

(1999) 02 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7722 of 1994

Devinder Lal Gupta and Others	Vs	APPELLANT
The Union Territory of Chandigarh and Another		RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8A
Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 12, 12(3), 21A
Constitution of India, 1950 — Article 226

Citation : (1999) 122 PLR 52 : (1999) 3 RCR(Civil) 1

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

Bench : Division Bench

Advocate : Chetan Mittal, for the Appellant; Ashok Aggarwal and Subhash Goyal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The petitioners have prayed for quashing the orders dated 6.5.1985, 12.10.1992 and 3.3.1993 passed by the Assistant Estate Officer, the Chief Administration and the Adviser to the Administrator, Union Territory, Chandigarh respectively.

Facts:

By accepting the highest bid of Rs. 27,10,000/- given by them at the auction held on 21.2.1983, the Administration of Union Territory, Chandigarh allotted S.C.O. No. 83-84, Sector 34, to the petitioners on lease-hold basis. The terms and conditions subject to which the lease was granted are incorporated in the letter of allotment dated 31.5.1983. Clauses 3, 4, 5, 8, 9(b), 20, 29 and 30 of the allotment letter read as under:-

"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.

4. The sum of Rs. 6,77,500/- paid by you as 25% of the premium of site has been adjusted against the premium payable in respect of the lease.

5. That lease shall be deemed to have commence from the date of auction. In case, it is intended to pay the premium in instalments the balance of 75% of the premium together with interest thereon at 7% per annum shall be payable in three equated annual instalments, the first instalment being payable at the expiry of one year from the date of auction. Interest shall accrue from the date of auction. However, no interest shall be payable if the said 75%; balance of the premium is paid in full within 30 days of the date of auction. In the former case, the following shall be the schedule of payment of instalments of premium:-

Sr. No. of Due date of Date upto which Amount of instalment payment payment should be equated made instalment including interest 1st Instalment 21.2.1984 10.3.1984 Rs. 7,74,484.12 2nd Instalment 21.2.1985 10.3.1985 Rs. 7,74,484.12 3rd Instalment 21.2.1986 10.3.1986 Rs. 7,74,484.12 Annual rent for 1st 33 years Rs. 67,750.00 xx xx xx xx xx 8. In the event of non-payment of any instalment of premium or rent by the 10th of the month following the month in which it falls due or such extended periods as may be allowed by the Estate Officer but not exceeding three months in all from the date on which the instalment was originally due, the Estate Officer may issue a notice to the lessee calling upon him to show cause as to why the lease may not be cancelled and the site resumed and the amount already paid forfeited to the Government.

xx xx xx xx xx 9(b). The rent will start accruing from the date of auction, the first instalment being due after the expiry of one year from the date of auction and shall be payable by the 10th day of the month following the month in which it falls due.

xx xx xx xx xx 20. Government shall not be responsible for levelling the uneven sites.

21. The erection of a building on the site in accordance with the Punjab Capital (Development and Regulation) Building Rules, 1952, shall have to be completed within three years from the date of auction. The date of completion will be the date of receipt of application for permission to occupy the building in form "D" annexed to Punjab Capital (Development and Regulation) Rules, 1952, accompanied by completion certificate from the registered surveyors/qualified Architect, who supervised the construction of the building, provided the building is also certified to have been completed according to the sanctioned plan by the Chief Administrator.

xx xx xx xx xx 29. The terms and conditions of this allotment letter shall be in addition to the provisions of Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder which shall be binding on the lessee.

30. A booklet containing the Capital of Punjab (Development and Regulation) Act, 1952, the Punjab Capital (Development and Regulation) Building Rules,

1952. The Chandigarh Lease-Hold of Sites and Building Rules, 1973, can be had on payment from this office."

2. Within one year of having secured possession of the site by paying 25% of the premium. The petitioners erected a four storeyed building of which second, third and fourth floors were lease-out to Canara Bank on 15.3.1986. However, they did not pay first, second and third instalments of premium which became due on 21.2.1984, 21.2.1985 and 21.2.1986 respectively. They also failed to pay the ground rent @ Rs. 67,750/- per annum. This resulted in initiation of proceedings under Rule 12(3) of the Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short "the Rules"). The Assistant Estate Officer, exercising the power of the Estate Officer, Union Territory issued notice dated 10.9.1984 requiring the petitioners to show cause against the proposed cancellation of the lease. He adjourned the hearing of the case on 25.9.1984, 6.11.1984, 30.11.1984, 11.12.1984, 28.12.1984, 11.1.1985. The petitioners neither paid the dues in response to the notices nor they appeared before the Assistant Estate Officer on the adjourned dates, who ultimately passed the order dated May 6, 1985 and cancelled the lease of the site. He also ordered forfeiture of 10% of the premium plus ground rent and interest. The appeal filed by the petitioners under Rule 22 of the Rules was fixed for hearing before the Lok Adalat on 11.6.1992 and 26.11.1992 but they failed to avail the opportunity of settlement. However, during the course of hearing of the appeal, their counsel made a statement that his clients are ready and willing to pay the amount of premium. However, the appellate authority refused to rely on his statement and dismissed the appeal on 12.10.1992. The Adviser to the Administrator dismissed the revision petition of the petitioners.

3. Shri Chetan Mittal urged the following contentions in support of the petition:-

(i) The order of cancellation of lease and forfeiture of a part of the premium etc. could not have been passed by the Assistant Estate Officer on the ground of alleged failure of the petitioners to pay the instalments of premium etc. because the respondents are guilty of violating the terms and conditions of the contract entered into between the administration and the petitioners, inasmuch as, the amenities like approach road, street lights, parking places, water and electricity connections, sewerage connections etc. have not been provided by the respondents at the site depriving the petitioners of the opportunity to use the enjoy the buildings constructed by them by spending lacs of rupees.

(ii) The failure of the public authorities to fulfil their contractual obligation to provide amenities is sufficient to restrain them from making recovery of the premium and ground rent.

(iii) The respondents cannot charge penal interest from the petitioners in terms of Rule 12(3) and 3(A) of the Rules because the petitioners were prevented from enjoying their properties.

4. Shri Ashok Aggarwal argued that the petitioners could not have avoided

payment of the instalments of premium etc. in terms of the conditions of allotment read with general terms and conditions which were made known to them at the time of auction. He argued that the plea of lack of amenities raised by the petitioners for avoiding fulfilment of their contractual obligation to pay the dues must be treated as frivolous and vexatious because they not only constructed multi-storeyed building after paying 1/4th of the premium but also occupied the same without obtaining the certificate in terms of Rule 18 of the Rules and leased out various portions of their building for hefty rents. Shri Aggarwal submitted that it was impossible for the petitioners to construct building without obtaining electricity and water connection and in any case, no tenant would have agreed to take the premises on rent without the provisions of electricity and water and, therefore, the very fact that the premises have been let out on rent, should be sufficient to draw an inference that the petitioners have filed this petition with the sole object of postponing the payment of premium etc. He argued that the petitioners have used the amount payable to the administration in the form of instalments of premium and ground rent, for advancing their business purposes and in this manner, public exchequer has been put to heavy losses. He argued that the petitioners, who are guilty of violating Rule 18 of Rules which require the obtaining of occupation certificate as a condition precedent for use of the building should not be shown any indulgence by the Court.

5. Before we deal with the rival submission, it will be useful to notice the relevant provisions of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as "the Act") and the Rules.

6. The Act was enacted by the Legislature to re-enact and modify the law in relation to the development and regulation of new capital of Punjab. Section 8-A of this Act empowers the Estate Officer to resume the site or building or booth and forfeit any part of the money paid in respect thereof in case of default in the payment of consideration money provided that such forfeiture shall not exceed 10% of the total consideration money, interest or other dues. Section 10 of the Act provides for appeal and revision by any person who is aggrieved by an order of the Estate Officer made u/s 8 or 8-A. In exercise of the powers conferred by Sections 3 and 22 of the Act as adopted by the Punjab Reorganisation (Chandigarh Adaption of Laws on State and Concurrent Subjects) Order, 1968, the Administrator of the Union Territory, Chandigarh made the Rules. Rule 4 of the Rules empowers the Chandigarh Administration to transfer sites and buildings at Chandigarh on lease for 99 years by allotment or by auction in accordance with the provisions of the Rules. Rule 5 empowers the Chief Administrator to reserve sites/buildings for groups of individuals or for persons practicing any profession or carrying on any occupation, trade or business or for the implementation of any scheme framed by the Chandigarh Administration. Rule 9 contains the procedure for grant of lease by auction. Rule 9-A empowers the Chief Administrator to extend the period for deposit of 25% of the auction money. Rule 10 provides for delivery of possession. Rule 12 contains the

provisions for payment of premium and consequences of non-payment or late payment. Rule 13 speaks of the rate of rent and consequences of non-payment. Rule 17 enumerates general conditions of lease. Rule 20 empowers the Estate Officer to cancel the lease and forfeit the whole or part of the ground rent on the ground of default, breach or non-compliance of any of the terms and conditions of the lease or for furnishing in writing incorrect information under Rule 19. There are two rules numbered Rule 21-A. First of these empowers the Administrator to relax all or any provisions of the Rules. The second one empowers the Estate Officer to re-transfer the site of which the lease has been cancelled under Rules 10, 12 or 20. Rule 22 contains provisions for appeal and revision by any person feeling aggrieved by an order of the Estate Officer made under Rules 10, 12, 13, 20 or 21.

7. Section 8-A of the Act and Rules 12 and 20 of the Rules, which are relevant in the context of the issues raised in this petition are reproduced below:

1952 Act:

"8-A Resumption and forfeiture for breach of conditions of transfer.- (1) If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, u/s 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause 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 cent 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.

(2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1.) and any evidence he may produce in support of the same and after giving him reasonable, opportunity of being heard in the matter, the Estate Officer 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 (1), of the whole or any part of the money paid in respect of such sale.

The 1973 Rules:

12 Payment of premium and consequences of non-payment or late payment.- (1) In addition to payment of 25 per cent premium under Rule 8 or 9 as the case may be the remaining 75 per cent premium may be paid in lump sum within 30 days from the date of allotment/auction without any interest.

(2) If payment is not made in accordance with sub-rule (1) of this rule, the balance of the 75 per cent premium shall be paid in three annual equated instalments along with interest at the rate of 7 per cent per annum (or at such higher rate of interest as may be fixed by the Chief Administrator by a

notification in the Official Gazette) before the commencement of" the lease. The first instalment shall become payable after one year from the date of allotment/ auction. Provided that in the case of allotment of site or building of Small Scale Industries as defined by Chandigarh Administration from time to time in the industrial area, the balance of the 75 per cent of the premium may be paid in ten annual equated instalments or such other number of annual equated instalments as may from time to time be fixed by the Chief Administrator along with interest at the rate of 10 per cent per annum or such higher rate of interest as may be fixed by the Chief Administrator by a notification before the commencement of the lease.

(3) In case any instalment is not paid by the lessee by the date on which it is payable, a notice may be served on the lessee calling upon him to pay the instalment within a period of 3 months together with a penalty which may extend upto 10 per cent of the amount due. If the payment is not made within the said period, the Estate Officer may cancel the lease and/or forfeit the whole or any part of the money if paid in respect thereof which, in no case, shall exceed 10 per cent of the total amount of the consideration money, interest and other dues payable in respect of the lease:

Provided that forfeiture will not be made in addition to penalty;

Provided further that no order of cancellation or forfeiture shall be made without giving the lessee a reasonable opportunity of being heard. If the order of cancellation is for non-payment or penalty, the lessee may show cause why the penalty should not have been levied.

(3-A) In case any equated instalment or ground rent or part thereof is not paid by the lessee by the date on which it became payable he shall be liable to pay in respect of that instalment or ground rent or part thereof as the case may be, interest calculated at the rate of twenty four per cent per annum from the date on which the instalment or ground rent became payable till such date it is actually paid.

(4) Each instalment shall be remitted to the Estate Officer by the prescribed mode of payment. Every such remittance shall be accompanied by a letter showing full particulars of the site of building to which the payment pertains or a statement giving reference to the number and date of the allotment referred to in rule 8. In the absence of these particulars, the amount remitted shall be deemed to have been received only on the date when the remitter supplies correct and complete information.

xx xx xx xx xx 20. Notwithstanding and without prejudice to other provisions of these rules the Estate Officer may, by notice in writing, cancel the lease and forfeit the whole or part of the premium and ground rent paid in respect thereof which in no case shall exceed ten per cent of the total amount of premium, interest and other dues payable in respect of the site or building or both as the case may be, on the ground of default, breach or non compliance of any of the

terms and conditions of lease or for furnishing in writing incorrect information under rule 19:

Provided that no order regarding cancellation of lease/forfeiture under this rule shall be made unless the lessee has been given a reasonable opportunity of being heard.

xx xx xx xx xx

8. A conjoint reading of the provisions extracted herein above shows that the lease of the sites and buildings allotted or auctioned by the Administration commences from the date of allotment or auction. The tenure of the lease is 99 years. It is renewable on such terms and conditions as the administration may decide. Where the lease is granted by auction, at least 25 per cent of the bid money is to be paid on the spot. Proviso to Rule 9 empowers the Estate Officer to accept 10 per cent of the bid money and give 30 days further time to the bidder to deposit the remaining of 25 per cent. Rule 9-A empowers the Chief Administrator to condone the delay in the deposit of 25 per cent of the bid money or to extend the time on such terms and conditions as he thinks fit including the payment of the penalty not exceeding 10 per cent of the amount in default in addition to the interest at the normal rate. Rule 12(1) gives option to the lessee to pay 75 per cent premium in lump sum within 30 days from the date of allotment/auction without any interest. Rule 12(2) lays down that if the lessee does not opt for payment in lump-sum then the balance of 75 per cent premium has to be paid in three equated yearly instalments along with interest at the rate of 7% per annum or such higher rate of interest as may be fixed by the Chief Administrator by a notification in the Official Gazette before the commencement of the lease. The figure 7 came to be substituted by 10 vide notification dated 29.10.1990. Proviso to Rule 12(2) which relates to the allotment of the site or building for Small Scale Industries is not relevant for the purpose of this case. Rule 12(3) lays down that in case the lessee fails to pay any instalment by the date on which it is payable the Estate Officer may serve a notice on the lessee calling upon him to pay the instalment within a period of three months together with a penalty which may extend to 10 per cent of the amount due and if the payment is not made within the said period, the Estate Officer may cancel the lease and/or forfeit whole or any part of the money paid in respect thereof. However, the forfeiture shall not exceed 10 per cent of the total amount of the consideration money, interest and other dues payable in respect of the lease. The first proviso to Rule 12(3) says that forfeiture will not be in addition to penalty. The second proviso to Rule 12(3) requires giving of a reasonable opportunity of being heard to the lessee before an order of cancellation or forfeiture can be made. Sub-rule (3-A) of Rule 12 which came to be added vide notification No. 5112-UTFI(III) dated 15.12.1979 lays down that the lessee shall be liable to pay interest calculated at the rate of 12% in the case any equated instalment or ground rent or part thereof is not paid by the lessee by which date is becomes payable. The figure of 12 has been twice substituted by the figure 15 and 24 vide

notification dated 29.12.1990 and 22.7.1993.

9. In the light of the above analysis of the relevant provisions, it is to be seen whether the impugned orders suffer from want of jurisdiction or an error of law warranting interference by this Court in exercise of its equitable jurisdiction.

10. A bare perusal of the various clauses of the letter of allotment, extracted hereinabove, shows that the petitioners were made aware of their liability to pay 75% of the premium either in lump-sum without interest or in three equated instalments together with interest. The petitioners were also made aware of their liability to pay the penalty in case of failure to pay the instalment/rent and also of the possibility of cancellation of the lease of the site and the forfeiture of the premium already deposited or a part thereof. The provisions of the Act and the Rules were made part of the conditions of allotment. Therefore, the same were binding on the petitioners who were under obligation to comply with the same in order to continue to avail the benefit of allotment made in their favour. However, they contemptuously ignored their liability to pay the instalments of premium in accordance with letter of allotment. Due to their persistent failure to abide by the terms and conditions of the contract entered into between them and the Chandigarh Administration, the petitioners made themselves liable to be proceeded against under Rule 12 of the Rules. They were given ample opportunity to show cause against the proposed action of cancellation of the lease but the petitioners exhibited complete lack of seriousness and did not take steps to comply with the requirement of paying the instalments of premium, ground rent etc.

11. In the order of cancellation, the Assistant Estate Officer has recorded a finding that the petitioners did not pay the instalments of premium along with interest and ground rent in spite of notices. The appellate and the revisional authorities have expressed their complete agreement with the views expressed by the Assistant Estate Officer. Therefore, we do not find any valid ground to interfere with the order of cancellation, particularly, because learned counsel for the petitioners has not been able to draw our attention to any patent error in the finding recorded by the concerned authorities.

12. The argument of Shri Chetan Mittal that the impugned orders should be declared arbitrary and violative of Article 14 of the Constitution of India is without substance. It cannot be doubted that the property vesting in the Central Government/Chandigarh Administration is a public property and the administration is its trustee. Section 3 of the Act empowers the Central Government/Administration to dispose of the property by allotment or by auction. In exercise of powers vesting in him u/s 3 read with Section 22 of the Act, the Governor of Punjab enacted the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (for short "the 1960 Rules"). After 13 years, the Administrator of the Union Territory enacted the Rules. Under the two sets of rules, the administration was/has been given power to sell and/or lease out the property by allotment or by auction with the condition of payment of premium in instalments. These

provisions were enacted for achieving two-fold objective. Firstly, the government wanted to attract more and more people to settle in the new city. Secondly, it wanted to augment the revenue which could be utilised for undertaking development of the City Beautiful. If the Act and the Rules contained a provision that the competent authority can dispose of the property only by outright sale, no exception could have been taken by anybody. By enacting provisions for payment of lease money in instalments, the Legislature and the rule making authority will be deemed to have given concession to those who are desirous to taking public property on lease basis. For availing this concession, the allottee is duty-bound to pay the premium in lump-sum within 30 days without being required to pay interest or to pay the same in three equated instalments along with interest. The provision for cancellation of lease in the case of default has been incorporated primarily for protecting public property from unscrupulous allottees. However, the rules of natural justice have been statutorily engrafted in Section 8-A of the Act and Rule 12(3) of the rules. In other words, the competent authority is required to give notice and opportunity of hearing to the lessee before an order cancelling the lease can be passed on the ground of non-payment of premium etc. Thus, the procedure prescribed for cancellation of the site/building is consistent with the rules of natural justice and the provisions of Rule 12 do not, in any manner, offend the concept of the fair procedure which forms an integral part of the scheme of our constitutional system. So far as this case is concerned, ample opportunity was given to the petitioners to pay the arrears of instalments and to show cause against the proposed action. It is a different thing that they deliberately refrained from using the opportunities given by the Assistant Estate Officer. Therefore, we are unable to agree with Shri Mittal that the impugned orders are arbitrary.

13. The question whether the allottees of commercial sites can avoid payment of instalment of premium and ground rent has been considered by this Court and answered in the negative while deciding C.W.P. No. 3370 of 1992, Sukhpal Singh Kang and 19 Ors. v. Chandigarh Administration and Anr. Some of the observations made in that case are:-

"The argument of the learned counsel that the respondents are estopped from making recovery of the instalments of premium etc. because they have violated the terms and conditions of contract entered into with the petitioners by not providing the amenities is wholly untenable. At the cost of repetition, we deem it appropriate to observe that neither in the conditions of auction nor in the terms of allotment any indication was given to the petitioners that the respondents will be giving possession of the fully developed sites or that the availability of amenities like approach roads, street lights, parking places etc. would constitute a condition precedent for payment of instalments. Therefore, the petitioners cannot avoid their liability to pay the instalments of premium and ground rent. That apart, after having taken part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the site on the basis of terms and conditions incorporated in the letter of

allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 Rules. In our considered opinion, the petitioners cannot seek intervention of the Court for getting themselves relieved of their obligation to pay the amount due to the respondents in accordance with the terms of contract."

14. In C.W.P. No. 9503 of 1995, *Ajit Singh and Ors. v. Chandigarh Administration through Administrator, Union Territory and Ors.*, decided on 29.8.1996,, the order of cancellation as well as the orders passed by the appellate and the revisional authorities were challenged on various grounds set out in the writ petition one of which was that the petitioners could not carrying out their business effectively because the basic amenities had not been provided by the Administration. While dismissing the writ petition, this Court held as under:-

"There is another important reason why no indulgence should be shown to the petitioners. The allotment letter, Annexure P-1, contains a clear stipulation regarding the schedule of payment. Para 8 of the allotment letter postulates cancellation of lease on account of non-payment of instalments money. Para 8-A " empowers the Estate Officer to allow payment of instalments with penalty upto 100 per cent of the amount due and interest at the rate of 12 per cent for the delayed period. Duty to pay fee and taxes etc. was also of the petitioners. In addition to the conditions incorporated in the letter of allotment, the petitioners were bound to abide the provisions of the Act and the Rules. The general terms and conditions laid down by the Administration form part of the contract entered into between the petitioners and the respondents. Paras 11, 12 and 21 of the general conditions also contemplate payment of 25 per cent amount as a condition precedent to the acceptance of bid; remaining 75 per cent in three equated instalments along with interest; and cancellation of the lease as well as forfeiture of the whole or part of the premium already paid. The petitioners took possession of the property and raised construction thereon after having accepted the conditions incorporated in Annexure P.1, and R.1. They did so knowing fully the implication and consequences of their failure to pay the instalment money. After having accepted those conditions and taken public property on an assurance that they would faithfully comply with the conditions of payment laid down by the Administration, the petitioners are not entitled to plead that they were not bound to make payment of instalments on the ground that basic amenities were not provided by the Administration. We may add that payment of instalments was not subject to the Administrations providing basic amenities to the petitioner. Rather the conditions incorporated in Annexure P.1 and R.1 made it obligatory for the petitioners to pay their duties. Thus, the petitioners cannot wriggle out of the contract which they had entered into with the respondents. In matters like the present one, writ jurisdiction cannot be exercised by the High Court to permit a party to commit a breach of the terms and conditions of the contract of allotment."

15. In *Ashok Kumar and Anr. v. Union Territory, Chandigarh and Ors.*, C.W.P. 17947 of 1995, decided on November, 1996, the Court rejected an argument similar to the one urged on behalf of the petitioners and held as under:-

"The argument of the learned counsel that the Administration was taking advantage of its own default by not providing amenities to the petitioners is wholly without substance. The petitioners had taken possession of the site in question after having given highest bid for the same in an open auction and made payment of 25% of the premium. They must have been aware of whatever amenities were available at the site. In the allotment letter, there is no indication of any special amenity being provided to the petitioners. Thus, there is no substance in the plea of the petitioners that they were not required to pay the amount of instalments because of the failure of the Administration to provide amenities to them."

16. Similarly in *Smt. Maya Devi v. Union Territory, Chandigarh and Ors.*, C.W.P. No. 14865 of 1995, decided on July 3, 1997, the Court declined to accept the justification put forward by the counsel for the petitioners for non-payment of the instalments of premium and ground rent on the ground that the administration has not provided amenities like parking place, metalled roads, street lights etc. Some of the observations made in that decision are extracted below:-

"We have heard learned counsel for the parties and have carefully perused the record of the case. There is no dispute between the parties that in accordance with the terms incorporated in the letter of allotment, the petitioner and her co-allottee had the option to pay 75 per cent of the premium in lump-sum within a period of 30 days from the date of allotment or to pay the same in three equated annual instalments and also that the petitioner and her co-allottee did not pay the 75 per cent amount in lump sum. It is, therefore, reasonable to infer that the allottees had opted to pay the remaining premium in three equated instalments. However, after exercising the option to pay the remaining amount of premium in three equated instalments, the petitioner and her co-allottee failed to pay even a single penny. This prompted the Assistant Estate Officer to issue notice dated 4.5.1988 under Rule 12(3) with the allegation that the allottees had wilfully failed to pay the amount of instalment and the ground rent which fell due on 22.2.1988. Even thereafter, The allottees did not bother to discharge their contractual obligation. Rather they persisted with default and did not pay the second and third instalments as well. Their contumacious conduct to grab the public property without paying the amount due to the Administration is amply exhibited by The fact that they not only refrained from paying the amount which was due in the form of instalments on the dates specified in the allotment letter but they did not avail the concession given by the Assistant Estate Officer to them to clear the dues by keeping the proceedings pending for over two years. In this factual background, we do not find any justification to accept the plea of the learned counsel that the respondent No. 3 did not have the jurisdiction to initiate action against the petitioner and her co-allottee for cancellation of the

lease of the site."

17. Recently, we examined this very question in *Raj Kumar v. The Union Territory, Chandigarh and Anr.*, C.W.P. No. 15283 of 1994, (decided on January 29, 1999) alongwith 4 other petitions. After a detailed survey of various judicial precedents, the Court upheld the order of cancellation by making the following observations:-

"In view of these judicial precedents, we have no hesitation to hold that the petitioners could not have avoided their statutory as well as contractual obligation to pay the instalments and the Assistant Estate Officer cannot be said to have acted illegally when he cancelled their respective leases by holding them guilty of wilful default in the payment of instalments of premium with interest and ground rent as required by Rules 12 and 13 of the Rules. The well reasoned conclusions recorded by the Assistant Estate Officer, which have been reiterated by the appellate and the revisional authorities and with which we express our complete agreement, are amply supported by the fact that at the time of giving bid at the open auction held on 22.2.1987, the petitioners did not point out that the basic amenities were lacking. They accepted the offer of lease without putting any condition. Even at the time of taking possession, the petitioners did not make grievance that they will not be able to do business due to lack of amenities. In response to the notice issued by the Assistant Estate Officer under Rule 12(3), the petitioners did not raise the plea of lack of amenities but after 5 years of accepting the allotment, they made representations to the administration through the President of the Association for relieving them of the obligation to pay instalments on the ground of lack of amenities. This conduct of the petitioners amply supports the conclusion recorded by the Assistant Estate Officer that the petitioners have concocted the plea of lack of amenities in order to get themselves relieved of their contractual obligation to pay the instalments of premium etc. and, in our opinion, this is sufficient to reject the argument of the learned counsel that the Assistant Estate Officer did not have the jurisdiction to initiate proceedings for cancellation of the lease of the booths allotted to the petitioners."

18. For the reasons mentioned above, we hold that the impugned orders do not suffer from any error of law warranting interference by this Court under Article 226 of the Constitution of India.

19. Before concluding, we may deal with the submission of Shri Mittal that the impugned orders should be set aside because the petitioners have paid Rs. 21,00,000/- in compliance of the interim order passed by the Court on July 3, 1994. In our opinion, the benevolent interim order passed by the Court can neither entitle the petitioners to seek restoration of the lease as of right nor can such order justify issuance of a writ to quash the orders which are otherwise legal and justified because there are grave dangers of adopting this concessional approach in such like matters, in which the petitioners have been found guilty of violating the conditions of contract (letter of allotment) and the rules regulating

allotment. If such defaults are condoned in the manner suggested by learned counsel for the petitioners, it will become a matter of pure conjectures and subjective satisfaction of the administrative authorities as well as the Courts and the possibility of patently inconsistent orders being passed in similar cases cannot be ruled out. It will also encourage unscrupulous persons to grab public property without paying for it, a phenomenon which is wide spread in Chandigarh, which is internationally known as City Beautiful. This can be avoided, if the provisions of law are rigorously enforced against all the sundry.

20. In this connection, we may make reference to the decision of the Supreme Court in the Haryana Urban Development Authority and Another Vs. Roochira Ceramics and Another, , the facts of that case show that the Estate Officer, H.U.D.A. allotted industrial plot to the petitioner for Rs. 2,61,360/(tentative price). Due to the failure of the allottee to pay the instalments, proceedings u/s 17 of the Haryana Urban Development Authority Act, 1977 were initiated by the Estate Officer, who passed the order of resumption on the ground of default. The petitioner challenged the order of resumption in C.W.P. No. 14676 of 1995. A Division Bench of this Court allowed the petition and passed the following order:-

"Keeping in view the financial stringency of the petitioner, interest of the parties, readiness and willingness of the petitioner to pay the remaining unpaid amount and to set the controversy at rest, orders Annexures P-5 to P.8 are quashed. The petitioner shall deposit the balance amount of instalments including enhancement of price alongwith interest at the rate of 10% per annum on the unpaid amount within a period of three months, the respondents shall calculate and convey to the petitioner the total amount payable by it within two weeks from the date of receipt of copy of judgment. After the receipt of intimation regarding the total amount of its liability, the petitioner shall deposit the said amount within two months thereafter positively. In case, the petitioner fails to deposit the amount within the time specified despite intimation in terms of our judgment, he shall be liable to pay whole of the amount to the respondents as per the demand and the calculations made by the respondents according to the order impugned and he shall not be held entitled to any further time to make the payment. It is relevant to mention here that as per stipulation in the allotment letter, copy Annexure P.1 to the writ petition, interest at the rate of 10% per annum is being charged from the petitioner."

21. The Haryana Urban Development Authority challenged the order of the Division Bench in SLP No. 15110 of 1996 (Civil Appeal No. 13187 of 1996), the Haryana Urban Development Authority and Anr. v. Roochira Ceramics and Anr.. On 23.10.1996, the Supreme Court accepted the appeal filed by the respondents and passed the following order:-

"The respondent was allotted an industrial plot. He had to pay 25% of the price in the beginning and the balance in 6 equal instalments. He only paid the first instalment but not the rest. A show cause notice was given to him on 5.9.94 u/s 17(3) of the HUDA Act. A notice proposing imposition of penalty was also issued.

These notices could not be served upon him and, therefore, notices were served by affixture. A notice dated 10.1.95 was also given providing personal hearing. The respondent never appeared. Accordingly, the plot was resumed u/s 17(4) of the Act and the amount deposited was forfeited. The appeal preferred by the respondent was dismissed by the Appellate Authority who held that though several notices were issued to the respondent, he has been evading service. It dismissed the appeal holding that in view of the persistent defaults made by the respondent, there was no ground for interference in appeal. The respondent therefore approached Punjab & Haryana High Court by way of a writ petition. He pleaded certain financial difficulties. Without recording a finding as to the correctness of the said plea assuming for the sake of argument that such a course was permissible in a writ petition the High Court allowed the writ petition "keeping in view the financial stringency of the petitioner, interest of the parties, readiness and willingness of the petitioner to pay the remaining unpaid amount and to set the controversy at rest." The High Court further directed that interest shall be charged only at 10% per annum on the amount due and not at the rate of 18% as calculated by the authority for a part of the period.

We are of the opinion that in a writ petition it was not open to the High Court to entertain the plea of financial stringency for the first time. The respondent who had not responded to repeated notices and had not availed of the personal hearing offered to him, could not be allowed to plead such financial stringency for the first time before the High Court. Indeed the High Court could not have entertained such a plea. It has been held repeatedly by this Court that the power under Article 226 is the power of judicial review. The High Court can only examine the procedural correctness. It cannot get into the merits of the controversy like an appellate authority. No finding is recorded by the High Court in this case that the procedure adopted by the Estate Officer was either not in accordance with the statutory provisions or was in violation of the principles of natural justice. The High Court obviously acted as an appellate authority. There is no room for any benevolence. The perils and pitfalls are too many to recount, there will be; no objective standards of judging. Justice becomes personalised. It would vary from Judge to Judge. In the absence of any procedural irregularity the High Court had no jurisdiction to interfere in the matter. The High Court also failed to notice that the respondent is guilty of not paying the instalments as undertaken by him. By interfering on the basis of unverified and unsubstantiated plea of financial stringency, the Court would be encouraging contumacious conduct and breach of undertakings.

The appeal is accordingly allowed. The judgment of the High Court is set aside. The writ petition filed by the respondent shall stand dismissed." 22 In view of this pronouncement of the Apex Court, we are unable to accept the submission of Shri Mittal that default in the payment of instalments may be condoned. However, one concession which can be given to the petitioners within the parameters of the law is to direct the respondents to entertain their application for re-allotment of site in terms of Rule 21 -A(ii) of the Rules. This is precisely

what this Court has done in all the judicial precedents referred to hereinabove and also in the following cases:

(i) C.W.P. No. 10937 of 1996, Devender Singh Pannu and Ors. v. The Chandigarh Administration and Ors.," decided on 20.2.1996:

(ii) C.W.P. No. 699 of 1996, Joginder Singh Sidhu v. Union Territory, Chandigarh, decided on 9.4.1997:

(iii) C.W.P. No. 5931 of 1997, Gurkirpal Singh Sandhu v. Chandigarh Administration, decided on 1.5.1997:

(iv) C.W.P. No. 2832 of 1997, Ghansham v. Union Territory, Chandigarh and Ors., decided on 29.5.1997:

(v) C.W.P. No. 16365 of 1995, Harpal, Singh Ahluwalia v. Union Territory Chandigarh, decided on 3.7.1997:

(vi) C.W.P. No. 9160 of 1997, Amar Nath v. Chandigarh Administration, decided on 4.7.1997:

(vii) C.W.P. No. 9692 of 1997, Kulwant Singh Sidhu v. Union Territory, decided on 16.7.1997: and

(viii) C.W.P. No. 4829 of 1996, Hari Pal and Ors. v. Chandigarh Administration through the Advisor to the Administrator, Chandigarh, " decided on 7.11.1997.

23. This is also the approach adopted by the Supreme Court while disposing of SLP Nos. 25282-25283 of 1996. That was a case in which the lessee had let out the premises for residential purposes but the tenant misused the same resulting in cancellation of the lease. There was inter se litigation between the lessee and the tenant as well. The order of eviction of tenant passed by the Rent Controller, was upheld by the Appellate Authority and the High Court. The tenant challenged these orders before the Supreme Court. While disposing of the SLPs on 17.2.1997, their Lordships observed that the respondents i.e. the allottees can take necessary steps to move the concerned authorities for re-allotment of site under Rule 11-D of the 1960 Rules (that rule is *pari materia* to Rule 21-A of the Rules).

In view of the above discussion, the writ petition is dismissed with liberty to the petitioners to apply for re-allotment of the site by making application under Rule 21-A of the Rules. If they file such application within two weeks from today, the competent authority shall grant their application within next month subject to their fulfilling the conditions laid down in the relevant rules.