

committed positive misconduct which was quite incompatible with the express and implied terms of relationship of the employer with the employee. What is misconduct will all along depend upon the circumstances of each case and the mere fact that the worker instead of packing 100 spring plates for despatch had packed 108 spring plates thereby causing loss to the Company to the tune of Rs. 2,254.

(11) Mr. Sharma whom the worker submits had not been spared by the Company to defend his case had been transferred to Delhi during the enquiry with regard to which he went to the Labour Court and his transfer was found to be valid by the Labour Court and his application was dismissed. So transfer of Mr. Sharma does not assume any importance and can be found that he was transferred only not to help the worker in the conduction of the enquiry. Rather he was transferred on his own merits of his service record and for that reason his order of transfer was not set at naught by the Labour Court because no *mala fides* were found in his transfer.

(12) The worker has been provided adequate opportunities by the Company to engage the services of Mr. Sharma to defend his case in the enquiry. Although Mr. R. K. Sharma at the relevant time happened to be posted as P.A. to the Material Manager of the Company and the said Manager was not ready to part with the services of Mr. Sharma but the Enquiry Officer took a bold decision in fixing the enquiry proceedings either after office hours or during the lunch hours 12.30 to 1 P.M. in order to enable the worker to avail the services of Mr. R. K. Sharma.

(13) On all fours, as has been held by the learned Tribunal rightly, we find that the domestic enquiry was held in accordance with the procedure and principles of natural justice in a fair manner and the order passed by the learned Tribunal does not suffer from any illegality or impropriety. Hence this writ petition fails which is dismissed without any costs for the matter relates to a dismissed worker.

S.C.K.

Before Hon'ble H. S. Brar & M. L. Koul, JJ.
BATRA FINANCE PRIVATE LTD,—Petitioner.

versus

CHANDIGARH ADMINISTRATION & OTHERS,—Respondents.

C.W.P. No. 5527 of 1994

18th October, 1995

Capital of Punjab (Development & Regulation) Act, 1952—
Ss. 1 & 8—Chandigarh Lease Hold Sites and Building Rules, 1973—
Rls. 1, 6 & 13—Payment of ground rent—Cinema site developed in

the year 1980—Ground rent for the period prior to the date of development—Whether such rent payable.

Held, that the petitioner could not claim that ground rent for the years 1977 to 1980 was not payable. He was duty bound to pay the ground rent under Rule 13 of the Building Rules. Sub rule (ii) of Rule 13 mandates that the rent shall be payable by the lessee annually on the due date without any demand from the Estate Officer. Imposition of 100 per cent penalty was absolutely justified as the petitioner had used the amount due to the administration for his benefit, from 1977 to 1980. The amount of penalty was also recoverable under section 8 of the Act as arrears of land revenue.

(Paras 12, 13)

Arun Jain, Advocate, for the petitioner.

Ashok Aggarwal, Senior Advocate with Rajesh Bindal, Advocate, for the Respondents.

JUDGMENT

Harphul Singh Brar, J.

(1) Notice of motion was issued in this case on 3rd May, 1994 on the basis of the contention of the learned counsel for the petitioner mainly on the ground that the respondents were charging interest on interest as well as on penalty. Notice of motion was issued by the Bench mainly on this point obviously because the Estate Officer, Union Territory, Chandigarh and later on the appellate as well as Revisional Authority after going through the records of the Department and after considering the arguments and the evidence produced by the petitioner, found it as a fact that all the requisite amenities were provided to the plot holder at the time of transfer of the site and the imposition of 100 per cent penalty on account of non-payment of rent was valid and was independent of the amenities provided at the time of transfer of the site.

(2) Now at the time of arguments, the learned counsel for the petitioner has tried to faintly argue that as the site was developed by the Chandigarh Administration in the first week of July, 1980 and the resumption order of the site passed by the Estate Officer on 19th December, 1979 was set aside by the Chief Administrator on 24th December, 1981, the Chandigarh Administration was not entitled to the ground rent atleast from the years 1977 to 1980 though, ultimately, the learned counsel laid the main emphasis on his contention that the imposition of 100 per cent penalty the maximum provided under the law is illegal and was on a higher side. The contention of the learned counsel that the respondents were charging

interest on interest and on penalty on the basis of which notice of motion was issued by the Bench, has not even been referred to by the learned counsel at the time of arguments.

(3) Even the order of the Estate Officer dated 22nd September, 1992,—*vide* which 100 per cent penalty was imposed on the petitioner is neither attached with the petition nor any prayer has been made to quash the same. Only the appellate order of the Chief Administrator dated 5th May, 1993 and the order dated 16th June, 1993 by which the revision petition of the petitioner was dismissed by the Advisor to the Administrator, Union Territory, Chandigarh are attached as annexures P-8 and P-9 respectively with the petition and a prayer has been made to quash these orders only.

(4) Brief facts. Batra Finance Private Limited through Shri Naresh Batra, its Managing Director, Batra Building Sector 17-D, Chandigarh (hereinafter called the petitioner) got on lease the Cinema Site No. 37, Chandigarh from the Estate Officer, Union Territory, Chandigarh in an open auction held on 9th December, 1976 on a premium of Rs. 27 lacs on the terms and conditions set out in the allotment letter and incorporated in the lease deed executed by the petitioner with the Estate Officer. The lease was to be governed by the provisions of the Chandigarh Lease Hold Sites and Building Rules, 1973 (hereinafter called the 'Building Rules'). The petitioner failed to abide by the conditions of lease as embodied in the allotment letter No. 197-3150-U-CL-1 dated 6th January, 1977 and incorporated in the lease executed by the petitioner with the Estate Officer inasmuch as the petitioner failed to make payment of the amount of Rs. 2,02,500 towards ground rent for the years 1977—1991. The Estate Officer thereupon proceeded against the petitioner under Rule 13(iii) of the Building Rules. A Show Cause Notice was served upon the petitioner by the Estate Officer on 15th July, 1992 calling upon the petitioner to deposit the ground rent due towards him by 15th August, 1992 and public notices were also published in the Daily Tribune and Indian Express dated 9th July, 1992, 5th August 1992 and 20th August, 1992 wherein it was specifically mentioned that the Administration shall initiate proceedings for imposition of penalty upto 100 per cent on the due amount of ground rent after the expiry of notice period. The petitioner was also given opportunity of being heard in person for 25th August, 1992,—*vide* notice dated 15th July, 1992. On 25th August, 1992, Shri L. K. Watts appeared on behalf of the petitioner before the Estate Officer and requested for an adjournment which was granted and ultimately the case was heard and decided on 22nd September, 1992. The Estate

Officer,—*vide* his order dated 22nd September, 1992, imposed 100 per cent penalty on the petitioner after affording him adequate opportunity of hearing. Since the petitioner did not pay the amount of ground rent, the Estate Officer proceeded against him under Rule 13(iii) of the Chandigarh Lease Hold of Sites and Building Rules, 1973 read with Section 8 of the Act and imposed 100 per cent penalty on the outstanding amount of ground rent. Further the amount of ground rent was ordered to be recovered as arrears of land revenue as provided under Section 8 of the Act.

(5) The petitioner preferred an appeal against the order dated 22nd September, 1992 of the Estate Officer before the Chief Administrator, Union Territory, Chandigarh. The case came up for hearing before the Chief Administrator at the first instance on 24th November, 1992. On that date, the application filed by the petitioner for grant of ad-interim stay of the impugned order of the Estate Officer was heard and the same was rejected after hearing the arguments. Ultimately,—*vide* his order dated 5th May, 1993, the Chief Administrator after going through the record of the Department and after hearing the parties, dismissed the appeal of the petitioner and upheld the imposition of 100 per cent penalty on the amount due towards ground rent.

(6) The petitioner then filed a revision petition before the Advisor to the Administrator, Union Territory, Chandigarh (exercising the powers of State Government under the Capital of Punjab (Development and Regulation) Act, 1952 and the rules framed thereunder). The Advisor, after considering the case of the petitioner and after going through the record of the Department concerned, dismissed the revision petition,—*vide* his order dated 16th September, 1993 and found that the imposition of penalty was justified. He further found it as a fact that all the amenities were provided to the petitioner at the time of transfer of the site. The Advisor further held that the imposition of penalty on account of non-payment of rent was independent of the amenities provided at the time of transfer of the site thereof.

(7) It is pertinent to refer to the relevant provisions of the Rules and the Act as under :—

“Rule 1. Short title.—These rules shall be called the Chandigarh Lease Hold of Sites and Building Rules, 1973.

Rule 6. Commencement and period of lease.—The lease shall commence from the date of allotment or auction, as the

case may be, and shall be for a period of 99 years. After the expiry of the said period of 99 years, the lease may be renewed for such further period and on such terms and conditions as the Government may decide.

Rule 13. Rent and Consequences of non-payment.—In addition to the premium, whether in respect of site or building, the lessee shall pay rent as under :—

(i) Annual rent shall be 2-1/2 per cent of the premium for the 33 years which may be enhanced by the Chandigarh Administration to 3-3/4 per cent of the premium for the next 33 years and to 5 per cent of the premium for the remaining period of the lease.

(ii) Rent shall be payable annually on the due date without any demand from the Estate Officer :

Provided that the Estate Officer may for good and sufficient reasons extend the time for payment of rent upto six months on the whole on further payment of 6 per cent per annum interest from the due date upto the date of actual payment.

(iii) If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100 per cent of the amount due which may be imposed and recovered in the manner laid down in Section 8 of the Capital of Punjab (Development and Regulation) Act, 1952 as amended by Act No. 14 of 1973.”

(8) Sections 1 and 8 of the Capital of Punjab (Development and Regulation) Act, 1952 read as under :—

“1. Short title, extent, and commencement.—

(1) This Act may be called the Capital of Punjab (Development and Regulation) Act, 1952.

(2) It extends to the City of Chandigarh which shall comprise the areas of the site of the Capital of Punjab as notified by the Government of Punjab before the 1st November, 1966 and to such areas as may be notified by the Central Government from time to time.

(3) It shall come into force at once.

8. Imposition of Penalty and mode of recovery of arrears.—

(1) Where any transferee makes any default in the payment of any rent due in respect of any lease of any site or

building or both, as the case may be under Section 3, or where any transferee or occupier makes any default in the payment of any fee or tax levied under Section 7, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty :

Provided that no such direction shall be made unless the person affected thereby has been given a reasonable opportunity of being heard in the matter.

(2) Where any person makes any default in the payment of any amount, being the arrears and penalty directed to be paid under sub-section (1), such amount may be recovered from the transferee or occupier, as the case may be, in the same manner as arrears of land revenue."

(9) The contention of the learned counsel that the Chandigarh Administration was not entitled to ground rent for the years 1977 to 1980 as the Chandigarh Administration had developed the cinema site in the first week of July, 1980 and the resumption order of the site passed by the Estate Officer on 19th December, 1979 was set aside by the Chief Administrator on 24th December, 1989, is without any force.

(10) It is stated in the written statement and which goes without rebuttal that the possession of the cinema site remained with the petitioner since the year 1979 till date which includes even the period during which the site remained under resumption from 19th December, 1979 to 24th December, 1981. It is an admitted fact that the petitioner had completed construction of the cinema building before 10th July, 1980 when he got licence from the District Magistrate, U.T. Chandigarh for running the cinema and again it is an admitted fact that the petitioner had started running the cinema from 10th July, 1980 and is running the same till date.

(11) At the time of arguments, we had asked the learned counsel for the petitioner as to whether the cinema is running from 10th July, 1980, he replied in the affirmative. Obviously, the construction was completed during the years 1977 to 1980 which included some of the period when the site remained under resumption. It is pertinent to note here that the cinema site was resumed by the Estate Officer, — vide order dated 19th December, 1979 and the resumption order was

revoked by the concerned authority on 24th December, 1981. It is apparent that the cinema building could not be erected without all the facilities provided by the Chandigarh Administration to the petitioner. The stand of the petitioner that the site was developed by the respondent-authorities in the first week of July, 1980 is falsified by the fact that admittedly, the petitioner after constructing the building, started running the cinema from 10th July, 1980 and started earning profits during that operation.

(12) It does not thus lie in the mouth of the petitioner to say that the Chandigarh Administration should not charge ground rent from him for the years 1977 to 1980. He was duty bound to pay the ground rent under Rule 13 of the Building Rules. Sub-rule (ii) of Rule 13 mandates that the rent shall be payable by the lessee annually on the due date without any demand from the Estate Officer.

(13) Learned counsel for the Chandigarh Administration submits that even 100 per cent penalty imposed by the Estate Officer will not fully compensate the Administration. The petitioner has used the amount due to the Administration for his benefits since the year 1977. According to the learned counsel, even a deposit in the small savings account in a Bank will earn atleast 4 per cent to 6 per cent interest and 100 per cent penalty does not even come to half per cent of the interest on the amount used by the petitioner. The Estate Officer, according to the learned counsel for the Chandigarh Administration, was thus absolutely justified in imposing 100 per cent penalty on the petitioner under the rules and its further recovery under section 8 of the Act as arrears of land revenue.

(14) We have enquired from the learned counsel for the petitioner as to whether the petitioner has paid the ground rent. He has brought to our notice that it has not been paid. It is a case where the petitioner has flouted the valid and legal orders of the Administration with impunity. It seems that he wielded influence with the officers of that time and very conveniently did not pay the ground rent payable by him and very conveniently he took about 3 years to complete the building at his own leisure; though according to the rules, he was required to complete the building within one year from the date he got possession of the site in the year 1977. He was again successful in getting a licence for running the cinema from the District Magistrate, U.T. Chandigarh and started running the same and reaped all the benefits therefrom even when the site was under resumption. Despite all this, the petitioner has got the cheek to say that 100 per cent penalty imposed by

the Estate Officer is excessive and he is still adamant in not paying the ground rent for the years 1977—81 due to him to the Chandigarh Administration. This attitude of the petitioner and his dilly-dallying tactics not to pay the ground rent due to him justifies the imposition of 100 per cent penalty by the Estate Officer and its recovery under Section 8 of the Act as arrears of the land revenue.

(15) In view of our discussion above, this petition is dismissed with costs which we determine as Rs. 5,000.

(16) We cannot refrain ourselves to observe that the petitioner has flouted the valid and legal orders of the Chandigarh Administration with impunity. It seems that he wielded influence with the officers of that time and with their help, very conveniently did not pay the ground rent of the site due from him to the Administration. The petitioner very conveniently constructed the cinema building at his own leisure and took about 3 years to complete the building when under the rules, he was required to complete the building within one year from the date of taking of the possession of the cinema site by him. Again, he very conveniently secured the licence to run the cinema on 10th July, 1980 and even started running the same with the help of the officers of the Administration even when the cinema site was under resumption till 24th December, 1981 and reaped all the benefits therefrom.

(17) We hope that the authorities shall be careful in future to take appropriate and immediate action in such matters so that confidence of the common man is restored in the Executive and the public money is saved from being looted by the unscrupulous elements in the society.

S.C.K.

Before Hon'ble P. K. Jain, J.

SMT. GURMIT,—Petitioner.

versus

STATE OF PUNJAB & OTHERS,—Respondents.

Cr. M. No. 3356/M of 1995

24th November, 1995

Code of Criminal Procedure, 1973—Ss. 154, 156 & 157—Information disclosing commission of offence—Such information conveyed to the Police Officer—Registration of a case—Mandatory—Only after the registration of case investigation can be started.