

(2010) 03 P&H CK 0332
In the Punjab And Haryana At Chandigarh

Dr. M.C. Sharma

APPELLANT

Vs

Union Territory and Another

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 20

Citation : (2010) 159 PLR 314

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition challenges the order of resumption issued by the Chandigarh Administration on alleged non-payment of the installments payable for the property within the time stipulated in the order of allotment. The whole case seeks an adjudication on issues relating to whether the petitioner could be guilty of having failed to comply with the terms of the order passed by the Authority and therefore, the facts now:

2. The petitioner had been allotted with a 71/2 marla plot in an auction held on 29.10.1977 for a price of Rs. 33,600/-. The petitioner had paid Rs. 3,400/- on the date of auction and the balance of amount was payable in three installments. For the default in payment of the installment on 29.10.1978, a show cause notice appears to have been issued on 24.02.1979 as per Rule 20 of the Chandigarh Lease Hold of Sites and Building Rules, 1973 and in spite of such a notice, when the amount had not been paid, the order of resumption had been passed, forfeiting the portion of the amount already deposited. This order, which was issued on 23.07.1979 was a subject of challenge in appeal before the Chief Administrator, U.T., Chandigarh. The Appellate Authority allowed the appeal, taking a lenient view in the matter and directed the petitioner to pay the entire outstanding dues with interest thereon as well as the ground rent and the amount of forfeiture within a period of three months. The order also imposed a condition that if the direction had not been complied with, the order of the Estate

Officer directing resumption shall be operative. The claim of the petitioner is that he had calculated the amount himself and he had made the payment purporting to be the amount due that included the installments and the penalty paid along with the letter dated 23.03.1981. The last installment along with penalty had been made on 23.03.1981, which according to the petitioner was within the time prescribed by the Chief Administrator in his appeal order dated 23.12.1980.

3. Notwithstanding the payment as directed, the Administration again issued a notice on 04.04.1983 i.e. two years after the payment, complaining that the petitioner had not complied with the decision of the Appellate Authority and that the order of resumption became operative. The petitioner had sent a reply on 13.04.1983 explaining the fact that the order had already been complied with and the order of resumption, which was made was erroneous. The contentions raised in the reply were directed to be urged by way of revision, while the Chief Administrator was considering the reply of the petitioner to his letter dated 13.04.1983. Accordingly, a revision had been filed, which was, however, dismissed stating that it was barred by limitation and that the amount that had been paid still fell short by Rs. 14,856.96 and therefore, there was no proper compliance.

4. It is this order of the Revisional Authority, which is in challenge before this Court. At the time when the writ petition was admitted on 21.09.1989, the Court had directed that the petitioner shall clear the balance of amount in six monthly installments. Learned Counsel appearing for the petitioner states that the entire amount had been paid but however not in six installments but in seven installments. The amount had been received by the respondent originally but had been returned after a period of five years. The amount returned by the respondent on 20.11.1995 is produced by the petitioner along with CM. No. 15201 of 1995. In my view, the Court was required to dispose of a short point that when the petitioner had sent various amounts payable within three months and when he had sent the last installment of Rs. 10,000/- on 23.03.1981, he had done so by calculating the amounts which he thought was payable as per the direction of the Appellate Court. If the amount that had been paid did not represent the correct quantum, it was incumbent on the Authority to demand and secure what stood in balance or must have returned the amount sent even then. They could not have retained the same for two years and issued a notice on 04.04.1983 to state that the order of resumption became operative. Even at the time when the petitioner had pointed out that the order of resumption, which was subsequently issued on 04.04.1983 was not proper and that he had made all the payments and the resumption issued without making reference to all the payments was unjustified, the Chief Administrator had in a queer way disposed of that letter by saying that the remedy was only to prefer a revision to the Chief Commissioner. When such a revision had been filed, the Chief Commissioner ought to have addressed the issue as to how the amount paid by the petitioner was not correct and how it did not amount to compliance of the order of the Appellate Authority. Instead, he adopted a short-cut and observed that the

revision itself was beyond the limitation and that further, as per the calculation of the respondent still an amount of Rs. 14,856.96 was due. If the submission was correct that the statement must have been given to the petitioner even at the time when he had sent last installment of Rs. 10,000/- on 23.03.1981, the self-operative order by resumption could not have been used against the petitioner, if only the petitioner had been put on notice of any specific amount as payable. The Appellate Authority when it was disposing of the appeal on 23.12.1980 had stated that he was taking a lenient view and that the allottee was entitled to an indulgence of retaining the property and only the amount was directed to be paid. The same spirit must have been exhibited even by the Estate Officer at that time if he found that according to his calculation any error existed and the amount had fallen short of the directions contained in the order of Chief Administrator dated 23.12.1980.

5. Learned Counsel for the respondents refers to the judgment of the Hon'ble Supreme Court in *Municipal Corporation, Chandigarh and Ors. v. Vipin Kumar Jain*, in Civil Appeal No. 4450 of 2007 that set aside the order of the High Court in quashing the order of cancellation of allotment. The Hon'ble Supreme Court was dealing with the case where a fresh auction was being held on resumption and when the Court had definite evidence that the allottee had failed to make the payment despite several opportunities and for violation of terms of allotment if an order of resumption had been made, a judicial intervention would not have been possible. The Hon'ble Supreme Court had also held that the resumption order cannot be lightly interfered without reference to the conditions of allotment. In this case, it did not require the Court to interfere with the original order of resumption. The Appellate Authority had himself interfered with the order of resumption and had expressly stated that the petitioner was entitled to a lenient view in the matter and had cancelled the order of resumption. I have already referred to the fact that the Appellate Authority namely the Chief Administrator had merely stated that the 2nd and the 3rd installments' premium and interest was to be paid but nowhere in the order was there any specific amount stipulated as the amount payable. The petitioner had, therefore, to help himself with such calculation and it was not as if the petitioner did not make the payment. The petitioner had made the calculation and when he wrote on 23.03.1981 that he was making a final payment by sending an installment of Rs. 10,640/-, he was guided by the belief that he had complied comprehensively with the directions of the Chief Administrator. This letter dated 23.03.1981 refers to a letter that is purported to have been issued by the Administration on 23.02.1981 directing him to make a payment of Rs. 24,300/-. He had explained that he had already given a representation on 16.03.1981, which he had made along with two bank drafts for Rs. 600.27 and Rs. 5,640/-. If this payment did not conclude the issue and the whole amount according to the Administration was still not fully paid, it was the duty of the Administration to reject the tender made on 23.03.1981 and never claimed that the directions of the Chief Administrator had not been complied with and therefore, the resumption order

had become operative. On the other hand, the Administration waited till 04.04.1983 to visit the petitioner with a letter that there had been no compliance of the directions of the Appellate Authority. Strangely, even in the order dated 04.04.1983, there is no reference to the payments that had been made on various dates between 09.01.1981 to 02.03.1981, payment totalling to a sum of Rs. 21,880.27/-. Even the amount which it had received from the date of the order of the Chief Administrator till when the last installment was paid, was not returned to the petitioner and when an explanation was given to the Administration by the petitioner through his letter dated 13.04.1983 as to how the payment made by him amounts to full compliance of the directions, the Chief Administration acted again in a strange fashion not dealing with the issue but informing him that his remedy would be only to prefer a revision.

6. I have already explained as to how unreasonable the Administration had been and it makes no comparison to a situation of recalcitrance on the part of the allottee, which the Hon'ble Supreme Court found in the case referred to above. Learned Counsel again refers to the decision of *Municipal Corporation Chandigarh and Ors. v. M/s Chandigarh Corporate Guides Ltd.* in Civil Appeal No. 6055 of 2009 where the Hon'ble Supreme Court dealt with a situation where the respondent did not deposit the amount, which was payable and he had been only disputing the correctness of the statement of account furnished by the Municipal Corporation. The Hon'ble Supreme Court was interfering in a case where the High Court did not consider whether the conditional order of restoration of lease was legally justified or not. The order of the Appellate Authority allowing the appeal and granting some time is itself not a subject of challenge. In fact, the petitioner has come to benefit by such an order and the petitioner's claim is that he has complied with the order. If the Administration were to contend that there was no compliance, again any action of such alleged non-compliance could not wait for a period of two years to bring a surprise to the petitioner that there had been no due compliance. The action of the respondent-Corporation betrays fairness at every turn and again a reliance of a judgment of the Hon'ble Supreme Court to a situation where the allottee was not flouting the directions could hardly support the contention of the respondent.

7. Learned Counsel also points out that even the direction given by this Court for making payment of Rs. 14,000/- and odd within a period of six months had not been complied with strictly and the petitioner took seven installments to refund the money. The Division Bench at the time of admission was not adjudicating on the controversy between the parties. It attempted to impose a condition for a benefit that the petitioner was seeking for when he was applying for stay of the order of resumption. It was not a conditional order nor did the Bench say that if such deposit had not been paid, the writ petition itself could not be considered. At best, it could have operated to vacate the interim order. Therefore, the contention that the amount had not been paid within six months and the petitioner had again defaulted by about a month to inflict upon him a situation of having to lose the property, it does not appear to be fair nor it could advance the

cause of justice.

8. The writ petition is, therefore, allowed with costs assessed at Rs. 10,000/-.