
(2013) 07 P&H CK 0854
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5190 of 1990

Chaman Lal (Deceased) through L.Rs. and Another	APPELLANT
Vs	
State of Punjab and Another	RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Citation : (2013) 172 PLR 424

Hon'ble Judges : Jaspal Singh, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : G.C. Dhuriwala, for the Appellant; N.K. Verma, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—The petitioners through the present petition filed under Articles 226/227 of the Constitution of India pray for quashing the orders dated 16.6.1976, Annexures P.1 and P.2 passed by respondent No. 2-Administrator, New Mandi Township, Punjab, directing resumption of the sites alongwith the structures and forfeiture of the whole amount paid by them. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Petitioner No. 1 Chaman Lal Bhatia purchased Plot No. 26 and petitioner No. 2-Nand Lal purchased Plot No. 17 for Rs. 9100/- and Rs. 13,000/- respectively in New Mandi Area, Bhulath District Kapurthala on 20.9.1972. After depositing 25% of the total amount, the possession of the plots was given to the petitioners. In the year 1987, the petitioners came to know that the said plots had been resumed for non-payment of due instalments. The petitioners got the copies of resumption orders dated 16.6.1976, Annexures P.1 and P.2 in December 1988. They submitted representations dated 16.1.1989, Annexures P.4 and P.5 to the Administrator-respondent No. 2 with the prayer to pass similar orders of withdrawal of resumption in their case which were passed in the case of a similarly situated person Joginder Pal, owner of Plot No. 13, Mandi Bhulath but no action was taken. According to the petitioners, the Government directed the

Director of Colonisation to form a policy in view of judgment of this Court in CWP No. 1524 of 1983 (M/s. Dalip Chand Vir Singh, Kapurthala v. State of Punjab and others,) dated 20.4.1983 whereby Section 13 of the Punjab New Mandi Townships (Development and Regulation) Act, 1960 (in short, "the Act") was declared ultra vires. Instructions dated 27.2.1979 and 30.8.1979, Annexures P.6 and P.7 were accordingly issued in this regard and as a result, a number of plots which were resumed earlier were restored to the allottees. Thereafter, the State Government amended Section 13 of the Act which was again challenged before this Court and resumption order was quashed even after the amendment. The delay in filing the petition was also considered by this Court in M/s. Dalip Chand Vir Singh's case (supra) and action of the authorities for resumption was held to be without jurisdiction. Aggrieved by the action of the respondents in not considering the representations submitted by the petitioners, they filed the present writ petition.

2. Learned counsel for the petitioners submitted that respondent No. 2- Administrator, New Mandi Township, Punjab had passed orders dated 16.6.1976, Annexures P.1 and P.2 u/s 13 of the Act, resuming the sites for non-payment and had forfeited the whole of the amount paid. According to the learned counsel, Section 13 of the Act was declared ultra vires and struck down by a Division Bench of this Court in Dharam Pal etc. Vs. State of Punjab and Another, . It was urged that by virtue of Punjab Act No. 16 of 1981, amended Section 13 of the Act was incorporated which was made operative with retrospective effect from 1.11.1966. Though u/s 8 of the Amending Act, the legislature had validated all actions taken under the existing provisions of Section 13 notwithstanding any judgment etc., still the requirements under sub-sections (1) to (4) of the Section 13 of the Amending Act were not complied with and no order imposing penalty was passed before order of resumption and forfeiture. Further, no show cause notice in terms of sub-section (3) was also issued to the petitioners. Rather, the orders impugned herein being of the year 1976, the provisions of Section 13 of the Amending Act which was incorporated in 1981 and made effective retrospectively could not be complied with. Support was drawn from Division Bench judgment of this Court in State of Punjab and Others Vs. Ram Kishan, Reliance was also placed on judgment of this Court in Mohan Lal and others v. The State of Haryana and others, 1981 P.L.J. 38 and M/s. Dalip Chand Vir Singh's case (supra). It was also argued that in similar circumstances, the respondents had withdrawn the resumption order dated 16.6.1976, whereas in the case of the petitioners, the same was not done and, thus, discrimination had occurred.

3. Controverting the submissions made by learned counsel for the petitioners, learned counsel for the respondents besides supporting the impugned orders submitted that the resumption orders were passed in the year 1976 whereas the writ petition challenging the same was filed in the year 1990. Thus, the writ petition was highly belated and deserves to be dismissed on the ground of delay and laches.

4. After hearing learned counsel for the parties, in our opinion, the writ petition deserves to succeed. It would be expedient to refer to section 13 of the Act, as originally enacted, which reads thus:--

13. Forfeiture for breach of conditions of transfer:--

(1) Notwithstanding anything contained in any other law for the time being in force, the Administrator may resume any site or building if the transferee or occupier persistently fails to use such site or building for the purpose for which it is sold, leased or transferred or fail to build upon the site within the period allowed or fails to pay the sale price or lease money of such site or building due under this Act or the rules made thereunder;

(2) In the event of such resumption of any site or building, any money paid or deposited in respect of such site or building may also be forfeited;

Provided that no order or resumption or forfeiture of money shall be passed under this Section without affording the defaulter an opportunity to show cause against it.

(3) The resumed site or building, as the case may be, may be resold by auction and any loss resulting from such resale which is not covered by the amount forfeited under Sub-section (2), shall be recoverable as arrears of land revenue from the defaulter.

5. The aforesaid provision came up for consideration before this Court in Shri Dharam Pal's case (*supra*) and while declaring it to be ultra vires Articles 14 and 19(1)(f) of the Constitution of India and striking it down, it was observed as under:--

10. It is further clear that under the provisions of section 12 of the Act, in the event of default of any payment due under the Act, the same can be recovered as arrears of land revenue. The contention of Mr. Sarhadi, the learned Advocate General, that the word used "any amount due under the Act" in section 12 will not include the balance payment of the amount due by way of sale consideration, is without any merit. It is well accepted that the provisions of the enactment have to be given the interpretation which can be construed from the plain meaning of the statute. Section 12 specifically provides that any amount due under the Act may be recovered as arrears of land revenue. It cannot be successfully contended that amount due to the State Government, which is a charge on the property itself in a given case is not amount due under the provisions of the Act when such amount has been specifically made due by the provisions of section 3 of the Act. Section 13 of the Act empowers the State Government to resume that site in question and forfeit the whole or any part of the money which has already been paid in respect of the site. Under the ordinary law of the land, there is a relief against forfeiture for breach of covenant or provisions. Section 13 of the Act does not offer any relief against forfeiture. This feature that the Government can proceed either under the ordinary law of the

land or under the Act shows that there is a discrimination. Further, there is nothing in the statute to guide the exercise of power by the Government as to in which case and how one of the methods will be chosen. There being charge on the property, the Government can proceed under the ordinary law by instituting a suit in a court of law. The owner will have the opportunity of paying the money and clearing the property of the charge. On the other hand when the Government proceeds u/s 13 of the Act to resume the site, it is more harsh provision to the subject. There is no guideline in the Act as to when the Government will resort to either of these remedies. Thus, it would be seen that in cases of recovery of money or resumption of the site and forfeiture of money paid, the Government may choose and discriminate in proceeding against one person in one manner and another person in another manner. The Act creates a charge on the property. The Act forbids creation of a third party right by the transferee until the amount represented by the charge is paid in full. In the teeth of statutory security and enforceability it is totally unreasonable restriction on the enjoyment of property by resuming the site for defaults in payments of money and forfeiting the monies paid by the transferee.

6. The State had amended the Act by Punjab Act No. 16 of 1981 and incorporated amended Section 13 which was made effective retrospectively from 1.11.1966. This amended section reads as under:--

13. Imposition of penalty for failure to pay consideration money and resumption and forfeiture in certain cases-(1) If any transferee fails to pay the consideration money or any instalment thereof on account of sale of any site or building, or both, u/s 8, the Administrator may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty (which shall not exceed ten per centum of the amount due from the transferee) be not imposed upon him.

(2) After considering the cause, if any shown, by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Administrator may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount due alongwith the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due alongwith the penalty, in accordance with the order made under sub-section (2), or commits a breach of any other condition of sale, the Administrator may by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the site or building or both as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof (which in no case shall exceed ten per centum of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building, or both) should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a

notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Administrator may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale.

7. The scope of amended Section 13 of the Act was examined by this Court in Shri Ram Kishan's case (supra). It was interpreted as under:--

7. A perusal of the aforesaid provisions reveals that, at first, a notice to show cause, within a period of thirty days, as to why penalty (which shall not exceed ten per centum of the amount due from the transferee) be not imposed upon him. The Administrator, after considering the cause shown by the transferee and giving him due opportunity of being heard in the matter and for reasons to be recorded in writing, can make an order imposing the penalty and directing the transferee to pay the amount due alongwith the penalty within the period specified in the order. It is only if the transferee fails to comply with that order that a notice calling upon the transferee to show cause within a period of thirty days why an order of resumption of the site or building or both, as the case may be, and the forfeiture of the whole or any part of the money, if any, paid in respect thereof, could be issued and then an order under sub-section (4) of amended section 13 of the Act could be passed after considering the cause shown by the transferee.

8. In the present case, the competent authority i.e. the Administrator had issued the notice of resumption in terms of section 13(3) of the Act straightway asking the transferee to show cause as to why the site be not resumed and the amount paid in connection therewith be not forfeited. This notice, under the amended provision of section 13(3) of the Act could have been issued only after the transferee had failed to comply with the order passed u/s 13(2) of the Act. The Administrator had no power to issue the impugned notice u/s 13(3) of the Act without first taking action in terms of sub-section (1) and (2) of the amended Section 13. That means that the action of the Administrator in the present case, was void ab initio and the proceedings taken on the said notice also suffered from the same vice.

Resultantly, the judgment of the learned Single Judge to the extent it quashes the show cause notice is sustained since the impugned action of the Administrator is ultra vires the provisions of the amended section 13 of the Act. In our view, the preliminary objections to the competency of the petitions on the ground of laches and non-joinder of second transferee, raised before the learned Single Judge and reiterated before us, are untenable for the very reasons given by the learned Single Judge in his judgment.

8. Taking up the factual matrix in the present case, the respondents had failed to demonstrate that the requirements under sub-sections (1) to (4) of amended

section 13 had been complied with.

9. Referring to the argument of learned counsel for the respondents regarding delay and laches, similar contention was repelled by this Court in M/s. Dalip Chand Vir Singh's case (supra) with the following observations:--

We have not been impressed by the preliminary objection, raised by Mr. G.S. Bains, that the writ petition has been filed after a great delay. In similar circumstances, I.S. Tiwana, J. has repelled similar objections raised in Civil Writ Petition No. 3244 of 1976, decided on 6th February 1981. It was observed therein:

I do not find any merits in these submissions, of the learned counsel for the short reason that the impugned orders having been passed under a void (aw, would be non-est or non-existent in the eye of law. The respondent authorities if could not resume the plot as they could not in view of the judgment of this Court referred to above, then they could not possibly pass a better title to the subsequent vendees.

10. In view of the above, we hold that in the absence of compliance of requirements as envisaged under sub-sections (1) to (4) of Section 13 of the Act, orders dated 16.6.1976, Annexures P.1 and P.2 resuming the property and forfeiting the amount would not stand the test of judicial scrutiny. As a result, the writ petition is allowed. The orders dated 16.6.1976, Annexures P.1 and P.2 are quashed. However, it shall be open to the respondents or any other competent authority to proceed in the matter in accordance with law.