

(1997) 07 P&H CK 0171
In the Punjab And Haryana At Chandigarh

Bhajan Singh and Sons (HUF) and Others	APPELLANT
Vs	
Chandigarh Administration U.T. and Others	RESPONDENT

Date of Decision : 22-07-1997

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 10(2), 8
Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 22(2)
Constitution of India, 1950 — Article 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4

Citation : (1997) 117 PLR 521 : (1997) 4 RCR(Civil) 404

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Shyam Kumar Sharma, for the Appellant; Subhash Goyal and Gulshan Sharma, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—All these petitions deserve to be decided by one order because the main issue raised in them is common.

2. Before we embark upon the task of adjudication of the legal issues, it is necessary to notice some facts.

3. Commercial site Nos. 447-448 (show room) was allotted to Bhajan Singh and Sons (HUF), K.D. Sharma, Ashok Kumar Sharma, Sunil Kumar Sharma and Raj Kumar Sharma in August, 1985. After the administration of Union Territory accepted the highest bid of Rs.15,65,000/- given by Bhajan Singh and Sons and others in the auction held on 9.7.1985. Clauses 3, 13(a), 16, 17 and 29 of the letter of allotment for the purpose of deciding these cases are reproduced below :-

"3. The lease shall be governed by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 as amended upto date and rules made thereunder.

XX XX XX XX XX 13(a) "The lessee will not be entitled to transfer the site or the building without the prior permission of the Estate Officer. Such permission shall not be given until the lessee has paid full premium and the rent due under the lease for the site unless in the opinion of the Estate Officer exceptional circumstances exist for the grant of such permission."

In case transfer permission is granted 50% of the unearned increase in the value, i.e. the difference between the premium paid and the market value of the site/building at the time of transfer shall be paid to the Govt. before registering such sale or transfer. The market value of the property for purpose shall be assessed by the Estate Officer or such other authority as may be prescribed by the Chief Administrator. The lessee shall be entitled to produce his evidence and of being heard. The decision of the Estate Officer or the prescribed authority shall be final and binding on the lessee.

XX XX XX XX XX 16. The site and the building erected thereon shall be used only for the purpose of "General Trade only" for which it has been leased.

17. In the event of default, breach or non compliance of any of the conditions of lease, the lease may be cancelled and the site/building resumed and the whole/part amount paid to Government towards the premium/rent of the site may be forfeited to Govt. After the cancellation of lease, it shall be responsibility of the lessee to remove the malba/structure, if any, within such reasonable period as may be prescribed by the Estate Officer, not exceeding 3 months from the date of cancellation of lease, failing which the Estate Officer shall be competent to remove the malba or to proceed to auction the site alongwith the building thereon and after deducting the market price of the site make over the proceeds of the auction to the lessee. In case of any dispute arising out of determination of the amount to be paid to the lessee following the auction of the site and building thereon, the Chief Administrator shall act as the Sole Arbitrator and his decision shall be final and binding on the parties.

XX XX XX XX XX 29. The terms and conditions at this allotment letter shall be in addition to "the provisions of Capital of Punjab (Dev. and Reg.) Act, 1952 and the rules made thereunder which shall be binding on the lessee."

4. Just after one year of the allotment of site, Bhajan Singh and sons and others, Tented out a part of the premises to the International Polytechnic for Women through its Director Shri Avtar Singh. A rent deed was executed by the parties on 30th September, 1986. Condition No. 10 of the rent deed reads as under:-

"10. That the tenants shall not use the premises for any prohibited trade, under the law and shall use the premises only for general trade."

5. After occupying the premises, the tenant started a Girls' Hostel and College in the name and style "International Polytechnic for Women". Having come to know of this activity, the Assistant Estate Officer issued notice dated 24.4.1987 upon the allottees for taking action under Rule 20 of the Chandigarh Lease Hold

of Sites and Building Rules, 1973 (hereinafter referred to as "the Rules"). One of the allottees, namely, K.D. Sharma, representing himself to be the general power of attorney holder of all the allottees, submitted a reply to the Estate Officer on 14.5.1987. Therein, he made the following statement:-

"It is requested that I had rented out Ist and 2nd floor of SCO No. 447-448, Sector 35-C, Chandigarh to the International Polytechnic for Women through their Director Sh. Avtar Singh vide rent deed executed between us on 10th July, 1986. I had specifically mentioned in clause 9 of the Rent Deed "That the Tenants shall strictly abide by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules framed thereunder as amended from time to time."

I may, however, request you that I have asked the management of International Polytechnic for Women to stop using it for hostel and to use it only for official purposes and they have assured me to accede to my request at the earliest possible. In view of above submissions the notice under reference may kindly be withdrawn."

6. The Assistant Estate Officer did not feel satisfied with the reply given by the allottees. Therefore, he gave opportunity to the allottees to produce evidence that the premises were not being misused. He fixed the case for hearing on 15.5.1987, 21.8.1987, 9.10.1987, 4.11.1987, 18.1.1988, 18.4.1988, 16.1.1989 and 27.2.1989. However, none appeared on behalf of the allottees. On 21.3.1989, the Assistant Estate Officer cancelled the lease of the site and forfeited 10 per cent of the total premium plus ground rent and other dues.

7. In the appeal filed by them the allottees made the following statement:-

"7. That appellant has also made clear to the tenant to stop the misuse of the premises, who has assured to stop it forthwith. It is further submitted that there are so many other commercial institutions functioning in Sectors 17, 22, 26, 34 and 35. 8. That there is no violation of instructions on, behalf of the appellant, if so, that too by the tenants, without the consent of the landlord, is being assured by the tenants to stop the misuse of the building, as alleged.

xx xx xx xx xx 11. That appellant is going to take stern action against the tenants to stop the misuse of the building, for which tenants have also assured to stop the same in due course."

8. The Chief Administrator who heard the appeal annulled the order of the Assistant Estate Officer. In his order dated 31.8.1993, the Chief Administrator observed :-

"After hearing the parties and going through the record of the Estate Officer as well as the inspection report I find that the only ground on which the lease of the site was cancelled was that the lessee have permitted the use of the building for running the Girls Hostel and College under women and this misuse has been stopped. Even if there is any other misuse opportunity is required to be given to

the appellant before the Estate Officer passes an order of cancellation of lease of the site on any other ground. Consequently, I set aside the impugned order, restore the site to the appellant subject to the condition that the forfeiture already imposed shall stand and be payable within 30 days reckonable from the despatch of this order, failing which the order of the Estate Officer shall become operative. The Estate Officer shall however be competent to proceed against the appellant for misuse of the premises on the ground other than that of the present impugned order."

9. Feeling dissatisfied with the order of the appellate authority, Bhajan Singh and others filed revision petition before the Adviser to the Administrator. During the pendency of the revision petition, the Law Officer of the administration produced inspection report dated 16.1.1996. By placing reliance on that report, the Adviser to the Administrator rejected the revision petition. This is evident from a bare perusal of para 4 of the order dated 17.1.1996 passed by the Adviser, which is quoted below: -

"During the course of arguments, the learned Law Officer has submitted inspection report dated 16.1.1996 according to which following misuses still exist at the spot:-

Basement:

Basement is still being misused for holding of classes for the Deptt. of Fashion and Designing. Five Long tables and 50 stools were lying in the basement and four sewing machines.

Ground Floor:

Wooden partitions still exist there: Functioning of restaurant under the name and style Dip-E-O-Fast food is also in existence. Second half portion is being used for running the business of S.T.D. Pay phone and photostat services and cold drinks.

F.F. and Top Floor:

Both upper floors are under the occupation of principal International Poly Tech. Institute and Girls Institute for Fashion Technology for Women and are being used for holding of classes.

This report could not be controverted by the petitioners. Rather it was argued that the School exists for the last many years and, therefore, the same cannot be thrown out. The site in question is meant for "General" Trade but from the report of the Estate Officer it comes out that all the floors of the building are being used for running School/Institution and also for running the business of Fast Food/restaurant, S.T.D. Pay Phone, the photostat Services and Cold Drinks. From the order under appeal, it comes out that at the time of passing this order, no school was in existence at the spot. As presently there still exists school/institution in the premises, it seems that immediately after the passing of this order, the petitioners re-started the same. Thus it comes out that the premises

are still being misused and the petitioners have no intention to remove the same. In this view of the matter, I see no force in this revision petition and dismiss the same."

10. The allottees have challenged the orders passed by the Assistant Estate Officer and the Adviser to the Administrator on the ground of violation of principles of natural justice, non-application of mind and arbitrariness. The order of the Chief Administrator has been challenged on the ground that having restored the site to the allottees, the Chief Administrator has no authority to uphold the forfeiture of 10% of the premium paid by the allottees.

11. M/s International Polytechnic for Women has filed C.W.P. No. 7331 of 1996 for quashing of the order dated 17.1.1996 passed by the Adviser to the Administrator on 17.1.1996 mainly on the ground of the violation of the principles of natural justice. Pawan Trehan, who is also one of the tenants of S.C.O. No. 447-448, Sector 35 since 28.12.1993 has challenged the order passed by the Advisor to the Administrator on the ground of the violation of the principles of natural justice and non-application of mind.

12. The petitioners have also challenged the orders passed by the respondents Under Sections 4 and 5 of the Public Premises (Eviction of Unauthorised Occupations) Act, 1971 (hereinafter referred to as "the Act of 1971") on the ground that the Competent authority had no jurisdiction to initiate proceeding u/s 4 of the Act of 1971.

13. Before we deal with the various contentions urged by the learned counsel for the parties to assail the order passed by the Adviser to the Administrator, it will be appropriate to dispose of the contention urged by Shri Shyam Kumar Sharma that the Chief Administrator had no jurisdiction to maintain the forfeiture of 10% premium. Shri Sharma relied on the decision of a learned Single Judge in Goyal and Company Vs. Union Territory and Others, , to strengthen his argument. Shri Subhash Goyal argued that the Chief Administrator did not set aside the order of the Assistant Estate Officer in its entirety and, therefore, the order of forfeiture cannot be declared as nullity. He relied on the Division Bench judgment in Ashok Kumar Vs. Union of India (UOI), and the judgment of the learned Single Judge in Navdeep Kaur Sandhu and Others Vs. The Advisor to The Administrator and Others, . In our considered opinion Shri Goyal is right in his submission that the appellate authority has the jurisdiction to maintain the order of forfeiture even if the order of cancellation of lease or resumption of site passed by the Estate Officer/Assistant Estate Officer is not sustained. Section 10(1) of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as "the Act of 1952") lays down that any person aggrieved by an order of the Estate Officer made Under Sections 8 or 8-A can file an appeal before the Chief Administrator within 30 days of the date of communication of the order. Proviso to Section 10(1) empowers the Chief Administrator to condone the delay in the filing of the appeal Section 10(2) confers powers upon the Chief Administrator to confirm, vary or reverse the order appealed against and pass such order as it:

deems fit. Likewise, under Rule 22 of 1973 Rules power is conferred upon the Chief Administrator to entertain the appeal against an order passed under Rules 12, 13, 20 or 21 of the rules. After hearing the parties, the Chief Administrator can confirm, vary or reverse the order appealed against and pass such order as it deems fit. On a plain reading of Section 10(2) alongwith rule 22(2) it becomes clear that the power conferred upon the appellate authority is very wide. It is vested with the discretion to pass appropriate order which may appear to be just and proper in the circumstances of the case. In a given case the appellate authority may uphold the order passed by the lower authority. In another case it may reverse the order of the lower authority in its entirety. In a third case the appellate authority may not reverse the order in its entirety but modify it. However, the requirement which is implicit in the exercise of appellate power by the concerned authority is that it must apply its mind judiciously to the facts of the case and give cogent reasons in support of its conclusion. To us there does not appear any reason why the Court should curtail or abridge the wide magnitude of the powers vesting in the appellate authority. The judgment of the learned Single Judge in *Goyal and Company v. Union Territory, Chandigarh* (supra), prima facie, seems to support the proposition put forward by Shri Shyam Kumar Sharma but the Division Bench judgment in *Ashok Kumar v. Union of India* (supra) lays down the correct proposition of law. After making reference to the decision of the learned Single Judge in *Goyal & Company's* case (supra), the Division Bench observed as under:-

"There can be no manner of doubt that Rule 12(3) of the Rules permits forfeiture only when there is an order of resumption and it cannot, therefore, stand without there being such an order of resumption. The question that, however, arises to be considered in the present case is whether or not the order of resumption was a valid order. If invalid, not only must the order be set aside, but the forfeiture too must go with it. If, however, such an order of resumption is valid, it could only have been set aside as a measure of concession granted by the appellate or revisional authority and as a concession, it is obvious that it could be conditional too. Payment of an amount equal to a certain proportion of the premium would in such a case be as valid a condition of restoration of the site as payment of the entire amount outstanding in respect of it within specified period. To hold otherwise, could lead to consequences, which may not be in public interest, as on the one hand, it may deter the appellate or revisional authority from affording a defaulter another opportunity of clearing his outstandings and thus save his site from resumption and on the other hand, if all that the defaulter has to do is to clear his outstanding without any further order and have the resumption set aside, it would be positive disincentive to allottees to pay their dues as per the terms of the allotment. Seen in this light *Goyal and Company Vs. Union Territory and Others*, must be read to be an instance of the order of resumption being invalid and not the rule that where an order of resumption is set aside as a concession, the condition, regarding forfeiture of the premium alongwith the entire outstanding amount due, must be taken to be invalid."

14. Moreover, the learned Single Judge who decided M/s Goyal and Company's case (supra) himself followed the reasoning given in Ashok Kumar's case (supra) and upheld the forfeiture in Navdeep Kaur Sandhu's case (supra).

15. A perusal of the order passed by the Chief Administrator together with the memo of appeal shows that the petitioners Bhajan Singh and sons and others have admitted the misuser of the premises but pleaded for compassionate approach by stating that the misuse has been stopped. The Chief Administrator accepted their plea and set aside the order of cancellation of the lease of the site. At the same time he observed that if the cancellation of the lease is to be done on some other ground then opportunity of hearing has to be given to the affected party. It is, therefore, clear that the Chief Administrator did not reverse the order of the Assistant Estate Officer on the ground that the said order was illegal or arbitrary but only on the ground that the misuse of the premises had been stopped. In the background of these facts and in view of the law laid down in Ashok Kumar's case (supra), we do not find any merit in the submission of Shri Shyam Kumar Sharma that the order passed by the appellate authority upholding the forfeiture is erroneous in law.

16. We shall now deal with the argument that the order passed by the revisional authority is liable to be quashed being violative of the principles of natural justice. Learned counsel argued that the revisional authority relied on the report which was got prepared behind the back of the petitioners but no notice or opportunity of hearing was given to them qua that report. Shri Goyal tried to defend the impugned order by arguing that no prejudice has been caused to the petitioner because the report submitted by the Law Officer was available on the record and the petitioners could inspect the same. However, we are unable to agree with him. The rule of audi alteram partem requires that no man shall be condemned unheard. By judicial precedents it is now a settled principle of law that all that material which is intended to be used against a party must be made known to the affected party who must be given opportunity of defence qua such adverse material. In other words it is the duty of the quasi-judicial authority to make available every piece of evidence which is likely to be used against the affected person. This is a necessary concomitant of the principles of natural justice because without knowing as of what material is going to be used against it the affected party cannot effectively defend itself.

17. In the present case, the inspection report produced by the Law Officer was not made available to the allottees and they did not get opportunity to make their submissions and produce evidence to counter the contents of the inspection report. Thus the order passed by the revisional authority is contrary to the principles of natural justice and on that ground the order dated 17.1.1996 is liable to be quashed. This view of ours is supported by the decision of the Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., .

18. Another reason for quashing the order dated 17.1.1996 is that the revisional

authority did not give notice and opportunity of hearing to the tenants in spite of the fact that the administration was fully cognizant of the existence of the tenants. Without hearing them no order could possibly be passed affecting "their right to remain in occupation of the premises.

19. We also find merit in the argument of the learned counsel for the petitioners that the revisional order is vitiated due to consideration of extraneous grounds. Learned counsel submitted that the notice issued by the Assistant Estate Officer was confined to the allegation of misuse qua International Polytechnic for Women and Girls Hostel and it did not contain the allegation that the premises were being misused by running a restaurant, STD Pay Phone, Photostat Service and Cold Drinks. Learned counsel for the administration could not satisfy us as to how new ground could be used by the revisional authority for rejecting the revision petition filed by Bhajan Singh and sons and others. Before creating new grounds for justifying the cancellation of the lease, the revisional authority should have given notice of the same to the petitioners. Admittedly, this has not been done. Therefore, we hold that the order passed by the Adviser is illegal and it is liable to be quashed.

20. The order passed by the Assistant Estate Officer is also liable to be ignored because the appellate authority had quashed it and the order passed by the revisional authority has been found by us to be illegal and violative of the principles of natural justice. The order/judgment passed under the Act of 1971 are based on the order passed by the Assistant Estate Officer and as we have found that the said order is liable to be ignored, consequential action taken on the basis of that order is also liable to be invalidated.

21. In the result, the writ petitions are allowed. The order dated 17.1.1996 passed by the revisional authority as well as the order/judgment passed u/s 4, 5 and 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are declared illegal and are quashed. This shall be subject to the following conditions: -

(i) If the petitioners Bhagat Singh and sons failed to comply with the directions given by the Chief Administrator on 31.1.1993 within a period of 30 days of the receipt of certified copy of this order, the site in question shall stand resumed automatically and the order passed by the Assistant Estate Officer shall stand restored.

(ii) Even after the petitioners Bhajan Singh and sons and others comply with the order passed by the Chief Administrator on 31.1.1993 within the time mentioned in para (i) above, the Estate Officer, Union Territory/other competent authority shall be free to initiate fresh action against the petitioners u/s 8-A of the Act and Rule 20 of 1970 Rules in the light of the report dated 16.1.1996 submitted before the revisional authority. However, before passing final order, the concerned authority shall give notice and opportunity of hearing not only to M/s Bhagat Singh and sons and Ors. but also to those who are likely to be adversely

affected by the order of resumption of site/cancellation of lease.

22. The Registry is directed to give copy of this order dasti on payment of the prescribed fee.