

(2012) 07 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 21131 of 2011

Amita Sehgal

APPELLANT

Vs

Haryana Urban Development Authority and another

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : (2012) 07 P&H CK 0116

Hon'ble Judges : Rajiv Narain Raina, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Ashish Gupta, for the Appellant; Raman Gaur, for the Respondent

Judgement

Hemant Gupta, J.—Petitioner has invoked the writ jurisdiction of this Court seeking a direction to the respondents to issue occupation certificate in respect of House No. 386, Sector 25, Panchkula after the completion of the construction as per the sanctioned site plan. Petitioner was allotted a plot measuring 6 marlas vide the letter of allotment dated 18.1.1994. The possession of the said plot was handed over to the petitioner on 8.6.2009. Subsequently, the petitioner got the building plan sanctioned. The sanctioned plans were valid for a period of two years i.e. 11.9.2011. The petitioner sought the occupation certificate on 10.3.2011. However, the petitioner has not been issued occupation certificate for the reason that the petitioner was to complete the construction within 15 years of the date of offer of possession which expired on 15.6.2010 i.e. the period specified in the policy granting extension in the period to raise construction. In these circumstances, the petitioner invoked writ jurisdiction of this court.

2. It is also admitted that respondents have not initiated any proceedings for resumption of the plot for any reason including that the petitioner has not constructed the building thereon.

3. After hearing learned counsel for the parties, we find that once the petitioner has raised construction before any proceedings for resumption have been

initiated, the non issuance of occupation certificate is not warranted. The policy for extension of raising the construction is to facilitate the allottees for raising construction. The resumption of plot for not raising construction is a last resort which has the effect of depriving the allottee of the property. In *Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others*, the Hon"ble Supreme Court applied doctrine of proportionality while considering the resumption of a building. The Court held as under:

24. It is, therefore, not a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard-and-fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not.

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43. In terms of the provisions of the Act, the respondents are entitled to: (1) resumption of the land, (2) resumption of the building, and (3) forfeiture of the entire amount paid or deposited. Having regard to the extreme hardship which may be faced by the parties, the same shall not ordinarily be resorted to.

44. The situation, thus, in our opinion, warrants application of the doctrine of proportionality.

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46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve.

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49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted

administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the fundamental freedom has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle. (See *Om Kumar vs. Union of India* (2001) 2 SCC 386.)

4. Since, the proceedings for resumption has not been initiated whereas the petitioner has completed the construction though beyond the extended the period of construction, we find that declining the occupation certificate is not justified. Consequently, we direct the respondents to issue the occupation certificate if the building is as per the plans or the violations are compoundable. Disposed of with the above-said directions.