
notification under Section 4 was issued on the 9th July, 1973 and the matter was decided by the Additional District Judge, Gurgaon and not Faridabad on the 21st January, 1978. Thus, it is clear that the two cases have nothing common with each other. There was no delay in Des Raj's case which may have required condonation. The subject matter of dispute was different. Consequently, the pendency of that case can be of no assistance to the appellant.

(8) No other point has been urged.

(9) In view of the above, we find that there is no ground to interfere with the discretion exercised by the learned Single Judge. The order passed by the learned Judge is neither contrary to law nor perverse. Consequently, it calls for no interference.

(10) As a result the appeal is dismissed. However there will be no order as to costs.

J.S.T.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

CHANDIGARH ADMINISTRATION & OTHERS,—Appellants

versus

ASHWANI KUMAR AND ANOTHER,—Respondents

LPA No. 618 of 1992

The 1st September, 1998

Constitution of India, 1950—Art. 14—Chandigarh (Sale of Sites and Buildings) Rules, 1960—Rl. 9—Capital of Punjab (Development and Regulation) Act, 1952—S.8-A—Premises allotted for carrying on 'special trade' i.e. Atta Chakki—Resumption of site on ground of misuser when tenant found to be running a Karyana shop in part of the premises—Rule 9 mandating that site or building shall not be used for any purpose other than that for it was sold—Rule does not admit of even minor deviation which when proved warrants resumption—Rule 9 deserves to be strictly construed and enforced—Action of resumption is non-discriminatory—In case similar premises elsewhere are misused defaulters should be visited with similar consequences of resumption—Resumption upheld—Landlord's request for restoration to be sympathetically considered

by the Administration on payment of charges ascertained under Rule 11-D of the Act.

(M/s Ram Gopal Banarsi Dass v. Satish Kumar, 1985 P.L.J. 591 (F.B.) distinguished)

Held that it is the admitted position that the site was allotted only for use as Atta Chakki. The specific purpose having been clearly indicated, no deviation was permissible. In fact, it appears that the detailed provisions have been statutorily enacted to maintain the basic character of the city of Chandigarh. Strict control regarding design and use is envisaged under the provisions of law. The purpose is to ensure a planned development and continued user of the premises for the specific purpose. Once a departure is allowed, the basic purpose for which the statutory provisions have been made is defeated. It was on account of this basic reason that a specific prohibition was introduced in rule 9 and it was provided that the transferee shall not use the site for a purpose other than that for which it has been sold. The mandatory language of the rule does not admit of any deviation. It deserves to be strictly construed and enforced.

(Para 22)

Further held, that the Chandigarh Administration has not treated the respondent-tenant differently from the others, who were similarly situated. It has not been shown that the instances on which reliance has been placed were similar to the present case. No reference to any undertaking or any earlier precedent has been made. It has not been shown that any one who had not lived by the undertaking given by him has been shown the concession of change of user. Thus, there is a fundamental difference between the case of the respondent and these which have been relied upon by the learned Single Judge for upholding the charge of discrimination. Secondly, it is also the admitted position that in the five cases which were decided by the Adviser,—*vide* order dated 9th January, 1991, the site had been allotted for a semi-industrial use. In the very nature of things, a semi-industrial categorisation admits of a minor variation. However, such is not the position in case of Special Trade where the categorisation is specific. In any event, it has not been shown that the Administration had permitted change of user or condoned misuse in case of Special Trade.

(Para 26)

Subhash Goel, Advocate, *for the appellant.*

Arun Jain, Advocate, P.S. Patwalia, Advocate, *for the Respondent.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The order of resumption passed by the Chandigarh Administration having been set aside by the learned Single Judge, the allottee-owner of the premises as well as the Chandigarh Administration have filed these two letters patent appeals. Since both the appeals are directed against one judgment, these can be disposed of by a common order. A few facts may be noticed.

(2) Bay Shop No. 56-57, Sector 15-D, Chandigarh, is the bone of contention. On 15th April, 1963, this site was allotted to Smt. Joginder Kaur, the appellant in Letter Patent Appeal No. 641 of 1992. The site was meant to be used for setting up an Atta Chakki—a flour mill. It appears that the allottee raised the construction and let out the premises to Ram Gopal. He set up a flour mill in the premises. He having expired, his son Ashwani Kumar stepped into his shoes. The tenant started selling articles of grocery. Consequently, proceedings for resumption of the site on account of “misuse” were initiated. Ultimately,—*vide* order dated 4th September, 1976, the site was ordered to be resumed. A copy of this order is at Annexure R-4/2. The tenant’s appeal was dismissed,—*vide* order dated 28th December, 1976. He challenged the order of resumption passed by the Estate Officer as also the order passed by the appellate authority by filing Civil Writ Petition No. 1559 of 1977. Simultaneously, it appears that he also filed a revision petition against the order passed by the appellate authority before the Chief Commissioner. On 7th January, 1981, the civil writ petition was allowed. The case was remanded for a fresh decision.

(3) After the remand, the Chief Administrator allowed the appeal filed by the tenant and set aside the order of resumption,—*vide* order dated 12th August, 1981. In this order, it was specifically held that the restoration of the site “is, however, subject to the condition that the premises are not put to misuse again. This should be ensured by the transferee (the allottee) as well as by the appellants (tenants). The Estate Officer is also directed to get the premises inspected periodically with a view to finding out whether

or not these are being used for the trade for which the site was sold. *In case it is found that the premises are being misused again, both the Estate Officer and the transferee shall take appropriate legal action against the tenants*" (emphasis supplied). A part of the amount which had been paid towards the price of the site was ordered to be forfeited. A revision petition against that order was dismissed.

(4) The tenant did not pay the amount of forfeiture. His revision against the order of forfeiture was dismissed on 8th August, 1988. As a result, the allotment of the site was cancelled. A copy of this order is on record as Annexure R-4/4.

(5) The tenant filed Civil Writ Petition No. 8203 of 1988 to challenge the order regarding the imposition of penalty of forfeiture and the order of cancellation of allotment. This petition was again allowed,—*vide* order dated 19th January, 1989. The tenant was given time to deposit the amount of forfeiture and the order of resumption of the site was set aside.

(6) In spite of the two lives, the tenant did not give up his effort to continue with the trade of selling articles of grocery. Resultantly, the resumption proceedings were again initiated against him. *Vide* order dated 23th October, 1989, a copy of which has been produced as Annexure P-1 on the record, the site was again ordered to be resumed. He filed an appeal which was rejected by the appellate authority,—*vide* order dated 9th April, 1990. A copy of this order is on record as Annexure P-2. The tenant filed a revision petition which was rejected,—*vide* order dated 16th August, 1991. The three orders, copies of which have been produced as Annexures P-1 to P-3, were challenged through Civil Writ Petition No. 13213 of 1991. This petition was allowed by the learned Single Judge on the ground that the Administration had allowed "the change of user with regard to all the shop keepers of Sector 15-D....." It was held that the action in resuming the site on the ground of misuse suffered from the vice of discrimination and, was, vitiated. Aggrieved by this decision, the Administration as well as the allottee (Smt. Joginder Kaur) have filed the two letters patent appeals. Ashwani Kumar, the tenant, is the first respondent in both the cases.

(7) Learned counsel for the parties have been heard.

(8) Mr. Subhash Goel, learned counsel for the appellant in

Letters Patent Appeal No. 618 of 1992 which has been filed by the Chandigarh Administration, has contended that the learned Single Judge has erred in quashing the orders passed by the respective authorities regarding the resumption of the site. According to the learned counsel, the respondent had admitted the change of user and was, thus, disentitled to claim any relief. In any event, the counsel submitted that the charge of discrimination could not be sustained as it was not shown that the respondent was similarly placed with the other defaulters.

(9) Mr. P.S. Patwalia, learned counsel for the appellant Smt. Joginder Kaur in Letters Patent Appeal No. 641 of 1992, pointed out that the site had been restored in the year 1981 subject to the specific undertaking given by the respondent that he would not misuse it again. Since he had not lived by his undertaking, the Administration was entitled to resume the site and this action was not vitiated on the ground of discrimination as it was not even suggested that the other allottees/occupants were similarly situated. Learned counsel submitted that the respondent having failed to abide by the undertaking was not entitled to the grant of any discretionary relief under Article 226 of the Constitution. He also pointed out that in view of the provision of rule 9 of the Chandigarh (sale of Sites and Buildings) Rules, 1960, the transferee is debarred from using the site or building for a purpose other than that for which it has been sold to him. Still further, in case of sites which have been included in part C of the Schedule, the change of user is not permitted. That being so, the view taken by the learned Single Judge was not tenable.

(10) Mr. Arun Jain, learned counsel for the respondent-tenant, initially attempted to contend that there was an implied consent to the change of user as it had continued for a long time. Learned counsel, however, contended that the impugned orders were based on a totally non-existent ground and that being so, the action has been rightly annulled by the learned Single Judge. He further submitted that,—*vide* order dated 9th January, 1991, a copy of which is at Annexure P-4 on the record, change of user had been permitted in various cases. As such, the action in ordering the resumption of the site in case of the respondent was wholly unfair and violative of Article 14 of the Constitution. Learned counsel also pointed out that even if it is assumed that the respondent had been selling articles of grocery, the site was still being primarily used as an Atta Chakki and, thus, the misuse was not such so as to call for the resumption of the site.

(11) On the basis of the contentions raised by the learned counsel for the parties, the two questions that primarily arise for consideration are :—

- (1) Has the respondent misused the premises ?
- (2) Is the action of the Administration in ordering resumption violative of article 14 of the Constitution ?

(12) Before proceeding to consider these two questions, it deserves notice that the tenant has been in occupation of the premises since the year 1963. 35 long years have passed. It is also the admitted position that litigation in respect of this site had commenced in the year 1976. In fact, on 4th September, 1976, the site had been ordered to be resumed for the first time. It is also clear that the parties in the present appeals have been litigating for the last 22 years. These facts assume a greater importance as Smt. Joginder Kaur, appellant, is now said to be on the wrong side of 70 and is keen to dispose of the property so as to be able to spend the evening of her life in some comfort.

(13) It is in the background of this factual position that the two questions may be considered.

Regarding (1)

(14) The first question that arises for consideration is—Has the respondent misused the premises ?

(15) It is the admitted position that the disputed site was allotted for setting up an Atta Chakki. It is also the admitted position that a part of the site was being used for sale of grocery items. In fact, it is alleged on behalf of the appellants that the respondent-tenant was actually running 'a Karyana shop'. However, on behalf of the respondent, it has been contended that only about 10 per cent of the area was being used for the sale of various items of grocery. Otherwise, the property was being used for an Atta Chakki.

(16) The sale of buildings and commercial sites in Chandigarh is regulated by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as the Act). The land and buildings have been transferred subject to certain conditions. Any one who violates those conditions invites resumption of the site under section 8-A. Still further, to regulate the sale etc. even rules have been framed. Particular reference may

be made to the provisions of rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (hereinafter referred to as the Rules). This rule provides as under :—

- “9. **Use of Site of Building.**—The transferee shall not use the site or building for a purpose other than that for which it has been sold to him. In the case of commercial or industrial sites and commercial or industrial buildings the transferee shall not carry on any trade or employ any industry other than that specified by the Estate Officer.
- (2) Instead of specifying any particular trade or industry, the Estate Officer may specify that the transferee shall not carry on any trade or employ any industry other than ‘General Trade’ ‘Semi-Industrial’, or ‘Special Trade’.
- (3) The expressions ‘General Trade’, ‘Semi-Industrial Trade’ and ‘Special Trade’ shall mean one or more of the trades respectively mentioned in parts A, B and C of the Schedule annexed to these rules and shall include any other trade which is not so mentioned provided that such other trade is similar to and carried on in the same fashion as mentioned in the respective part of the Schedule.”

(17) A perusal of the above provision would show that the transferee of the site of building is obliged to use it for the purpose for which it has been sold to him. In case of a commercial site/building, the transferee cannot “carry on any trade or employ any industry other than that specified by the Estate Officer”. Still further, the trade and industry etc. have been divided into three broad categories. One of these is Special Trade which has been included in Part C of the Schedule. Atta Chakki has been specifically included in the “Special Trade.”

(18) It is also the admitted position that no order as envisaged under section 4(f) of the Act relaxing the restriction regarding the use of site has been issued by the Administration. Thus, there was no consent for the change of user.

(19) On a perusal of these provisions, it is clear that the transferee is debarred from using a building or site for a purpose other than that for which it has been sold to him. It is implicit in this provision that the bar which is applicable to the transferee/owner of the site shall also apply to a tenant inducted by the allottee. Still further, it is clear that an Atta Chakki has been categorised

as a Special Trade and the site in dispute could be used only for that purpose. What is the position in the present case ?

(20) A perusal of the orders passed by the Estate Officer as well as the appellate and revisional authorities, copies of which have been produced as Annexures P-1 To P-3 on the record, shows that proceedings had been initiated on the ground that the premises were being used "for a purpose other than Chakki i.e. Karyana shop". Still further, it is the admitted position that when the case was taken up for consideration by the Estate Officer, Mr. Harinderjit Singh, the appellant's son, had appeared on her behalf. However, in spite of the service of the notice, the tenant-present respondent, had not appeared. He had not controverted the allegation that there was change of user or that a Karyana shop was being actually run in the premises. It is also the admitted position that the site was being misused in spite of the fact that the respondent had given an undertaking that he would not do so in future. It was only on that condition that the site had been restored,—*vide* order dated 12th August, 1981.

(21) Mr. Arun Jain, learned counsel for the respondent, has contended that the site was still being used for an Atta Chakki. Only a small area was being used for sale of grocery items. Since the dominant user was in conformity with the terms of allotment, it cannot be said that there was any misuse of the premises.

(22) The contention is misconceived. It is the admitted position that the site was allotted only for use as Atta Chakki. The specific purpose having been clearly indicated, no deviation was permissible. In fact, it appears that the detailed provisions have been statutorily enacted to maintain the basic character of the City of Chandigarh Strict control regarding design and use is envisaged under the provisions of law. The purpose is to ensure a planned development and continued user of the premises for the specific purpose. Once a departure is allowed, the basic purpose for which the statutory provisions have been made is defeated. It was on account of this basic reason that a specific prohibition was introduced in rule 9 and it was provided that the transferee shall not use the site for a purpose other than that for which it has been sold. The mandatory language of the rule does not admit of any deviation. It deserves to be strictly construed and enforced. A change howsoever small would be like a drop of poison in a cup of milk which would completely defeat the basic object of allotting the site for a particular use or trade. The setting up of Atta Chakki

having been categorised as a Special Trade, the site cannot be used for any other purpose. Since the change is admitted, it is clear that there was a 'misuse'. This is so in spite of the undertaking. Thus, the undertaking given by the respondent had not been honoured. He had clearly violated the provisions of rule 9.

(23) Mr. Arun Jain, learned counsel for the respondent, has referred to the decision of a Full Bench in *M/s Gopal Banarsi Dass v. Satish Kumar* (1), to contend that merely selling certain goods in addition to the basic trade cannot amount to misuse. The counsel has emphasised the following observation :—

“Firstly, it is highly doubtful that the provisions of the said Rules could be said to have been violated simply because along with the carrying on of a trade for which the site is meant, the tenant starts selling some other goods as well.”

(24) On a perusal of the judgment we find that the basic issue which arose for consideration before the Full Bench was regarding the interpretation of section 41 of the Specific Relief Act. An observation made by their Lordships on a matter which really did not fall for consideration, though entitled to all respect, cannot be construed as laying down a binding precedent. It is not disputed that no definite opinion had been expressed by the Bench on the question which arises in the present case. Thus, the observations do not really support the case of the respondent.

(25) In view of the above, the first question is answered against the respondent. It is held that he had misused the premises.

Regarding (2)

(26) Is the action of the appellant violative of Article 14 of the Constitution ? In other words, has the Chandigarh Administration treated the respondent differently from the others who were similarly situated ? The answer is no. It has not been shown that the instances on which reliance has been placed were similar to the present case. No reference to any 'undertaking' or any earlier precedent has been made. It has not been shown that any one who had not lived by the undertaking given by him has been shown the concession of change of user.

In fact, Mr. Jain has conceded before the Bench that in none of the cases where the Administration had permitted the change of user, any undertaking appears to have been given.

Thus, there is a fundamental difference between the case of the respondent and these which have been relied upon by the learned Single Judge for upholding the charge of discrimination. Secondly, it is also the admitted position that in the five cases which were decided by the Adviser,—*vide* order dated 9th January, 1991, a copy of which is on record as Annexure P-4, the site had been allotted for a semi-industrial use. In the very nature of things, a semi-industrial categorisation admits of a minor variation. However, such is not the position in case of Special Trade where the categorisation is specific. In any event, it has not been shown that the Administration had permitted change of user or condoned misuse in case of Special Trade.

(27) Mr. Jain contends that even now certain sites which have been allocated for Atta Chakkis in different Sectors of the town are being misused by the occupants. No such affidavit has been filed by the respondent. However, if these are being actually misused, it would be open to the respondent to pin-point the factual position to the Administration. We have no doubt that action in accordance with law shall be taken against all the defaulters.

(28) In view of the above, even the answer to the second question has to be against the respondent.

(29) Before parting with the case, we may also observe that, as already noticed, the respondent has been in occupation of the premises for the last more than 35 years. He has not paid anything to the owner/allottee for the last about two years. It was suggested to the counsel that the present value of the property being about 25 lakhs or more, there should be a reasonable increase of rent so that the owner gets a fair return and the Administration could be requested to consider the case for change of user in a sympathetic way. Mr. Jain tried to persuade the respondent to agree to a reasonable enhancement. He was adamant and was not prepared to do so. In this situation, we are satisfied that it would be unfair and inequitable to exercise discretion in favour of the respondent-tenant. It would result in injustice to the appellant.

(30) Mr. Jain, however, tried to contend that for the last two years the respondent had stopped the misuse of the premises and in view of the decision of their Lordships of the Supreme Court in

R.C. Chawla v. State of Haryana and others (2), the order of resumption should be set aside.

(31) We are unable to accept this contention. There is nothing on record to support the contention raised by the counsel. The respondent has not filed any affidavit in respect of this submission. In any event, the respondent having failed to honour his undertaking, we are not inclined to stretch the matter to help him.

(32) It has pointed out by Mr. Patwalia, learned counsel for the appellant, that the owner Smt. Joginder Kaur is herself supporting the order of resumption. It is against her interest. *Prima facie*, it would appear to be so. However, it has been pointed out on her behalf and we think rightly that the respondent-tenant is the main cause of misery for the appellant. The litigation has cost more than the total rent paid by the respondent during the last 35 years. Still further, it has been pointed out that a specific provision exists in rule 11-D which entitles a transferee to seek restoration/re-transfer of the site being misused on payment of certain charges. Mr. Patwalia states that the appellant shall bear the burden of such payment as the Administration may impose who would at least get back the site so that she can deal with it in a proper way.

(33) The counsel appears to be right. The provision permits the restoration of the site to the allottee on payment of certain charges. The appellant's husband being an ex-army officer, we have no doubt that her request for restoration would be sympathetically considered by the Administration.

(34) No other point has been raised.

(35) In view of the above, the appeals are allowed. The judgment of the learned Single Judge is set aside and the writ petition is dismissed. No costs.

R.N.R.