
(2010) 05 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8540 of 1989 (O and M)

Avtar Singh (deceased)

APPELLANT

Vs

The Adviser to The Administrator, U.T. and Others

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8A

Citation : (2010) 159 PLR 576

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition challenges resumption of the property and the subsequent order confirming the same, the action having been taken at the instance of the Chandigarh Administration for failure of the owner to put up a construction within the time allotted. The difficulty pleaded by one of the co-owners was that his father, who was a co-owner with him, had died and the consent of all the heirs of the father could not be obtained since they were living in different places. It became difficult for one of the co-owners to obtain the necessary transfer from all the coheirs of his father's share and the last of communication which the Chandigarh Administration sent to the petitioner was that the transfer of plot in his name would become possible only if the death certificate along with the affidavits of all the legal heirs were submitted to the office for transfer. With the unavailability of the co-heirs, the problem lingered on for the petitioner and the ultimately when the transfer had not been made in favour of the petitioner, the construction could not be completed. The resumption order was, therefore, issued after a show cause notice and an enquiry u/s 8-A of the Capital of Punjab (Development and Regulation) Act of 1952. There was an appeal filed by him against the order contending inter alia that the building could not be constructed on account of the heart attack that he had himself and that he should not be deprived of the property for the failure to complete the

construction which was beyond his control. It appears to have argued before the Appellate Court that an order that had been passed by the Assistant Estate Officer was the result of an enquiry that had been held against a dead person and therefore the entire proceedings were invalid. I am convinced that the Chief Administrator held on to a line of reasoning that was adopted by the Assistant Estate Officer that the property had been lying vacant since the year 1954 and they had failed to erect the building on the said site over a span of 8 years since granting of extension of time. The Appellate Authority found that the Estate Officer had started resumption proceedings against Kartar Singh and Avtar Singh knowing the fact that Avtar Singh had already expired but without adverting to the effect of proceedings against a dead person, he held that the appeal had been filed only on 20.04.1981 when the order had been passed on November 1979 and, therefore, the appeal was barred by time. It was reasoned by him that no cogent reason had been given by him for not filing the appeal within time. He found fault with the legal heirs of the deceased person for not having taken steps to get the share transferred in their names and found that there was no merit in the appeal. This decision of the Appellate Authority was confirmed in revision and the writ petition challenges this order.

2. The rules under the Capital of Punjab (Development and Regulation) Act prescribing certain time limit for construction of houses with further provision for resumption if the allottee had not constructed is rooted on a sound public policy that a development of a city and town does not take place in a single day and it would become possible only if the beneficiaries of sites avail their allotments for construction of houses. The city develops through settlement of persons and construction of houses and if only people had purchased property to retain them as sites, there could be no scope for development of the city itself. There may be hard cases where the constructions might not have become possible, such as death of a person or illness. Both these events happened with the petitioner, his father died and he himself was reported to have suffered a heart attack. The legal heirs were strewn about in various parts in India and abroad and consequently, the transfer of ownership could not be obtain from all the legal heirs of the father in favour of one of the co-owners. The learned Counsel appearing on behalf of the petitioner states that without obtaining transfer of the heirship from other co-owners, it was impossible for the petitioner to put up the construction, since the rules themselves do not provide for sanction of building plans in the absence of transfer of shares from a deceased person to a legal heir. It was not as if the administration was not aware of any difficulties that an allottee could face and there has been reasonable resilience in its policy in granting periodical extensions for construction. The learned senior counsel refers to policy guidelines issued by the Chandigarh Administration, Finance Department, on 01.12.2009 providing for extension of time for construction for a period of 1 year from the date of publication of the public notice. The counsel states that presently the property stands registered in the name of one of the co-heirs and the registered owner is prepared to pay the extension fee and put up

the construction after securing sanction from the building plans within the time that may be allotted, if the resumption order was set aside.

3. This Court has held in several cases that the order of resumption shall be the last resort and adequate opportunities must be granted to set right the violations where they existed or provide for opportunity to put up constructions. In this case, the inability to put up the construction was on account of death of one of the co-owners and the difficulty that the surviving member had in securing the transfer from the co-heirs to his own name. The problem has got aggravated over the years when there had been a death of the surviving member also.

4. Having regard to the peculiar facts and circumstances, I find merit in the contention that the inability to put up the construction had been due to unusual circumstances beyond the control of the petitioners and therefore, the extreme step of resumption would not be justified. The impugned orders of resumption are set aside and the owner of the property who has obtained mutation in the official records relating to holding of the property will apply to the competent authority for sanction of building plans and complete the construction in accordance with law. The petitioners shall abide by the relevant rules and regulations relating to the payment of extension charges and any other charges that may become payable to secure valid right to the property. For any violation of the terms the petitioners shall take the consequences as the rules would provide.

5. The writ petition is allowed on the above terms. There shall be however no directions as to costs.