alter or demolish the building, as the case may be, within the time specified and on his failure to do so, the Chief Administrator has been authorised to have the building demolished at the expense of the owner. A time frame has, however, been fixed for such notice being given to the owner, namely, within six months of the building having begun or completed.

(9) Next, again in terms of section 15, contravention of the building rules has been made a punishable offence with the defaulter being liable not only to fine but also to a recurring fine for continued breach. The Court has, in addition, power to order the forfeiture of the building too.

(10) Finally, there is resumption of the site or building and forfeiture of the whole or part of the money paid in respect thereof in terms of section 8A of the Act for breach of any of the conditions of the sale.

(11) Mr. M. L. Sarin, Senior Advocate, who had been requested to assist us in this matter, on his part adverted to the strict, precise and detailed rules framed regarding the construction of the buildings, known as the Punjab Capital (Development and Regulation) Building Rules, 1952. Rule 3 thereof renders it imperative upon a person who erects or re-erects or even occupies a building, to comply with these rules and also the restrictions as shown in the Zoning Plans, Architectural Control Sheets or Frame Control Drawings as the case may be. Rule 18 further provides that no person shall occupy any building unless it has been certified by the Chief Administrator, to be complete as per the sanctioned plan.

(12) Further, it deserves note that specifically agreeing to abide by the rules made under the Act, has been incorporated as an essential condition for the sale and transfer of site and buildings under the Chandigarh (Sale of Sites and Buildings) Rules, 1960.

(13) It is in this background that *Mrs. Harinder Pannu's* case (*supra*) warrants critical reappraisal. The matter there concerned an alleged unauthorised construction made by the writ petitioner Mrs. Harinder Pannu, in her house in Sector 3, Chandigarh. Notice was served upon her in terms of the first proviso to section 15 of the Act, admittedly after six months of the completion of this construction. It was in pursuance of this notice served upon her in August 1983 that the alleged unauthorised construction was demolished in December 1986. The demolition of this construction was what was challenged in writ proceedings. The learned single Judge held this demolition to be illegal and the writ petitioner consequently entitled to reconstruct the demolished portion at her own cost.

(14) When the matter came up before the Division Bench in Letters Patent Appeal, it was held that no notice for demolition of the construction could have been issued to the writ petitioner after six months of its completion. The Division Bench, however, went on further to observe, "The learned single Judge has correctly held that the demolition on the basis of such a notice was illegal. The learned Single Judge in his judgment has observed, "that by lapse of time, the construction stood implied compounded and legalised." We may make it clear that this does not mean that the writ petitioner is not to pay any compounding fee for the unauthorised construction. The department will be entitled to charge the compounding fee as if the construction had been made in the year 1982.

(15) Subject to the observation made above, this appeal fails and is dismissed, with no order as to costs. In other words, it was held that by lapse of time the alleged illegal construction stood legalised. A view which we cannot, with respect, possibly endorse.

(16) A plain reading of the provisions of the Act and the rules made thereunder would show that while clear and imperative prohibitions are contained therein regarding the erection and construction of buildings in contravention thereof, there is no provision which provides for or can be construed as even an enabling provision, tending to legalise any unauthorised construction by mere lapse of time.

(17) As regards the compounding of contraventions, in the matter of erection or construction of buildings, these too, by the very nature of things, can be resorted to only with regard to minor or technical infractions and not where such unauthorised construction, contrary to the Act and the rules made thereunder prejudicially affects the rights of third parties. This is apparent also from the directions issued, in this behalf, by the Chief Administrator, Chandigarh under section 4 of the Act on January 22, 1993. It is these directions that rightly govern compounding of contraventions of the building bye-laws.

(18) It is, no doubt, true that in terms of the first proviso to section 15 of the Act, a time limit has been imposed for the issuance of notice upon the owner for demolition of the alleged unauthorised construction and no such notice can, therefore, be issued after this time limit has expired, but, as pointed out earlier, issuance of such notice is but one of the three consequences that can flow from contravention of the provisions of the Act and the rules pertaining to erection of building. The defaulting owner's liability for action against him under section 8A and 15, namely, resumption of the site, forfeiture and fine would still subsist. It cannot, therefore, be said that by mere lapse of time, namely, six months after the completion of the unauthorised construction that it would stand legalised.

(19) Such, thus, being the settled position in law, we are constrained to hold that the judgment of the Division Bench in *Mrs. Harinder Pannu's case* (supra) in so far as it lays down that an unauthorised construction shall stand legalised by mere passage of time does not express correct law and is, thus, hereby, over-ruled. The issue posed in this reference is answered accordingly. As for the decision of the writ petition on merits, we remit this matter to the learned single Judge. Costs of this reference shall be costs in the writ proceedings.

(20) Before parting with this matter, we cannot but draw the pointed attention of the Central Government to the anomalous position as it now exists with regard to the construction. Whereas, no constraint of time for resorting to resumption or forfeiture with regard to it has been imposed, there is a time limit of six months for notice to the owner calling for its demolition. It does, indeed, appear somewhat odd that such a time frame should have been fixed

for the mildest form of action that could be taken against the defaulter. The Central Government may, therefore, in its wisdom consider deleting altogether any time limit for the issuance of notice of demolition under the first proviso to section 15 of the Act.

R.N.R.