

(1998) 07 P&H CK 0163

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10187 of 1992

Bhagwati and Another

APPELLANT

Vs

The Advisor to the Administrator, Union Territory, Chandigarh
Administration, (Exercising the Powers of Administrator) and
Others

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8A
Constitution of India, 1950 — Article 14, 19

Citation : (1998) 120 PLR 466 : (1998) 4 RCR(Civil) 348

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : None, for the Appellant; Subhash Goyal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This petition has been filed with the following prayers :-

"It is, therefore, respectfully prayed that this Hon"ble Court may please issue to:-

i) call the records of the case for their kind perusal.

ii) issue a writ in the nature of certiorari for quashing of Annexure P/I and further declaring Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 as violative of Articles 14 and 19(g) of the Constitution of India and are liable to be struck down as unconstitutional.

iii) issue any other appropriate writ, order or direction which this Hon"ble court may deem fit and proper in the facts and circumstances of the case.

iv) filing of certified copies of Annexure P/I to P/3 may kindly be dispensed with as the same are not readily available with the petitioners.

v) Service of advance notice upon the respondents may also be dispensed with.

vi) Costs of the writ petition be awarded in favour of the petitioners and against the respondents".

2. A look at the averments made in the writ petition shows that the petitioner has challenged the vires of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 by placing reliance on the decision of the Apex Court in Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others, .

3. We have heard Shri Subhash Goyal and have perused the record.

4. The constitutional validity of Section 8-A of 1952 Act has been upheld by the Full Bench of this Court in Ram Puri v. Chief Commissioner, Chandigarh (1982) 84 P.L.R. 388. In its judgment, the Full Bench has taken note of the decision of the Supreme Court in Jagdish Parshad's case (supra) and then held as under :-

"The fundamental right under Article 19(1)(f) to acquire, hold and dispose of property is not an absolute right. It can be hedged in by the imposition of reasonable restrictions of its exercise in the interest of general public. Apart from this express limitation imposed by the Constitution itself, binding precedents of the Final Court have authoritatively highlighted that in this context considerations of larger, social and public purpose are germane to the construction of this article.

The challenge to the constitutionality of a statute on the anvil of Article 19(1)(f) is not merely to be judged from the particular provisions of the Section alone. It is permissible and indeed desirable for the Court to take judicial notice of the facts which led to the enactment of the statute and the avowed objects and reason thereof. Again the preamble to the act may provide a clue to its interpretation. Further the provisions of the impugned Section along with the other supplementary provisions of the Act as also the statutory rules made thereunder, have all to be viewed as a whole for testing its constitutionality.

It is well settled that the taint of unconstitutionality does not attach to a provision of law merely because there may be remote possibility of the abuse of power conferred thereby. In such a situation it is only the arbitrary or the wrongful exercise of the power which can be struck down but not the statute itself.

The entire Act was purposefully directed to provide a reasonable social control of the urbanisation visualised by the creation of an altogether new capital city for the State from scratch. The threefold pre-eminent ideas underlying the same were the need and incentive to create an altogether new town at a place where none existed and that too within the shortest possible time, and further to ensure that it conformed to an ideal concept of a planned city as against the haphazard urbanisation or the mushroom growth of slums which in the ultimate analysis can even strangle an existing town to extinction.

It is not mandatory for the authority to order resumption, but only in extreme cases it enables it to do so when the other powers 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.

In the larger conspectus of the purposes of the Act itself, its preamble, the specific provisions of Section 8-A: the setting in which it is placed along with the supplementary Sections of the Act and the rules framed thereunder; it has to be held that the enabling power of resumption conferred thereby is only a reasonable restriction on the fundamental right to hold, acquire and dispose of property and is, therefore, in no way violative of Article 19(1)(f)".

The Full Bench has also held :-

"The subsequent amendments introduced in Sections 3 and 8 as also the deletion of S.9 altogether and its substitution by S.8-A of the Act was designed to and has undoubtedly cured the infirmities which their Lordships had discerned in the previous provisions in Jagdish Chand Radhey Shyam Vs. The State of Punjab and Others, . By these legislative changes the charge on the transferred site has been abolished and similarly the clog on the transfer to the third party stands removed. Further there are now in-built guarantees and safeguards provided in S.8-A itself by ensuring a reasonable opportunity to show cause against any proposed resumption or forfeiture. A further limitation that forfeiture in no case shall exceed 10 per cent of the total amount of consideration money has been itself laid down therein. The Estate officer is obliged to record his reasons after giving adequate opportunity including the right to lead evidence to the transferee before passing an order adverse to his interest. Further the Statute and the rules thereunder provide for an appeal and revision against such orders. Therefore, it cannot be said that Section 8-A suffer from the vice of discrimination or in any way violate the equality clause under Article 14 of the Constitution."

5. The constitutional validity of Section 8-A of 1952 Act has also been upheld by the Supreme Court in Babu Singh Bains etc. Vs. Union of India and others etc., . In that decision, the Apex Court has expressly approved the Full Bench judgment of this Court in Ram Puri's case.

6. In view of the authoritative pronouncement of the Apex Court, we do not find any rhyme or reason to declare Section 8-A of 1952 Act as ultra vires to the provision of Articles 14 and 19 of the Constitution.

7. The petitioner's challenge to the notice Annexure P-I dated 23.7.1992 deserves to be negatived being pre-mature. The petitioners should have instead of invoking jurisdiction of the High Court under Article 226 of the Constitution filed reply to the notice to contest the allegation that they are guilty of misuse of the premises allotted to them. If, at all, the competent authority had passed an order adversely affecting their right, the petitioners could file appeal u/s 10 of 1952 Act. If the appellate authority was not to accept their plea, then it was open to them to file revision before the Advisor to the Administrator. Thus, atleast three remedies were available to the petitioners to satisfy the respondents, that

they have not misused the allotment made in their favour.

8. It is unfortunate that in the garb of challenging the vires of Section 8-A of the 1952 Act, the petitioners succeeded in persuading the Court to stay the operation of the notice dated 23.7.1992 and this stay has operated for last 6 years due to utter negligence of the respondents to contest the writ petition and failure of the court to decide the case. It appears to us that the attention of the Division Bench which passed the ex parte interim order dated 30.7.1992 was not drawn to the judgment of the Full Bench in Ram Pun's case (supra) else there was no occasion for passing an ex parte interim order in favour of the petitioners.

9. Be that as it may, there is no valid reason to exercise writ jurisdiction of this Court to quash the notice.

10. For the reasons mentions above, the writ petition is dismissed. The respondents are now free to take further proceedings in continuation of the notice dated 23.7.1992. The petitioners are also given liberty to challenge the order which may be passed by the competent authority after taking into consideration the amendments made in 1952 Act and 1960 Rules and the policy framed by the Administration granting permission for partial use of residential premises for non-residential purposes.