

Before Amarjeet Chaudhary, J.

SHUKAN KUMAR AND OTHERS,—*Petitioners.*

versus

MUNICIPAL CORPORATION, LUDHIANA,—*Respondent.*

Civil Writ Petition No. 8224 of 1987.

January 19, 1989.

Punjab Municipal Corporation Act (XLII of 1975)—S. 275—Punjab Municipal Act (III of 1911)—S. 192—Municipal Corporation transferring shop to tenant in occupation—Condition of sale restricting shop owner from constructing first floor—Effect of such restriction on ownership rights, stated—Absence of Town Planning or Building Scheme—Effect of, on regulation of building activity—Fact that Corporation itself having constructed double storeyed buildings—Permission for further construction—Whether can be validly rejected.

Held, that Section 192 of the Punjab Municipal Act, 1911 is in para materia with the provisions of Section 275 of the Punjab Municipal Corporation Act, 1976. As no town planning or building scheme is in existence the Municipal Corporation cannot impose any condition which may restrict the right of the shop owners from raising structures on their shops. Since the Municipal Corporation has itself raised multi storeyed buildings the shop owners cannot be restricted from raising further structures. Under the general law when a vendor transfers the property, then he cannot put any condition in the sale deed which may effect the right of ownership. The shop owners being owners of the land and building they can make use of them in any manner subject to the condition that it does not violate any statutory scheme. In the absence of statutory scheme there can be no violation of any such rule. Hence, it has to be held that the Corporation cannot validly refuse permission to the shop owners from raising further structure over their shops.

(Para 4)

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

- (a) *an appropriate writ, order or direction may kindly be issued to the Respondent No. 1, directing the Respondent No. 1 to accord sanction to the building plan submitted by the Petitioners;*
- (b) *In case it is held that there is a statutory ban on raising on more than one storey, then the Municipal Corporation*

may be directed to comply with these conditions themselves and to bring the building shown as Annexure P-5 in such a manner as to conform to the conditions to which the Petitioners are being subjected to;

- (c) *an appropriate writ, order or direction may kindly be issued quashing Annexure P-10;*
- (d) *any other writ, order or direction may also be issued to which the petitioners are found entitled to :—*
 - (i) *that the filing of the certified copies of the Annexures may kindly be dispensed with.*
 - (ii) *service of the advance notice to the respondent may also be dispensed with.*
 - (iii) *that the cost of this petition may kindly be awarded to the petitioners.*

It is further prayed that the respondent may kindly be directed not to reject the applications filed by the Petitioners for sanction of the Building Plans till the final disposal of this Petition.

J. S. Chahal, Advocate, for the Petitioners.

T. S. Doabia, Advocate, for the Respondents.

ORDER

Amarjeet Chaudhary, J.

(1) The petitioners, who are displaced persons from Pakistan, after the partition of the country, have settled at Ludhiana. They erected temporary wooden cabins on a piece of land known as 'Kamla Nehru Market' and this land belonged to Railway Administration. The Municipal Committee, Ludhiana which has now been converted into Municipal Corporation Ludhiana with a view to provide permanent structures to the persons who were carrying on their business in wooden cabins decided to acquire this land from the Railway Administration. Accordingly, negotiations took place between the railway administration and the Municipal Committee, Ludhiana and in the month of March, 1970, this piece of land where the wooden cabins existed and some other land was transferred by the Railway Administration to the Municipal Committee, Ludhiana. Thereafter, the Municipal Committee erected shops on this piece of land and allotted the same to the petitioners on a monthly rent of

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Rs. 325. Later on these shops were sold to the petitioners in the year 1987. The petitioners have thus acquired full ownership rights in the shops. After acquisition of ownership rights by paying sale consideration in cash, the petitioners approached Municipal Corporation, Ludhiana with a view to seek permission to raise first floor on the shops already existed. The request of the petitioners was not acceded. This is apparent from order Annexure P-10 whereby application of Kuldip Chand for raising the construction of first floor was rejected. The request was turned down simply on the ground that as per conditions of the sale, the petitioners are not entitled for raising further constructions on the shops in their possession. The petitioners have challenged the order passed by the Municipal Corporation, Ludhiana *inter alia* on the following grounds :—

- (i) That once the property was transferred to the petitioner by the Municipal Corporation, Ludhiana it is not within the competence of the Municipal Corporation to impose further conditions and such a condition would be a clog on the title and ownership rights of the petitioners.
- (ii) that the Municipal Corporation has itself raised more than one storeyed buildings on a part of the land which was acquired in the same manner as the land of the petitioners from the railway administration. In support of this averment, the petitioners have also placed on record some photographs indicating one storeyed and more than one storeyed structures raised by the Municipal Corporation, Ludhiana.
- (iii) That there is no town planning scheme or buildings scheme in existence and the petitioners are governed by the building bye-laws in existence and there is absolutely no prohibition in raising more than one-storeyed buildings on the sites in questions under section 275 of the Punjab Municipal Corporation Act, 1976.

(2) On the contrary, the stand of the Municipal Corporation is that the petitioners are bound by the terms and conditions on which the transfer of the shops was made to them, as one of the conditions mentioned in the agreement is that the petitioners cannot

raise more than one storeyed structures and as such they are barred from raising further construction. It is the further case of the respondent that so far as the building activities within the municipal limits of Ludhiana are concerned, they are governed by the Municipal Corporation Act, 1976.

(3) I have heard the learned counsel for the parties and perused the documents on the file.

(4) So far as construction activities of buildings within the municipal limits of Ludhiana are concerned, the same are governed by the Punjab Municipal Corporation Act, 1976. Section 275 of the Punjab Municipal Corporation Act, 1976, provides that the building activity can be by a town plan or building scheme. Upto 1st April, 1977 the Punjab Municipal Act, 1911, was operative at Ludhiana. Under the Punjab Municipal Act, 1911, the building activities were regulated by Section 192 of the Act. As a matter of fact Section 192 of the Act is *para materia* with the provisions of Section 275 of the Punjab Municipal Corporation Act, 1976. As no town planning scheme or building scheme is in existence, therefore, the Municipal Corporation cannot impose any condition which may restrict the right of the petitioners to raise one storey more on their shops. The plea of the Corporation that the petitioners are bound by the conditions of the transfer is of no consequence unless and until it is shown that there is zonal plan or there is in existence some statutory scheme,—*vide* which the right of the petitioners to raise further construction can be curtailed. The Municipal Corporation in the written statement has not denied that the Corporation has itself constructed buildings having more than one storey. If the Municipal Corporation itself could construct buildings having more than one storey then it cannot deny the petitioners their right to construct upper storey. Since the respondent-Corporation has itself raised multi-storeyed buildings, the petitioners cannot be restricted from raising further structures. It will be worthwhile to add that under the general law when a vendor transfers the property, then he cannot put any condition in the sale deed which may effect the right of the ownership. The petitioners are owners of the land and buildings and they can make use of them in any manner subject to the condition that it does not violate any statutory scheme. In the absence of any statutory scheme, there can be no violation of such rule. As the Corporation has not shown any scheme to be in existence, it cannot put any condition on the petitioners with regard to construction of further structures on their shops.

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(5) In view of what has been stated above, the Municipal Corporation, Ludhiana, respondent, cannot put any condition on the petitioners and cannot prohibit them from raising one storey more on the buildings of which they are owners. The building applications submitted by the petitioner be considered and disposed of in the light of the observations made above. This petition is allowed in the terms stated above. No order as to costs.

R. N. R.

Before I. S. Tiwana and M. R. Agnihotri, JJ.

BALJIT SINGH CHAUHAN,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4787 of 1985

December 2, 1988.

Haryana Excise and Taxation Department Subordinate Offices Ministerial (Group C) Service Rules, 1981—Rl. 9(3)—Haryana Government instructions of February 9, 1979—Promotion criterion provided under service Rules—Seniority cum fitness basis for promotion—Government instructions not giving benefit of reservation in such promotions—Deletion of instructions with immediate effect—Such deletion whether retrospective.

Held, that there is no conflict between any provisions of the Haryana Excise and Taxation Department Subordinate Offices Ministerial (Group C) Service Rules, 1981 or the instructions in question. Further, even if some weight is to be given to this submission of the learned counsel for argument's sake i.e. Rule 9(3) is to be ignored, still the petitioners cannot claim promotions to the posts in question in the face of paragraph (6) of the 1979 instructions as it forms an integral part of those instructions and lays down that when the promotions are to be made on the basis of seniority-cum-fitness the said posts cannot be treated as reserved. This paragraph (6) cannot possibly be ignored. Apparently paragraph (6) of the instructions has been deleted with immediate effect, i.e. with effect from August 11, 1988 and has no retrospective effect.

(Para 2)