

Mohinder Singh v. Union of India and another (D. S. Tewatia, J.)

(26) As regards Letters Patent Appeal No. 102 of 1977, the matter is remanded to the learned Single Judge to decide Civil Writ Petition No. 1419 of 1974 on merits in the light of the finding rendered already regarding the right of a tenant to file objections to the proposed action under section 8-A of the Act and also, if aggrieved, to challenge the said order in appeal, for I find that the appeal of the tenant-appellant had been dismissed by the Chief Administrator, Chandigarh, on the short ground that an appeal of a tenant was not maintainable as it was only the owner of a site or building who could file an appeal.

S. C. Mital, J.—*I agree.*

Sukhdev Singh Kang, J.—*I also agree.*

N.K.S.

FULL BENCH

Before S. C. Mital, D. S. Tewatia and Sukhdev Singh Kang, JJ.

MOHINDER SINGH,—*Appellant.*

versus

UNION OF INDIA and another,—*Respondents.*

Letters Patent Appeal No. 103 of 1977.

February 19, 1980.

Capital of Punjab (Development and Regulation) Act (No. 27 of 1952)—Sections 8-A and 10—Impermissible use of a building by the tenant—Such building resumed under section 8-A—Similar impermissible use of other buildings alleged where no action is taken—Order of resumption under section 8-A—Whether discriminatory—Plea that no action is taken in cases of similar impermissible user—Whether available.

Held, that if a citizen feels that he is entitled to make a grievance against the owner or lessee of a building, who happens to be putting that building to an impermissible use, he may move the authority

which is competent to take action under section 8-A of Capital of Punjab (Development and Regulation) Act, 1952 and if such authority does not take any action, then, perhaps, he can seek a writ of *mandamus* if he can prove the *factum* of misuse and his right to redress. But no one, who is found to have put a building to an impermissible use and against whom a legal order under section 8-A of the Act is passed and his appeal under section 10 of the Act had been dismissed on merits, can be heard to say that some persons who, according to him, were making similar misuse of residential houses, were not proceeded against and so, against him also, no action under section 8-A of the Act ought to have been taken and if such an action was taken against him, that would be a discriminatory one violating the provisions of Article 14 of the Constitution of India.

(Para 5).

Case referred by the Division Bench consisting of Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice J. V. Gupta on 7th March, 1979 to Full Bench for decision of the following question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice S. C. Mital, The Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice Sukhdev Singh Kang finally decided the case on 19th February, 1980.

"Whether the lessee of a "transferee" under the Capital of Punjab (Development and Regulation) Act, 1952, has the locus standi to challenge the proceedings under section 8-A of the said Act for resuming the site."

H. L. Sibal, Senior Advocate, (R. L. Sharma, & S. C. Sibal, Advocates with him).

Anand Swaroop, Senior Advocate, (M. L. Bansal & Sunil Parti, Advocates with him).

JUDGMENT

D. S. Tewatia. J. (Oral):

(1) The sole question that falls for determination in this Letters Patent Appeal is as to whether the action of the Estate Officer, Union Territory, Chandigarh, respondent No. 2, in resuming the site in question, on which house No. 1515 at Sector 18-D in Chandigarh stands constructed, and thereafter ordering the eviction of the tenant-appellant (hereinafter referred to as the tenant) under section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as the Eviction Act), is discriminatory in character and violative of Article 14 of the Constitution of India in that, as against the States of Punjab and Haryana, which also

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happened to run guest houses in the residential buildings of Chandigarh as does the tenant, no such action had been taken by the Estate Officer.

(2) The proposition posed above has to be approached in the light of facts which are not in dispute that house No. 1515 at Sector 18-D in Chandigarh was owned by Mr. P. S. Multani who had leased out the same to Mohinder Singh, tenant. The tenant started running a paying guest house in the said premises naming the same as the "Capital Paying Guest House, Chandigarh". The site was resumed on the ground that running of a paying guest house amounted to a violation of the terms of sale of plot as it had been transferred by the Union of India, respondent No. 1, to the said owner for residential purposes only. The tenant had challenged the order of the Estate Officer, passed under section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as the Act), in appeal under section 10 of the Act. The Chief Administrator, Chandigarh, dismissed the appeal of the appellant on merits. The eviction order passed under section 5 of the Eviction Act was similarly challenged in appeal which was dismissed on merits. Neither before the learned Single Judge whose order is under challenge in this appeal nor before us, the decision of the appellate authorities under section 10 of the Act or under section 5 of the Eviction Act has been challenged on merits.

(3) To the averment in the petition that the Estate Officer had allowed the Governments of Punjab and Haryana to use residential buildings as official guest houses while he had taken action against the tenant and his landlord for putting a residential building to an identical use, the reply on behalf of the Union Territory Administration was that the official guest houses were meant for officers and no profit motive being involved, the use of the residential buildings in such a case would not tantamount to the residential buildings being used for business or commercial purposes while in the case of private guest houses, the reason for running them as such was to earn livelihood and such a use tantamounted to the use of the residential building for business purposes. The learned Single Judge appeared to accept the aforesaid distinction sought to be highlighted in the return of the Union Territory Administration and held that the guest houses of the States of Punjab and Haryana being run by them did not

fall in the same category as that of the private guest house being run by the tenant and, therefore, the respondent had not discriminated against the tenant or other persons falling in that category.

(4) I do not think it was open to the learned Single Judge, or is open to us in appeal, to entertain a submission the acceptance whereof would adversely affect the parties which were not before the Court. The *factum* whether the Punjab or the Haryana Government were or were not using the residential buildings which they occupied otherwise than as residential buildings, had first to be gone into by the authority which was competent to take action under section 8-A of the Act. The data which the respondent-Union Territory Administration in its reply has furnished regarding such guest houses, may not be the facts which the Punjab and Haryana Governments would be prepared to endorse, for they might have come forward with other facts, which could sway the decision one way or the other, if they had been a party to the writ petition.

(5) If a citizen feels that he is entitled to make a grievance against the owner or lessee of a building, who happens to be putting that building to an impermissible use, he may move the authority which is competent to take action under section 8-A of the Act and if such authority does not take any action, then, perhaps, he can seek a writ of *mandamus* if he can prove the *factum* of misuse and his right to redress. But no one, who is found to have put a building to an impermissible use and against whom a legal order under section 8-A of the Act is passed and his appeal under section 10 of the Act had been dismissed on merits, can be heard to say that some persons who, according to him, were making similar misuse of residential houses, were not proceeded against and so, against him also, no action under section 8-A of the Act ought to have been taken and if such an action was taken against him, that would be a discriminatory one violating the provisions of Article 14 of the Constitution of India.

(6) For the reasons aforesaid, I find no merit in the appeal and dismiss the same but make no order as to costs.

S. C. Mital, J.—I agree.

Sukhdev Singh Kang, J.—I too agree.

N.K.S.