

## MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and J. M. Tandon, JJ.

SOHAN SINGH ETC.,—Petitioners.

versus

UNION TERRITORY CHANDIGARH and others,—Respondents.

Civil Writ No. 6544 of 1975

January 10, 1978.

*Capital of Punjab (Development and Regulation) Act (XXVII of 1952)—Section 15—Capital of Punjab (Development and Regulation) Building Rules 1952—Rule 5—Constitution of India 1950—Article 14—Construction of building in violation of Rules—Issuance of 'No Objection Certificate'—Whether has the effect of condoning the violations—Article 14—Whether can be attracted in the face of other instances of condonation.*

*Held*, that a 'No Objection Certificate' is issued for the purposes of facilitating the transfer and not for the purpose of condoning any violations of the Capital of Punjab (Development and Regulation) Act 1952 or the Capital of Punjab (Development and Regulation) Building Rules, 1952.

(Para 6).

*Held*, that there is no fundamental right of equality before the orders passed by the quasi-judicial authority under any statute and if a wrong order is passed in one case, it does not give the right to another person to claim equality before the wrong order by saying that a similar wrong order should be passed in his case. A claim enshrined in Article 14 of the Constitution of India 1950 is before the law and an order of an executive authority under an Act does not amount to law.

(Para 7)

*Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court be pleased :*

- (a) *To issue a writ of Certiorari, Mandamus or any other order or writ or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case, quashing the impugned notices dated 13th September, 1974, 30th January, 1975 and 22nd March, 1975.*
- (b) *The respondents be further directed to pass the order taking into consideration the pleas raised by the petitioners in this writ petition and the representations.*

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- (c) *To exempt the petitioners from serving the respondents with the requisite of the notices in the circumstances of the case (i.e. the respondents have reached on the site with their staff to demolish the property in question) and to further exempt the petitioners from filing the certified copies of the Annexures.*
- (d) *To direct the respondents not to demolish the property in question till the final decision of the writ petition.*
- (e) *To award the cost of this petition to the petitioners.*

Kuldip Singh, Bar-at-law with Mohan Singh, Advocate; for the Petitioners.

R. K. Chhibbar, Government Pleader U. T. Chāndigarh, for Respondents.

#### JUDGMENT.

*J. M. Tandon, J.—*

(1) The present writ petition under Articles 226 and 227 of the Constitution of India filed by Sohan Singh and others is directed against the orders of the respondents specified in the writ petition relating to the construction of S.C.O. No. 57-58-59, Sector 17-C, Chandigarh.

(2) The relevant facts of the case, in short, are that the property detailed above was purchased by petitioners No. 1 to 7 along with some other persons from Ranjeet Singh Grewal etc.—*vide* sale agreement dated July 3, 1974. Before the execution of the sale in favour of the vendees could take place, the original owners, namely, Ranjeet Singh Grewal and others (vendors) applied for a 'No Objection Certificate' from the Chandigarh Administration which was issued on May 13, 1974, copy of which is Annexure P-1 to the writ petition. The vendees started the construction of laying of slabs etc. in September, 1974. On September 13, 1974, the Estate Officer issued a notice under section 15 of the Capital of Punjab (Development and Regulation) Act, 1952, (hereinafter referred to as the Act), stating therein that the construction on the site was in contravention of rule 5 of the Punjab Capital (Development and Regulation Building Rules, 1952 (hereinafter referred to as the Rules). Another notice dated September 30, 1974, was issued

stating therein that petitioners No. 1 to 7 along with other owners had laid the slabs over the basement under the public verandah on both sides which was also in contravention of rule 5 of the Rules. The petitioners replied to the notice explaining therein that the 'No Objection Certificate' dated May 13, 1974, issued by the Estate Officer validated the violation, if any, of the building rules and further prayed for the composition under second proviso to section 15 of the Act which prayer was declined by the Administration. The petitioners moved a review petition for composition but did not succeed. Petitioners No. 8 to 21 purchased half share of the property from Om Parkash Gupta etc.—*vide* sale deed dated January 31, 1975. On March 27, 1975, the petitioners received another notice from the Administration wherein the contraventions with regard to the construction of basement under the verandah, doors openings and partition walls etc. were mentioned. This notice was replied to explaining that no contravention of any provision of the Act or the Rules had been made and further they may be treated at par with similar other cases in the matter of composition. The Authorities did not agree with the explanation given by the petitioners nor to compound the violations and passed orders for the demolition of the building. The petitioners, finding no other remedy to meet their demand, have filed the present writ petition praying for the quashing of the notices issued to them and further to direct the respondents to compound the violations if any, under the second proviso to section 15 of the Act.

(3) The respondents, in their written statement, denied that the petitioners had not committed any violation in the construction of the building specified above. It is also denied that any discriminatory treatment has been given to the petitioners in the matter of composition under the second proviso to section 15 of the Act. The stand taken by them is that the violations committed by the petitioners cannot be compounded by the Authorities under the law.

(4) According to the respondents, the following violations have been committed by the petitioners in the matter of construction of the building :—

- (i) Construction of basement making an encroachment under the public verandah;
- (ii) construction of multiple shops;

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(iii) construction of small partitions; and

(iv) construction of excessive number of doors.

(5) Mr. Kuldip Singh, the learned counsel for the petitioners, did not contest so far as violations (ii) to (iv) are concerned. He stated during arguments that some of the partitions made in the building have already been demolished by the Administration. In any case, the petitioners have no objection so far as the removal of violations (ii) to (iv) are concerned.

(6) The writ petition has been mainly argued regarding violation (i), that is, construction of basement making an encroachment under the public verandah. It has been contended that the basement had been constructed when petitioners No. 1 to 8 along with some others purchased the site from the original owners. For this purpose, a reference has been made to the 'No Objection Certificate' dated May 13, 1974, wherein it is recorded that "the owner has erected building on the said site upto ceiling level of basement." It has been argued that assuming that the construction of the basement involved encroachment under the public verandah, the violation stood condoned when the 'No Objection Certificate' was issued on May 13, 1974, and as such the petitioners now cannot be called upon to demolish it. We are unable to agree with this contention of the learned counsel. A 'No Objection Certificate' is issued for the purposes of facilitating the transfer and not for the purposes of condoning any violations of the Act or the Rules. It has been argued that may be that the 'No Objection Certificate' does not specifically condone the said violations, but it does so by implication. This contention again has no force. As observed earlier, the object of the 'No Objection Certificate' is not to condone the violations of the Act or the Rules and as such it cannot have such an effect even by implication.

(7) The learned counsel for the petitioners has drawn our attention to para 16(n) of the written statement of the respondents wherein the details of the cases in which composition was ordered by the Authorities under the second proviso to section 15 of the Act are given. The contention of the learned counsel is that those cases, in which composition has been allowed, are similar to the present case and the Authorities, by not allowing composition in the instant case have discriminated against the petitioners. The learned counsel

for the respondents has taken us through the facts of those cases and it is evident that those cases are quite distinguishable from the present case. For instance, under the first proviso to section 15 of the Act, the building could be demolished within a period of six months of its having begun or having been completed for any violation of the Act or the Rules. The learned counsel for the respondents has explained that in all the cases detailed in the written statement the statutory period of six months had expired. The learned counsel has conceded that it is not within the competency of the Authorities to compound the violations made in the building by the petitioners. He has also cited *Shiromani Gurdwara Parbandhak Committee, Amritsar v. Union Territory of Chandigarh*, (1) wherein it was held that there is no fundamental right of equality before the orders passed by the quasi-judicial authority under any statute and if a wrong order is passed in one case, it does not give the right to another person to claim equality before the wrong order by saying that a similar wrong order should be passed in his case. It was further held that the equality enshrined in Article 14 of the Constitution is before law and an order of an executive authority under an Act does not amount to law.

(8) After hearing the learned counsel for the parties on this point, it is clear that the present case is not similar to those detailed in the written statement of the respondents. It is also doubtful if the violations involved in the present case can at all be compounded by the Authorities under the second proviso to section 15 of the Act.

(9) The learned counsel for the petitioners has argued that the second proviso to section 15 of the Act is *ultra vires* Article 14 of the Constitution inasmuch as it does not provide any guidelines for its application. The contention of the learned counsel for the respondents is that this point cannot be raised in these proceedings because the *vires* of the second proviso to section 15 of the Act have not been specifically challenged in the petition. The contention of the learned counsel for the respondents must prevail. The *vires* of the second proviso to section 15 of the Act have not been specifically challenged in the petition and as such the learned counsel for the petitioners cannot be allowed to argue this point in these proceedings.

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(1) 1975 P.L.R. 354.

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(10) The learned counsel for the petitioners has then argued that in the event of the basement under the verandah being demolished the whole building would fall down and the petitioners would suffer a huge loss. The learned counsel for the respondents has drawn our attention to the application dated October 7, 1974, (copy Annexure P-4), addressed by the petitioners to the Estate Officer-cum-Deputy Commissioner, Union Territory, Chandigarh, wherein it has been specifically stated that in the event of their request being not allowed, they will close down the alleged unauthorised construction of the basement under the verandah. It has thus been argued that the removal of encroachment under the verandah will not involve demolition of the whole building as such and, as stated by the petitioners themselves, the unauthorised construction of the basement can be closed without any damage to the building. We agree with the learned counsel for the respondents.

(11) The last contention of the learned counsel for the petitioners is that in case the writ petition fails, they may be allowed two months' time to remove the encroachment under the verandah of the building. The learned counsel for the respondents has no objection to this prayer being granted.

(12) In view of what has been stated above, there is no merit in this writ petition which is dismissed but without any order as to costs. The petitioners are, however, allowed two months' time to remove the encroachment of the basement under the verandah of the building.

S. S. Sandhwalia, J.—I agree.

K.T.S.

FULL BENCH

Before R. S. Narula C.J., Harbans Lal and Surinder Singh, JJ.

RADHA RAM BADRI NATH and others,—Petitioners.  
versus

AMRITSAR SUGAR MILLS COMPANY LIMITED ETC.,—  
Respondents.

Company Petition No. 150 of 1973

April 8, 1977.

*Industries (Development and Regulation) Act (65 of 1951) as amended by Acts (26 of 1953 and 72 of 1971)—Sections 18-AA (1) and*