

any charge is created by a Company on its property, it is got to be registered as required under section 125 of the Companies Act. Register of such charge is maintained in Form 8. No such register has been produced to show that claim of the Bank is not so registered. If the Bank has attached property/goods other than mortgaged or hypothecated, the Bank would cease to be a secured creditor, the other amount of sale proceeds of such property or goods would be available to the Liquidator or the Court for distribution proportionately according to law among the creditors after meeting out the other necessary obligations.

(6) The position of a secured creditor has been fully discussed by the Supreme Court in *M. K. Ranganathan and other v. Government of Madras and others* (5). The secured creditor can choose to recover the amount by selling property mortgaged or goods hypothecated and thus remain outside the winding up proceedings. In case such a creditor wants to recover the decretal amount by taking assistance of the Court by filing execution and attaching other properties of the Company, he would cease to be a secured creditor and would rank with other creditors of the Company.

(7) In view of what has been stated above, directions of Single Judge in the impugned order for disposal of objections to the execution on merits by the Executing Court are appropriate. This appeal is dismissed. There will be no order as to costs. The parties are directed to appear in the Executing Court on 25th November, 1991.

J.S.T.

Before A. L. Bahri & H. S. Bedi, JJ.

JASWANT SINGH,—Petitioner.

versus

CHANDIGARH ADMINISTRATION AND OTHERS,—Respondents.

Civil Writ Petition No. 7534 of 1991

November 14, 1991

Capital of Punjab (Development & Regulation) Act—1952 Section 8A—Resumption—Delayed payment of due instalment—Lease cancelled and 10 per cent forfeiture imposed—Appeal against cancellation order—Site restored on appeal but forfeiture amount raised to 25 per

(5) A.I.R. 1955 S.C. 604.

cent of premium—No provision in Act or rules allowing authorities to order forfeiture of 25 per cent—Resumption ordered only in extreme cases—Interest to be charged at 12 per cent & forfeiture maximum of 10 per cent of premium of plot.

(Para 7 & 8)

Held, that there is no provision in the Act or the Rules aforesaid authorising the Authorities under the Act to order forfeiture of 25 per cent of the premium and the orders impugned to that extent are void being passed without jurisdiction and authority. That on account of delayed payment of instalments of dues of the premium of lease hold or price of the plot allotted would be to charge interest at the rate of 12 per cent of the premium or price of the plot. The step to resume the site would be taken only in extreme cases and therein also taking into consideration the facts of each case, i.e. the nature of construction made thereon or other defaults or breach of terms and conditions.

Petition under article 226/227 of the Constitution of India praying that :—

- (i) a writ in the nature of Certiorari/Mandamus or such other appropriate writ, order or direction be issued quashing the impugned orders, Annexure P-1 to P-4;*
- (ii) such other appropriate writ, order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case may also be issued in favour of the petitioner and against the respondents;*
- (iii) records relating to the writ petition may be ordered to be summoned for the kind perusal of the Hon'ble Court;*
- (iv) filing of certified copies of the Annexures may be dispensed with at this stage as the true copies of the originals have been annexed with this petition;*
- (v) issuance of advance notices to the respondents may also be dispensed with;*
- (vi) costs of the writ petition may be awarded to the petitioner against the respondents.*

It is further prayed the pending the decision of the writ petition, dis-possession of the petitioner from the property in question may be ordered to be stayed.

Arun Jain, Advocate, for the Petitioner.

Anand Swaroop, Sr. Advocate with Ajay Tiwari, Advocate, for the Respondents.

JUDGMENT

A. L. Bahri, J.

(1) Jaswant Singh, petitioner was allotted a commercial site known as S.C.F. 3035-3036, Sector 22-D, Chandigarh, on leasehold basis in an open auction held on September 28, 1975, at a premium of Rs. 1,07,000. This allotment was done under the Chandigarh Leasehold of Sites and Building Rules, 1973, (hereinafter called 'the Rules of 1973'). As per terms and condition of the allotment 25 per cent of the premium and also the first instalment was paid in-time. The second instalment of Rs. 35,579 fell due on September 28, 1977, but was paid on October 10, 1977. The Estate Officer-respondent No. 3 proceeded to cancel the lease,—*vide* order dated November 20, 1978, by imposing 10 per cent forfeiture of Rs. 10,700. Copy of the order is Annexure P-1. An appeal was preferred before the Chief Administrator against the aforesaid order which was accepted on February 12, 1982, (Annexure P-2). The lease of the site was restored. However, the amount of forfeiture was raised from 10 per cent to 25 per cent and the same was to be paid within 30 days. Against the said order a revision was taken to the Advisor to the Administrator, Union Territory, Chandigarh, which was dismissed on October 10, 1988. In the order it was noticed that there was no legal provision regarding forfeiture of 25 per cent of the premium. Further revision petition filed by the petitioner was dismissed on March 22, 1991. Copies of these orders are Annexure P. 3 and P. 4 respectively.

(2) The Chief Administrator had allowed 30 days time to deposit the amount of forfeiture. The petitioner was informed about this order,—*vide* letter dated March 4, 1982 by the Estate Officer to make payment of Rs. 67,681 within 30 days. On March 11, 1982 the Chief Commissioner in its revisional jurisdiction had stayed operation of order of the Chief Administrator. While disposing of the revision, the Chief Commissioner should have granted fresh time to the petitioner to comply with the order of the Chief Administrator. In spite of that a sum of Rs. 70,000 was deposited on February 3, 1989,—*vide* receipt No. 3788 (Annexure P. 5). In this manner the petitioner claimed to have paid the entire amount to the Administration. The challenge in this writ petition is to be aforesaid orders of the authorities (Annexures P.1 to P.4).

(3) The grounds taken up to challenge the aforesaid orders of the authorities primarily are :—

- (i) The authorities under the Act have no jurisdiction to order forfeiture of 25 per cent of the premium.

(ii) That when during the time allowed by the Chief Administrator to deposit the amount of forfeiture the revision had been filed and the Chief Commissioner had ordered stay of the operation of the order, while disposing of the revision petition it was incumbent upon the Chief Administrator to grant time for deposit of the amount due.

(4) The stand of the respondents in the written statement is that several notices were issued to the petitioner to pay the amount of instalments which had fallen due. Since the same was not paid, the Estate Officer was justified in taking the step of cancelling the allotment. In the case of re-allotment the authorities could impose forfeiture in the form of penalty to the extent of 30 per cent of the difference of the premium on which the site was allotted and the prevalent market-price. In the present case when forfeiture has been ordered only to the extent of 25 per cent of the premium the same is far less than the penalty provided under the rules.

(5) After hearing learned counsel for the parties we are of the view that the action of the respondents in cancelling the allotment is not justified. Furthermore, as per rules on account of delayed payment of instalment the authorities could charge interest at the rate of 12 per cent and while restoring the site in appeal or revision filed against the order of resumption, forfeiture to the extent of maximum of 10 per cent of the premium could be ordered. Furthermore, when one of the authorities under the Act had allowed time for deposit of the amount due, while restoring the site aforesaid and operation of the aforesaid order having been stayed, it was incumbent upon the appellate/revisional authority to grant more time while dismissing the revision.

(6) The scope of the provision of the Capital of Punjab (Development & Regulation) Act and the different Rules framed thereunder for the sale of plots or allotment of plots on leasehold basis was considered by the Full Bench of this Court in *Shri Ram Puri v. The Chief Commissioner, Chandigarh* (1), following rule of law was laid down :—

“Power of resumption under Section 8-A is merely a discretionary and an enabling power. The statute does not lay down any mandate that it must necessarily be exercised in a particular situation. In sub-section (1) thereof it is first in the discretion of the Estate Officer that he may issue a

notice to show cause why an order of resumption of site or building may not be made. Equally under sub-section (2) after considering the cause shown against such a notice it is optional for the Estate Officer to order such resumption or not. The word used in both the sub-sections is 'may' and not 'shall'. To put it in plain language it is not mandatory, for the authority to order resumption but only in extreme cases it enables it to do so when the other power and sanctions to enforce the purpose of the Act have failed, or in the circumstances it is the only remedial power which can be applied. Therefore, it is farcical and imaginary to assume that the authority would necessarily use this power arbitrarily and whimsically and that they will use this hammer to swat a fly."

The aforesaid decision has subsequently been followed in several decisions of this Court. To name a few : *Shri Brij Bhushan v. The Union Territory, Chandigarh Administration* (2) and *Col. Ramesh Mehta and others v. The Chandigarh Administration, Union Territory, Chandigarh and others* (3). The present is a case where after allotment of the leasehold rights the petitioner has raised 3-storeyed building and if there was some delay in the payment of some of the instalments, the extreme step of resumption of the site was not at all called for. The fact that in spite of some notices having been issued the petitioner was unable to make arrangement for payment of the instalments *per se* is not enough to take the extreme step of resuming the site. The fact cannot be lost sight of that the Appellate Authority, examining the facts of the case, had set aside the order of resumption but conditionally, i.e. on forfeiture of 25 per cent of the premium amount. Such like matters earlier also came up for consideration of this Court. *Civil Writ Petition No. 2640 of 1990 (Des Raj v. Chandigarh Administration)* decided by the Division Bench on February 26, 1990, was case of allotment by auction of lease hold rights of shop-cum-office in Sector 37-D, Chandigarh. The site was ordered to be resumed for non-payment of some of the instalments even on notice. High Court set aside such orders with the directions that on the delayed payments of dues interest at the rate of 12 per cent in terms of Rule 12 (3-A) of the aforesaid Rules be charged. *Civil Writ Petition No. 6443 of 1990 (M/s Mannu and Association v. Chandigarh Administration and others)* was also decided by the Bench alongwith the above said case. Shri Anand

(2) (1987-1) 91 P.L.R. 598.

(3) 1989 (2) P.L.R. 668.

Swarup, Senior Advocate for the Chandigarh Administration relied upon decision of Division Bench of this Court in *Civil Writ Petition No. 11593 of 1990 (Romesh Kumar and others v. Union Territory, Chandigarh)* decided on February 13, 1991, whereby writ petition filed against the order of resumption of lease hold site for non-payment of instalments except 25 per cent money, was dismissed. This case is distinguishable on facts from the present case. The petitioner has paid, apart of 25 per cent of the premium, two other instalments. He also paid a sum of Rs. 70,000 during pendency of the appeal/Revision. The petitioner has also raised three storeyed building on the site in dispute. The ratio of the decision in *Romesh Kumar's case* cannot be applied to the case in hand.

(7) Shri Arun Jain, Advocate for the petitioner has rightly argued that there is no provision in the Act or the Rules aforesaid authorising the Authorities under the Act to order forfeiture of 25 per cent of the premium and the orders impugned to that extent are void being passed without jurisdiction and authority. Shri Anand Swarup, Senior Advocate appearing on behalf of the Chandigarh Administration, has relied upon *Pratibha Co-operative Housing Society Ltd., and another v. State of Maharashtra and others* (4), in support of his contention that 25 per cent of premium could be ordered to be recovered. The decision is not at all applicable to the case in hand. It is only for re-transfer of the plot under Rule 21-A of Rules, 1973, that upto 1/3rd the difference between the premium and the prevalent price could be charged. The present is not a case of re-transfer but is a case of resumption governed by Section 8 of the Act. In appeal or revision filed against order of resumption aforesaid forfeiture of premium to the extent of 10 per cent maximum only could be charged. Rule 21-A, aforesaid, will not be applicable at the stage of proceedings under Section 8, or appeal or revision arising therefrom.

(8) The net result of the discussion of the relevant provisions aforesaid is that on account of delayed payment of instalments of dues of the premium of lease hold or price of the plot allotted would be to charge interest at the rate of 12 per cent and forfeiture maximum to the extent of 10 per cent of the premium or price of the plot. The step to resume the site would be taken only in extreme cases and therein also taking into consideration the facts of each case, i.e. the nature of construction made thereon or other defaults or breach of terms and conditions. Even thereafter in the case of re-transfer of plot, penalty to the extent of 1/3rd of difference of premium and prevalent price could be imposed.

(4) 1991 (3) S.C. Cases 341.

Manjit Singh Khattrra, Principal, G.H.G. Khalsa College Gurusar 29
Sudhar Ludhiana v. A. S. Bedi, Principal, S. D. College,
Hoshiarpur and others (S. S. Sodhi, J.)

(9) For the reasons recorded above, the writ petition is allowed with costs, which are assessed as Rs. 1,000. The impugned orders, Annexures P1 to P4, are set aside to the extent of charging 25 per cent of the premium while restoring the site. Respondents are directed to charge 12 per cent interest on the delayed payment of instalments and 10 per cent of the premium for restoring the site. After adjusting the amount already stated above, the Estate Officer, Respondent No. 3, will inform the petitioner the amount still due which would be paid by the petitioner within one month from the service of notice of payment, aforesaid.

(10) With the directions aforesaid, this writ petition stands disposed of.

J.S.T.

Before : S. S. Sodhi & G. C. Garg, JJ.

MANJIT SINGH KHATTRA, PRINCIPAL, G.H.G. KHALSA
COLLEGE, GURUSAR SUDHAR LUDHIANA,—*Petitioner*

versus

A. S. BEDI, PRINCIPAL, S. D. COLLEGE, HOSHIARPUR AND
OTHERS,—*Respondents*.

L.P.A. No. 1241 of 1991.

January 9, 1992.

Letters Patent Appeal Clause X—Punjab University Calendar Regulation 36 & 37—Election to senate—Validity of Vote—Failure or omission on voters part to place figure denoting his order of preference under column ‘Order of Preference’—Figure ‘1’ placed after name of candidate and not in column Order of Preference—Such vote declared invalid—No ground made out to invalidate such vote.

Held, that what emerges as of material significance is the fact that failure or omission on the part of the voter in placing the figure to denote his preference under the column “Order of Preference” constitutes no ground to render such a vote in-valid. The requirement for the voter, in this context, merely being “to place on his ballot paper the figure 1 in the square opposite the name of the candidate for whom he votes”. Appeal stands dismissed.

(Para 6)

LETTER PATENT APPEAL under Clause 10 of the Letter Patent against the judgment of Hon’ble Mr. Justice V. K. Bali in Civil Writ Petition No. 16658 of 1990 decided on September 20, 1991. Civil Misc No. 1751(LPA)91.