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& others (Jawahar Lal Gupta, J.)

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money to the Corporation. It has a right to sell this property to recover money. Even otherwise, the provisions of the State Financial Corporations Act, 1951 have an over-riding effect. Thus, Section 60 cannot be invoked by the petitioners.

(18) No other point has been raised.

(19) In view of the above, we find no merit in the contentions raised on behalf of the petitioners.

(20) However, before parting with the judgment, it may be observed that we had given an opportunity to the counsel for the petitioners to obtain instructions if they were willing to make the deposit. He has expressed his inability, to do so. He states that the petitioners cannot pay the dues of the Corporation. It is, thus, clear that the attitude of the petitioners is most unfair. Having taken the loan, they are not willing to repay. They are not even willing to pay whatever they can.

(21) As a result, the writ petition is dismissed. In the circumstances, we make no order as to costs.

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**R.N.R.**

*Before Jawahar Lal Gupta & N.K. Sud, JJ*

SUMAN DEVI & OTHERS—*Petitioners*

*versus*

U.T. ADMINISTRATION CHANDIGARH & OTHERS—  
*Respondents*

C.W.P. No. 15270 of 1999

6th July, 2001

*Constitution of India, 1950—Arts. 14 & 226—Licensing of Tenements and Sites & Services in Chandigarh Scheme, 1979—Cls. 2 to 5 & 7—Trespassers—Unauthorised encroachment & occupation on Govt. land—Petitioners do not fulfil the prescribed conditions for allotment of tenements as required under the 1979 Schemes and failing*

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*to prove the charge of discrimination—No right to claim an alternative site—Action of the authorities in proceedings to get the sites vacated from the encroachers is legal—Writs dismissed.*

Held, that it has not even been established that the petitioners fall within the definition of 'recognised residents'. Nothing has been placed on record to show that the petitioners have been residing in Chandigarh for the prescribed duration. Still further, the petitioners have not submitted any application to the authorities for the allotment of any sites or tenements. The Electoral Roll was prepared in the year 1998. Even the Identity cards were issued during that year. The Electoral Roll indicates that the petitioners have been residing at the site since the year 1998. That gives them no right to either claim an alternative site under any Scheme or Statute or to sustain the plea of licence etc. The petitioners have also totally failed to prove their charge of discrimination. In this situation, we are satisfied that they cannot claim that the action of the authorities in proceeding to get the sites vacated from them is illegal or unauthorised.

(Paras 16 & 17)

M/S. G. C. Dhuriwala and Pritam Saini, *Advocates for the Petitioners.*

Sanjeev Sharma, Advocate for U.T. Chandigarh

C.B. Goel, Advocate for the Chandigarh Housing Board.

### JUDGMENT

*Jawahar Lal Gupta, J. (O)*

(1) We have three petitions. the question is common. Do the petitioners have a right to stay on the land which they have unauthorisedly occupied and should the respondent-authorities be restrained from demolishing the jhuggis/structures that the petitioners have raised? Learned counsel for the petitioners have referred to the facts in CWP No. 15270 of 1999. These may be briefly noticed.

(2) The 90 petitioners claim to be residing in Labour Colony No. 5, Village Burail, in the Union Territory of Chandigarh. They claim to be doing labour jobs. It is further alleged that they have got

identity cards as well as ration cards. They have been residing in the jhuggis for the last more than 10 years. The Chandigarh Administration has allotted the numbers to the Jhuggis by creating different blocks viz. A, B, C, and D etc.

(3) On 29th October, 1999, the Enforcement Wing of the Administration reached the site with the purpose of demolishing the jhuggis. The petitioners claimed that they were not residing unauthorisedly. In fact, they were licensees as they had been rehabilitated by the Administration. It is the case of the petitioners that the "encroachers can be removed by the Government by....giving them alternative sites but in the present case neither any opportunity for shifting from the place nor any alternative site was given by the Chandigarh Administration". Relying upon the decision of a Division Bench of this Court in CWP No. 11637 of 1996 (Azad Bharat Colony and another Vs. State of Haryana and others) decided on 19th April, 1999, the petitioners pray that an appropriate writ, order or direction be issued "restraining the respondents from demolishing Jhuggis....till alternative sites" are provided.

(4) A written statement has been filed on behalf of respondent Nos. 1 and 2 by Mr. Ashish Kundra, the Land Acquisition Officer, U.T. Chandigarh. It has been averred that "the land in question has been acquired recently *vide* Award No. 521 dated 23rd December, 1998 and 527 dated 26th March, 1999. The land was agricultural in nature prior to the acquisition...." It has been further averred that "it is absolutely incorrect on the part of the petitioners to state that they were rehabilitated by the Chandigarh Administration on this land. This is so because the Administration cannot rehabilitate the people on private agricultural land. The jhuggi dwellers have not produced any proof whatsoever to show their right or title on the land. The revenue record contains no entry to prove the claim of the petitioners". The respondents maintain that "the possession of the land was handed over by the Land Acquisition Officer to the Engineering Department which in turn handed over the possession to the Chandigarh Housing Board on 17th September, 1999...." On this basis, it is claimed that the land vests in the administration and the Chandigarh Housing Board. The petitioners are "illegal trespassers on Government land". The claim of the petitioners "that they are licensees of U.T. Administration is utterly baseless and misleading and they have no *locus standi* on the

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land". It has also been stated that when the Board tried to carry out a minor operation for clearance of the land from encroachment, the jhuggi dwellers showed lot of resentment. The Board requested for police protection. It is maintained that "the Administration is not bound to rehabilitate each and every encroacher of Government land. In fact, in Chandigarh, the land is shrinking by each passing day and the petitioners are attempting to grab the land for material gain". On these premises, it has been prayed that there is no merit in the writ petition and that it may be dismissed.

(5) A separate written statement has been filed on behalf of the Chandigarh Housing Board by Mrs. Varsha Joshi, IAS. It has been averred that the petitioners are "just rank encroachers on the Government land". So far, Rs. 9,07,48,950.00 have already been paid by the Chandigarh Housing Board to the Administration on account of acquisition and cost of land. The land has to be utilised "for developing Sector 51-A and the answering respondent-Board is to construct different categories of flats for general public besides establishing the commercial market to cater to the needs of the residents as per approved planning of Chandigarh Administration. The answering respondent has been delivered the possession on 17th September, 1999 including the area shown red in the lay out plan of Sector 51-A which is under unauthorised occupation of the petitioners". On 29th October, 1999, some of the officials of the Board had gone to the site and requested the encroachers to vacate it. They were hostile. Subsequently, the court had directed the maintenance of status quo. As such, the encroachment was not removed. On these premises, the respondent prays that the writ petition be dismissed.

(6) In CWP No. 15926 of 1999, the petitioner claims to be running a Tourist Bus Company. It has its office in SCO No. 2443-44, Sector 22-C, Chandigarh. It claims to have hired some land in village Nizampur Kumbra for parking the buses and for the shelter of the staff. The petitioner was given a notice by the Land Acquisition Officer to appear on 16th August, 1996 "for removing the unauthorised construction". The petitioner states that he is ready to remove the rooms but he is entitled to the allotment of alternative site. On 15th November, 1999, the Officials of the respondents reached the site and threatened to demolish the structures. Hence the prayer that the

respondents be restrained from demolishing the structures till an "alternative site" is provided.

(7) In this case also, written statements have been filed on behalf of the respondents.

(8) In CWP No. 15769 of 1999, there are 100 petitioners. They claim that they are residing in the Shahid Bhagat Singh Colony, Village Jhumru, in the Union Territory of Chandigarh, for the last 7-8 years. They have constructed their houses on small pieces of land which had been purchased or taken on lease by them. They also pray that the respondents be restrained from demolishing the houses till they are allotted alternative sites.

(9) In this case, notice was not issued to the respondents. As such, no reply has been filed. The case was placed before different Benches and was adjourned.

(10) At this stage, it may be mentioned that initially, these writ petitions had been listed before a Bench of which one of us (Jawahar Lal Gupta, J.) was a member. The arguments had been heard and the judgment was reserved. Before the judgment could be delivered, Civil Misc. No. 30037 of 2000 in CWP No. 15270 of 1999 was filed. In the other two cases, no application was filed. Notice of this application was issued by the Bench on 22nd December, 2000. Counsel for the respondents had asked for time to check up the factual position and to report. Thereafter, the matter was posted before the same Bench on 16th March, 2001. The application was allowed. The additional documents which consisted of the extract from the Electoral Roll and the Identity Cards were taken on record. The cases were directed to be posted before a Bench according to the roster. The cases have been posted before this Bench.

(11) On behalf of the petitioners, Mr. G.C. Dhuriwala, learned counsel, has made a two-fold submission. Firstly, it has been contended that the petitioners have been staying at the respective places for many years. They cannot be dislodged till alternative sites are allotted to them. Secondly, it has been contended that the action of the respondents in not allotting sites to the petitioners is discriminatory. The counsel submitted that the respondent-authorities had framed

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the "Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979" (hereinafter referred to as the Scheme). Under the scheme, various unauthorised occupants of Government property had been accommodated. The action of the respondents in not according a similar treatment to the petitioners is violative of Article 14 of the Constitution. These submissions were adopted by Mr. Pritam Saini, learned counsel, who appeared for the petitioners in the other two cases. The claim made on behalf of the petitioners was controverted by M/S Sanjeev Sharma, Rajiv Narain Raina and C. B. Goel, who appeared for the respondents.

(12) The petitioners have undoubtedly claimed that they were rehabilitated by the Chandigarh Administration. They are licensees. However, these allegations have been categorically denied by the respondents. No replication has been filed. Some of them have even claimed to have purchased the land or taken it on lease. No particulars have been given. When was the land purchased? From whom? How much? Similarly, there is nothing to indicate as to which petitioners had taken land on lease. From whom? There is no answer. Totally vague averments have been made. Still further, despite being repeatedly asked, counsel for the petitioners were unable to refer to any evidence which may show that they had any right or title to the land in their possession. In fact, during the course of arguments, the counsel had actually admitted that the petitioners are trespassers. In this situation, it is clear that the petitioners have no right or title to the property in their possession.

(13) Faced with the above, the counsel for the petitioners initially placed reliance on the scheme framed by the Administration called the "Chandigarh Allotment of Low Cost Tenements on Lease and Hire-Purchase Basis Scheme 1979". On perusal of the scheme, it was pointed out to the counsel that it had been repealed *vide* notification, dated 9th December, 1997. Then the counsel referred to the provisions of "Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979". He submitted that by virtue of this scheme, the petitioners were entitled to the allotment of tenements and sites. Is it so?

(14) Clause 2 of the Scheme provides that "it applies to all persons living in Chandigarh who fulfil the conditions laid hereunder..."

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Clause 3(g) of the Scheme defines a 'recognised resident' as under :—

“ 'Recognised Resident' means :—

- (i) *a bona fide* resident of a Labour Colony since 1971 whose income does not exceed Rs. 500.00 or
- (ii) *a bona fide* resident of a Labour Colony since 1974 whose monthly family income is above Rs. 250.00 but below Rs. 500.00.
- (iii) of *a bona fide* lessee/squatter of erstwhile Bajwara or any part thereof, whose monthly income does not exceed Rs. 500.00.”

(15) Under Clause 4, the competent authority is entitled to prepare a phased plan for clearing the labour colonies. Under Clause 5, the eligible persons are required to submit an application to the competent authority in the prescribed form. Under Clause 7, a person is entitled to the allotment of a tenement or site provided he fulfils the prescribed conditions.

(16) In the present case, it has not even been established that the petitioners fall within the definition of 'recognised residents'. Nothing has been placed on record to show that the petitioners have been residing in Chandigarh for the prescribed duration. Still further, the petitioners have not submitted any application to the authorities for the allotment of any sites or tenements. In this situation, we are satisfied that they cannot claim that the action of the authorities in proceeding to get the sites vacated from them is illegal or unauthorised.

(17) Mr. Dhuriwala has referred to the documents produced with CM No. 30037 of 2000 in CWP No. 15270 of 1999. We have perused the Electoral Roll and the other documents. The Electoral Roll was prepared in the year 1998. Even the Identity Cards were issued during that year. This does not advance the case of the petitioners beyond what has already been noticed and considered. At best, the Electoral Roll indicates that the petitioners have been residing at the site since the year 1998. That gives them no right to either claim an alternative site under any scheme or Statute or to sustain the plea of licence etc.

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(18) Mr. Dhuriwala contended that the State is under an obligation to provide shelter to the citizens. Assuming it to be so, a fact which stares everybody in the face is that a large number of people are migrating to Chandigarh everybody in the hope of earning livelihood and getting a shelter. Their number is multiplying by the day. On the other hand, the Administration has its own difficulties. It needs land. It also needs money. The land and the resources being limited, it cannot provide shelter to everyone. Still further, it was rightly pointed out by the learned counsel for the respondents that even in case of persons who were accommodated. It has been found that a significant percentage had actually sold off the tenements at a premium and gone away. In this situation, it seems difficult to accept the claim that every unauthorised occupant is entitled to remain in occupation of the land in his possession till an alternative site is allotted to him.

(19) It is undoubtedly true that every person should have a decent job and some accommodation. It would be 'ideal' to provide every citizen with all the necessities of life. However, such a scheme would need lot of money. When the resources are limited, it becomes impossible to achieve the ideal. In the present case, we are satisfied that the Administration is doing its utmost. Nothing better can be expected of it.

(20) Mr. Dhuriwal contended that the action of the respondents is discriminatory as a total of about 25000 persons have been actually accommodated by the respondents. However, counsel was unable to refer to any material on record which may show that equals have been treated unequally. Not a single instance has been quoted by the counsel which may satisfy the court that anyone who was similarly placed with the petitioners has been treated differently. It is very easy to make a charge of discrimination. But no advance inference can be drawn against the authority till the allegation is proved. In the present case, the petitioners have totally failed to prove their charge of discrimination.

(21) Lastly, reference was made to the decision of the Division Bench in the case of Azad Bharat Colony and another *versus* State of Haryana and others (CWP No. 11637 of 1996 decided on April 19, 1999). In this case, the Bench has undoubtedly held that alternative accommodation should be provided to the unauthorised occupants of Government land. After perusal of the judgment, we are satisfied that



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the decision was given in an entirely different set of circumstances. Firstly, it was found as a fact that there was discrimination. Secondly, the petitioners in the case before the Division Bench had produced evidence in the form of ration cards and electricity bills etc. to prove that they had been residing at the particular places for long durations of time. In the present case, nothing of the sort has been done. In fact, the perusal of the case file shows that the factual position is entirely different. No evidence indicating long residence has been placed on record. Totally baseless claim that the land had been purchased or taken on lease has been made. It has also been falsely alleged that the petitioners are licensees and had been accommodated by the Administration. These pleas have been categorically denied and no evidence to support the averments in the petitions has been produced. Thus, the submission cannot be sustained.

(22) No other point has been raised by any of the counsel.

(23) In view of the above, we find no merit in any of these petitions. These are, consequently, dismissed. However, the petitioners are given one month's time to make alternative arrangement and vacate. There will be no order as to costs.

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R.N.R.

*Before M. L. Singhal, J.*

SMT. NIRMAL—*Plaintiff/Petitioner*

*versus*

LAKHPAT SINGH & OTHERS—*Respondents/Defendants*

C.R. No. 938 of 1999

11th July, 2001

*Code of Civil Procedure, 1908—0.39 Rls.1 & 2—Agreement to sell—Land sold to another in breach of the agreement—Questions of evidence—Courts below declining injunction against the purchaser—Temporary injunction—Discretion—Exercise of—High Court has jurisdiction to interfere with the exercise of discretion if the Courts below*