

(2001) 09 P&H CK 0111

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14736 of 2001 and Civil Miscellaneous No. 26615 of 2001

A. Neogi

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17(3), 17(4)

Citation : (2002) 3 RCR(Civil) 473

Hon'ble Judges : N.K. Sodhi, J; Jasbir Singh, J

Bench : Division Bench

Advocate : D.D. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Residential plot No. 703-P in Sector -7 Panchkula was allotted to one Krishan Chand Talwar as per allotment letter dated 22.2.1973. It was transferred in the name of Krishan Lal son of Shri Ramji Lal and Smt. Neelam Rani wife of Krishan Lal on 23.3.1985. The transferees took possession of the plot on 28.4.1986 and thereafter constructed a building thereon which was let out to different tenants. The house was inspected by the Junior Engineer of the Haryana Urban Development Authority (for short HUDA) and also by the Sub Divisional Engineer (Survey) who reported that the building was being misused as the occupants were running shops in different parts of the building. Notice dated 4.8.1992 u/s 17(3) of the Haryana Urban Development Authority Act, 1977 (for short the Act) was issued to the allottees as well as to the tenants but none of them gave any reply. A copy of the notice was also pasted on the front door of the premises and in spite of that no reply was received. Thereafter notice was issued u/s 17(4) of the Act to the allottees and the tenants to appear before the Estate Officer, HUDA, Panchkula on 20.8.1996. A copy of this notice was also pasted on the front door of the premises. Since no one appeared before the Estate Officer, he relying on the report of the Junior Engineer came to the

conclusion that inspite of sufficient opportunities given to the allottees and the tenants they had failed to remove their shops and that misuse of the residential premises had not stopped. He, therefore, by his order dated 17.2.1997 resumed the plot and the building constructed thereon and forfeited an amount of Rs. 1045/-. He also ordered eviction proceedings to be initiated against the allottees and the tenants. Feeling aggrieved by the order of resumption the allottees preferred an appeal before the Administrator, HUDA. It was urged before the appellate authority that the allottees were not at fault and that the tenants had started misusing the residential premises by opening shops in the building against their wishes and without their consent and that eviction proceedings had bent started against the tenants before an appropriate court. The plea of the allottees was not accepted by the appellate authority which observed that misuse of the premises was continuing and that they were only trying to win the sympathy of the court by expressing their inability to stop the commercial use of the residential building. It was also observed that the allottees did not produce any evidence to show what action had been taken by them against the tenants and whether any eviction proceedings had been initiated against them. The Administrator exercising the powers of the Chief Administrator, HUDA dismissed the appeal by his order dated 1.12.1998. Not satisfied, the allottees filed a revision petition before the Commissioner and Secretary to Government of Haryana, Town and Country Planning Department. While this petition was pending Dr. A Neogi the petitioner herein who is occupying one room with an attached bath room on the first floor of the building as a tenant since November, 1990 filed an application for being impleaded as a respondent in the petition as he was an interested person against whom proceedings were to be taken for his eviction after resumption of the plot and the building. It was pleaded by the applicant that the allottees had let out the ground floor to various shop keepers for earning rentals and that he too was a tenant in one room on the first floor where he was running his clinic as a doctor. His grievance was that he had not been served with a notice before the order of resumption was passed. The application was allowed and Dr. A Neogi one of the tenants was impleaded as a respondent. He also moved another application for placing on record a photo copy of the order dated 30.5.2001 passed by the Additional District Judge, Panchkula in civil appeal No. 74-CMA of 2001. It appears that the allottees had filed a suit against the applicant (Dr. A. Neogi) for his eviction and had obtained an injunction order seeking to restrain him from misusing the residential premises. The trial court had granted an injunction against which he had preferred an appeal and the Additional District Judge had stayed the operation of the order impugned before him. The dispute was compromised in appeal and the parties agreed that status quo will be maintained till the revision petition pending before the Commissioner and Secretary to Government of Haryana was decided. The appeal was disposed of accordingly. The final order passed in the appeal was also placed on the record of the revision petition before the Commissioner-cum-Secretary. The Commissioner and Secretary to Government, Haryana by his order dated 11.8.2001 dismissed the revision petition holding that misuse in the

premises was still continuing and that even Dr. A Neogi could not run his clinic in the residential premises as a tenant as that would violate the instructions issued by HUDA in this regard. It is against this order that the present petition has been filed by Dr. A. Neogi.

2. We have heard counsel for the petitioner and perused the record and find no merit in the writ petition. It is not in dispute that the allottees had rented out the ground floor of the building to different tenants who were running shops therein. It is also admitted that the petitioner was given on rent in November, 1990 one room with an attached bath room on the first floor of the building where he is running his clinic as a doctor. The only argument advanced on behalf of the petitioner is that running a clinic in one room of the premises is not a commercial activity so as to hold that the premises were being misused by the petitioner. Counsel for the petitioner placed reliance on a judgment of the Supreme Court in *Devendra M. Surti v. State of Gujarat* AIR 1989 S.C. 63 and also on a single Bench Judgment of this court in *Kuldeep Singh Gill v. State of Punjab* 1989 96 P.L.R. 702. Both these judgments in our opinion, do not apply to the facts of this case. In *Dr. D.M. Surti* case (supra) the learned Judges of the Apex Court were dealing with the words "Commercial Establishment" as defined in Section 2(4) of the Bombay Shops and Establishments Act, 1948 and held that a doctor running a clinic must be taken to be a professional activity carried on by an individual by his personal skill and intelligence and a distinction was drawn between a professional activity and an activity of a commercial character and it was held that unless the profession carried on by a doctor also partakes of the character of a commercial nature, the doctor cannot fall within the ambit of Section 2(4) of that Act. Similarly, the learned Single Judge of this court following *Dr. D.M. Surti's* case (supra) held that a doctor carrying on his profession by running a clinic with his personal skill and intelligence cannot fall within the ambit of Section 2(4) of the Punjab Shops and "commercial establishment" as there is no commercial activity involved therein. The question that arises before us is whether the petitioner is using rented premises for residential purposes or not. Admittedly, the petitioner is a doctor who has taken on rent a room where he is running his clinic. It cannot be said that he is using the premises for residential purposes. There is, thus, a misuse of the premises for which the authorities were justified in ordering resumption of the building and the plot.

3. It was then contended that the petitioner was not served with any notice before the order of resumption was passed and, therefore, the principles of natural justice stood violated. We are unable to accept this contention either in view of the concurrent findings recorded by the authorities below that notices were sent not only to the allottees but also to the tenants which included the petitioner as well. A notice on the front door of the premises had also been pasted. We are, therefore, satisfied that the rule of *audi alteram partem* has not been violated and that all the tenants including the petitioner were served with notices.

4. No other point was raised.

5. In the result, the writ petition fails and the same stands dismissed.

Sd/- Jasbir Singh, J.