

Before : M. R. Agnihotri, J.

M/S SIRI CHAND AND SONS,—*Petitioners.*  
*versus*  
ADMINISTRATOR, UNION TERRITORY, CHANDIGARH AND  
OTHERS,—*Respondents.*

Civil Writ Petition No. 1771 of 1989.

8th January, 1991.

*Capital of Punjab (Development and Regulation) Act, 1952—S. 8-A—Resumption of plot for non-construction—Site originally allotted in 1953—Transferred in 1958—After 20 years, Estate Officer formally transferred site and granted permission to construct within 4 months—Meantime, litigation between co-sharers—Construction not completed—Plot resumed—When authorities itself took 20 years to transfer plot on same terms and conditions as original allotment—Incumbent on authorities to grant same period of 5 years to transferee to complete construction.*

*Held, that when the Chandigarh Administration itself took full twenty years in transferring the site in dispute in the names of the petitioners that is, from 1958 to 20th November, 1978, on the same terms and conditions as were stipulated in the original order of allotment, that is, construction of the building on the site in dispute to be completed within five years, it was incumbent upon the Administration to grant to the petitioners also the same period of five years for completing the construction from 20th November, 1978 to 20th November, 1983. Before the expiry of this period the passing of the impugned order of resumption by the Estate Officer, Chandigarh, on 18th February, 1980, as upheld by the Chief Administrator, Chandigarh on 24th March, 1981 was wholly unwarranted and untenable in law.*

(Para 6)

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that—*

- (i) a writ in the nature of certiorari quashing the orders Annexures P-2, P-4, P-6 & P-7 passed by the respondents No. 1 to 3 respectively be issued;*
- (ii) a writ in the nature of Mandamus directing the respondents to restore the original allotment of the plot be issued;*
- (iii) that records of the case be summoned;*
- (iv) issuance of advance notices on the respondents be dispensed with;*

(v) *filing of certified copies of Annexure P-1 to P-7 be dispensed with;*

(vi) *costs of the petition be awarded to the petitioners;*

(vii) *Any other relief to which the petitioners may be found entitled to be granted.*

Smt. Sheela Didi, Advocate, for the Petitioners.

Ajai Lamba, Advocate, for the respondents.

#### JUDGMENT

M. R. Agnihotri, J.

(1) In this writ petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the order of resumption of the residential plot, passed on 18th February, 1980 (Annexure P. 4), by the Estate Officer, Chandigarh, and the orders dated 24th March, 1981 (Annexure P. 6) and 8th June, 1988 (Annexure P. 7) passed by the Chief Administrator, Chandigarh, and the Adviser to the Administrator, Union Territory, Chandigarh, by which appeal and revision against the order of resumption have been rejected, respectively.

(2) Residential site No 8, Sector 2-A, Chandigarh, was allotted to one Shri M. D. Gautam on 19th May, 1953, who later on agreed to transfer the same in favour of the present petitioners in 1958. However, it was only after twenty years, that is, on 20th November, 1978, that the Estate Officer, Chandigarh, formally transferred the site in the name of the petitioners and granted them permission to construct the same. Since according to clause (4) of the Deed of Conveyance, the original allottee was required to complete the construction of the building on the said site within a period of five years, the respondents called upon the petitioners also to complete the construction of the building and obtain occupation certificate from the Estate Officer, Chandigarh, by 31st March, 1979, that is, within four months of the date of transfer of the site in dispute in favour of the petitioners. On the representation made by the petitioners, time was extended only upto 31st December, 1979. However, in the meantime, one Yog Raj, one of the co-owners of the site in dispute, died and litigation started with regard to the estate of the deceased. On 12th December, 1979, the Estate Officer, Chandigarh, issued a show-cause notice to the petitioners under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952, regarding resumption of the site in dispute. In response

thereto, Abhey Kumar son of Yog Raj deceased appeared on behalf of the petitioners on 7th January, 1980, before the Estate Officer. Abhey Kumar explained the difficulties being experienced by the petitioners who were residents of Kenya and assured the Estate Officer that as the litigation regarding ownership of the estate of the deceased was over, construction would be started without any further delay. Accordingly, the petitioners got the building plans prepared from M/s Charanjit & Associates, Architectes, and deputed Mr. K. K. Bakshi, a representative of the petitioners, to appear before the Estate Officer on 18th February, 1980, for obtaining necessary permission and extension of time for completing the construction. According to the petitioners, no orders were pronounced in the Court; but later on the order of resumption dated 18th February, 1980, itself was served on the petitioners. Against the aforesaid impugned order of resumption dated 18th February, 1980, passed by the Estate Officer, the petitioners filed an appeal before the Chief Administrator, Chandigarh, explaining the entire position, but the same was dismissed on 24th March, 1981. Against that order, on 20th April, 1981, they preferred a revision petition under Section 10 of the Capital of Punjab (Development and Regulation) Act, 1952, before the Adviser to the Administrator, Union Territory, Chandigarh, which revision petition remained pending for more than seven years and was ultimately dismissed on 8th June, 1988. Aggrieved against the aforesaid order of resumption and the subsequent appellate and revisional orders upholding the same, the petitioners have filed the present writ petition.

(3) In the written statement filed by the respondents, factual position has almost been admitted and the only plea taken by the respondents is that the petitioners should have constructed the building on the site in dispute immediately after the allotment of the site in favour of the original allottee in whose favour the allotment was made on 19th May, 1953, with the condition that the construction shall be completed within five years. It has further been pleaded that even though the impugned order dismissing the revision petition was passed by the Adviser to the Administrator, Union Territory, Chandigarh, on 8th June, 1988, yet the writ petition has been filed on 7th February, 1989, that is, after eight months and that too because the Chandigarh Administration was going to auction the site in dispute. As such according to the respondents, the writ petition was belated and deserved to be dismissed on the ground of laches.

(4) At the time of motion hearing, Division Bench had stayed the auction of the plot in dispute on 9th February, 1989, and the

interim order was allowed to continue later on when the writ petition was admitted.

(5) Having heard the learned counsel for the parties and after going through the records of the case, I find that the impugned decision of resumption of the site in dispute as expressed by the Estate Officer in the original order of resumption and the subsequent appellate and revisional orders passed by the Chief Administrator, Chandigarh, and the Adviser to the Administrator, Union Territory, Chandigarh, are not tenable in law and deserve to be set aside, being contrary to the very objects and purposes of the enactment of the Capital of Punjab (Development and Regulation) Act, 1952. No doubt, the reasons which compelled the authorities to order resumption of the site in dispute were the keenness and zealousness on their part to ensure speedy construction in the city, yet one salient feature of the whole process has been lost sight of, that is, the uncertainty prevailing about future of the city, surcharged atmosphere through which the city has been passing during the last one decade and the pendency of the litigation in Kenya/India, in the first instance for settling the disputes about ownership of the property of the deceased owner and later on before the respondents — the Estate Officer, Chief Administrator and the Adviser to the Administrator, Union Territory, Chandigarh. In this regard, reproduction of a para from the judgment of this Court reported as *Shri Brij Bhushan vs. The Union Territory Administration, Chandigarh*, (1), would be relevant for appreciating the correctness and propriety of the impugned orders in the present case :—

“After 1st November, 1956, when the Union Territory of Chandigarh came into existence, construction activity in the city got a set back. There was a trend towards disposal of built houses as well as to have extensions from time to time so far as unbuilt and incomplete residential and commercial sites/buildings were concerned. Due to uncertain future of the city during the last twenty years, if an owner of a site has not been able to complete construction or even undertake construction, he cannot be accused of the delay. In any case, now since the petitioner has shown keenness and anxiety on his part to undertake the construction and complete the same within this year, I think it is a fit case in which the order of resumption should be set aside and the last opportunity be given to him for completing the construction. In this approach,

I am fortified by the law laid down by the Full Bench of this Court in *Shri Ram Puri v. The Chief Commissioner, Chandigarh*, (1982)84 P.L.R. 388, in which S. S. Sandhawalia, C.J., by majority judgment, held, that there is no manner of doubt that resumption in the sense of a divestiture of title would be the ultimate civil sanction in the armoury of the authorities to effectuate the twin purpose of a regulated and planned development as also the expeditious creation of the capital city in the State. It bears repetition that the power of resumption is the ultimate civil sanction and must, therefore, be a weapon of last resort. Inevitably it should be used with great caution and circumspection."

(6) Keeping in view the aforesaid circumstances, I allow this writ petition and set aside the impugned order of resumption dated 18th February, 1980 (Annexure P. 4) passed by the Estate Officer, Chandigarh, as well as the appellate order dated 24th March, 1981 (Annexure P.6) passed by the Chief Administrator, Chandigarh, and the revisional order dated 8th June, 1988 (Annexure P. 7) passed by the Adviser to the Administrator, Union Territory, Chandigarh; especially for the reason, that when the Chandigarh Administration itself took full twenty years in transferring the site in dispute in the names of the petitioners that is, from 1958 to 20th November, 1978, on the same terms and conditions as were stipulated in the original order of allotment, that is, construction of the building on the site in dispute to be completed within five years, it was incumbent upon the Administration to grant to the petitioners also the same period of five years for completing the construction from 20th November, 1978, to 20th November, 1983. Before the expiry of this period the passing of the impugned order of resumption by the Estate Officer, Chandigarh, on 18th February, 1980, as upheld by the Chief Administrator, Chandigarh, on 24th March, 1981, was wholly unwarranted and untenable in law. In any case, when the revision petition was filed before the learned Adviser to the Administrator, Chandigarh, on 20th April, 1981, at least a couple of years more could still be granted to the petitioners to complete the construction, but after keeping the revision petition pending for more than seven years, the same was rejected on 8th June, 1988, without any cogent reason. Therefore, as a consequence of success of this petition and the quashing of the aforesaid impugned orders, the site in dispute stands restored to the petitioners who shall now act forthwith, in accordance with law. However, there shall be no order as to costs.

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J.S.T.