
(1996) 05 P&H CK 0156
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6633 of 1996

Dr. A.P. Sanwaria

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8
Chandigarh (Sales of Sites and Buildings) Rules, 1960 — Rule 9
Constitution of India, 1950 — Article 14, 19, 21

Citation : AIR 1997 P&H 283 : (1997) 1 ILR (P&H) 78

Hon'ble Judges : M.L. Koul, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Rajiv Kataria, for the Appellant;

Judgement

Jawahar Lal Gupta, J.—The petitioner, a Doctor, who has set up an X-ray clinic in a residential house which was on lease with him, is aggrieved by the order of resumption passed by the Estate Officer, Chandigarh. His appeal and revision petition having been dismissed, he has approached this Court through the present writ petition. He prays that the orders be quashed and the provisions of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 and Rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 be declared ultra vires of the Constitution. A few facts may be noticed.

2. The petitioner was a member of the Army Medical Corps. He took voluntary retirement in the year 1979-80. He took a part of the ground floor of House No. 3352, Sector 21, Chandigarh, on rent and set up private practice. In the year 1983, the petitioner installed an X-ray machine in the premises. The petitioner alleges that he had set up the X-ray machine with the permission of Shri S. N. Bhandari, who was then the owner of the building. In the year 1991, Shri Bhandari sold the house to Mr. K. L. Chopra. He filed a petition for ejectment against the petitioner on the grounds of personal necessity and change of user of the premises from residential to commercial. During the pendency of the petition

for ejectment, Mr. Chopra unfortunately passed away. His widow and the other legal representatives were impleaded as parties. The petition for ejectment was allowed by the Rent Controller. An appeal filed by the petitioner is pending before the appellate Court.

3. The petitioner states that he has been the President of the Medical Association. He had pleaded with the Administration for the allotment of plots to the members of the Medical profession at the reserved price, so that they could build their own clinics or nursing homes. The Administration instead of allotting plots at the reserved price, initiated proceedings for resumption of the premises. On July 6, 1993, the Estate Officer respondent No. 4 passed an order of resumption. Aggrieved by the order of the Estate Officer, the petitioner filed an appeal which was dismissed by the Chief Administrator vide order dated May 23, 1995. The petitioner then filed a revision petition. Vide order dated April 10, 1996, the Advisor to the Administration rejected it. Aggrieved by these orders, the petitioners has filed the present writ petition.

4. The petitioner alleges that the provisions of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 give an unregulated handle to the landlord of a premises to evict his tenant. The petitioner further alleges that the provisions of Rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 which debar the transferee of a site or building from using the property "for a purpose other than that for which it has been sold to him....." place unreasonable restriction on the carrying of occupation, trade or business, and are, thus, violative of Articles 14, 19 and 21 of the Constitution of India. The petitioner prays that the orders dated July 6, 1992, May 23, 1995 and April 10, 1996 regarding the resumption of premises and the provisions of Section 8-A as well as Rule 9 be quashed.

5. Mr. Rajiv Kataria, learned Counsel for the petitioner submitted that the orders passed by the respondents are arbitrary and that the provisions confer an unfair advantage on the landlord.

6. Firstly, a word about the validity of the provisions. Section 8-A, inter alia provides for resumption in case of violation of conditions of transfer. It reads as under :--

"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.

(a) 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 a 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 subsection (1) of the whole or any part of the money paid in respect of such sale."

A perusal of the above provision shows that this power can be invoked when the transferee fails to pay the consideration money including an instalment thereof or commits a breach of any of the conditions of sale. However, adequate safeguards have been provided. It is incumbent on the Estate Officer to give a notice in writing pointing out the default on the part of the transferee and to give him an opportunity to show cause as to why the proposed action be not taken against him. The transferee is entitled to adduce evidence in support of his claim and be heard against the proposed action. The Estate Officer has to pass a speaking order. It is, thus, clear that the grounds on which the action for resumption or for forfeiture of a part of the consideration money can be taken are clearly well defined. The transferee's right to adduce evidence and to be heard so as to effectively show cause against the proposed action has been guaranteed. The authority is under a duty to consider the explanation furnished by the transferee. Still further, not only the transferee but even the person who is in occupation of the premises like a tenant is also entitled to be heard. The word transferee should in all fairness include even a lessee. The provision in our view, provides adequate safeguards.

7. It is true that resumption of the site or building is a drastic measure. It has to be used "sparingly". The power can be invoked generally in case of a flagrant violation of the conditions of sale. Just one day's delay in paying the instalment cannot entitle the authority to resume the property. It has to be used only when the offender has erred repeatedly and has failed to rectify the mistake in spite of the grant of opportunity. Still further, the order passed by the authority is not final. The aggrieved party has the remedy of an appeal and/ or a revision. If the Estate Officer invokes this power and orders the resumption of a site or building on account of a minor default, like a day's delay in making of payment or in inconsequential violation of the conditions of sale, the appellate authority can remedy the wrong. Similarly, Rule 9 debars the transferee from using "the site or building for a purpose other than that for which it has been sold to him". The provision only ensures that the purpose of Section 8-A is carried out.

8. Taking the totality of these facts into consideration, it cannot be said that the provisions of Section 8-A or Rule 9 confer an unguided or arbitrary power on the authority.

9. Mr. Kataria made a half-hearted submission that the provision can be misused by a landlord. He also referred to the provisions of Rule 11-D to contend that it was possible for a landlord to have the site resumed on account of a breach of

condition of sale and then to have the property retransferred to himself by payment of "10 per cent of the premium originally payable for such property or one-third of the difference between the price originally paid and its value at the time when the application for transfer is made, whichever is more". According to the learned Counsel, this provision enables a landlord to get the premises vacated on account of misuser and then to have the property retransferred by payment of a paltry sum of money.

10. We are unable to accept this submission. The provisions of Section 8-A and Rule 11 -D are primarily meant to ensure that the property is used only for the purpose for which it has been given to the person. A residential property should be used for the purpose of residence only. If a person misuses it, he commits a violation of the conditions of sale. He can suffer a loss of property on account of this misuser. The threat of resumption acts as a check on the misuse of the property. When it is found that the misuser was not by the owner but by a lessee, or that it was not intentional but for the reasons beyond the control of the person concerned and that adequate effort had been made by the transferee to have the misuse Mopped, the resumed site or building can be restored to the owner. Stilt further, the restoration of the property is not without imposition of a penalty on the person concerned. It is incumbent on him to pay one-third of the difference in price. To illustrate, if a person has purchased a plot measuring 500 square yards for a price of Rs. 5,000/- in the year 1965 and it is retransferred in the year 1996, when the price of the plot may be in the region of Rs. 25 lacs, the person concerned has to pay an amount of nearly Rs. 8 lacs before the property can be retransferred to him. This amount may well be much above the total rent recovered by the owner of the premises. In this situation, it cannot be said that the right given to the transferee to seek retransfer is unfair or that it is unconstitutional. In the present case, the rate of rent is admittedly Rs. 400/- per mensem. Assuming that the petitioner has been regularly paying rent at this rate since the very beginning, he would be paying a total of Rs. 4800/- per year. During the last about 16 years, he would have paid about Rs. 77,000/-. The landlord has had to go through proceedings for his eviction before the Rent Controller and now before the appellate authority. He has also faced proceedings for resumption of the property before the Estate Officer since November, 1991. The cost of litigation alone may be near the total rent paid by the petitioner. Still further, the owner is almost confronted with the loss of property and may be able to regain it only on payment of a few lacs of rupees and yet the petitioner complains that the provisions contained in Section 8-A, Rule 9 and Rule 11-D confer an undeserved advantage on the landlord. The contention is wholly misconceived and cannot be accepted. The provisions do not place any unreasonable restriction on the petitioner's freedom of trade. These do not confer any arbitrary or unguided power in the authority. The provisions do not violate Articles 14 19 or 21 of the Constitution of India.

11. This brings us to the consideration of the orders passed by the respondents. Admittedly, the owner of the property and the petitioner were given a show

cause notice vide memo, dated November 18, 1991 to show cause "as to why the said site be not resumed u/s 8-A" for "the breach of conditions of sale and an amount not exceeding 10 per cent of the total amount of premium, interest and other dues payable in respect of the sale of the said site be not forfeited". It is further clear from the record that the petitioner was given opportunity to adduce evidence on December 19, 1991; February 12, 1992; April 2, 1992; May 21, 1992; July 16, 1992; September 10, 1992; December 3, 1992; February 23, 1993; April 13, 1993; May 20, 1993 and finally on July 6, 1993. It is further established that the petitioner had failed to appear before the Estate Officer on July 6, 1993 in spite of the fact that "he was bound down on 20-5-93". In this situation, and on examination of the file the authority found that "many opportunities" had "already been afforded to the owner/occupier to stop the misuse but the same is still running as reported by the Inspector Enforcement". The case was, accordingly, decided against the petitioner. The site was ordered to be resumed and 10 per cent of the total amount of premium was ordered to be forfeited. The petitioner as well as Mrs. Chopra (the owner) filed an appeal. After hearing counsel for the parties and going through the record, the Chief Administrator found that there was "misuse" of the premises. Consequently, the appeal was dismissed. Even on revision, the Estate Officer submitted a report to the effect that "on one side of ground floor (of) the house. Dr. A. P. Sanwaria is running his clinic, X-rays laboratory under the name and style "Parkash X-ray Clinic". The authority held that "misuse still continues at the site". It also noticed the fact that the Estate Officer had resumed the site "as far back as on 23-9-1993 due to misuse of the site. Thereafter appeal filed by the petitioner against the said order was also dismissed by the Chief Administrator on 23-5-1995. Thus it follows that misuse is there since the year 1993. Therefore, if the petitioners had intention to remove the same then they could very easily set the things right during this intervening period. Accordingly, as the misuse still exists at the site, I see no grounds to interfere with the order of the Chief Administrator in this revision petition". Accordingly, the revision petition was dismissed.

12. It is the admitted position that the petitioner had set up an X-ray clinic in the year 1983. He has been continuously running this clinic in the residential premises since then. The authorities have come to a firm finding that he is misusing the premises. In such a situation, the action of the authorities is based on admitted facts and does not call for any interference.

13. Mr. Kataria, learned Counsel for the petitioner, however, submitted that persons belonging to various professions like Law or Teaching etc. are being allowed to continue to work in residential premises. In such a situation, it cannot be said that running of an X-ray clinic amounted to a "misuse" of the premises.

14. This contention cannot be accepted. It is true that X-ray provides a good diagnostic facility. Medical X-rays are necessary for the diagnosis and treatment of diseases. However, experience has shown that X-rays "give significant dose of

radiation". This presents a health hazard. Even moderate "doses of radiation can interfere seriously" with the human system. When an X- ray clinic is set up in residential premises, the radiation emitted in the diagnostic process not only exposes the patient or the physician but also others living inside the premises to a continuous process of radiation. Just as a small leak can sink a big ship, the continued exposure to X-ray howsoever small can do serious physical damage in the long run to all the persons living in the house. In such a situation, it cannot be said that an "X-ray clinic" is the same thing as a lawyer's "study" or that merely because a lawyer is permitted to run his "chamber" in the residential premises, a doctor has a right to run an X-ray clinic. There is no parity between the two. Consequently, the question of violation of Article 14 of the Constitution docs not arise.

15. No other point was urged.

16. In view of the above, we find no merit in this writ petition. It is, consequently, dismissed in limine.

17. Petition dismissed.