
(2014) 10 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 6349 of 2013 (O&M)

Gurinder Singh and Others

APPELLANT

Vs

Estate Officer, Chandigarh Administration and Others

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2015) 1 RCR(Civil) 543 : (2015) 1 RCR(Rent) 47

Hon'ble Judges : Jaishree Thakur, J; Hemant Gupta, J

Bench : Division Bench

Advocate : A.S. Grewal, Advocates for the Appellant; Sanjeev Sharma, Senior Advocate and Smriti Dhir, Advocates for the Respondent

Judgement

Jaishree Thakur, J.—Petitioners herein have challenged the order of resumption dated 4.5.1995, passed by the Estate Officer, Union Territory, Chandigarh, and orders dated 11.5.2011 and 7.10.2012, passed by the Chief Administrator, Chandigarh and Adviser to the Administrator respectively, upholding the order of resumption. The petitioners allege that House No. 1278, Sector 21-B, Chandigarh was owned by Smt. Mahinder Kaur wife of late Shri Baldev Singh, who expired on 17.10.1988. Smt. Mahinder Kaur had executed a Will dated 4.2.1988, bequeathing the said house to the petitioners who are the son and grandson of late Smt. Mahinder Kaur. After the death of Smt. Mahinder Kaur, the house was transferred in favour of the petitioners on 20.2.1990. Both petitioners are living in Canada since 1990. The mother of petitioner No. 1 Smt. Mahinder Kaur had inducted tenant Shri Suresh Mehrotra, vide a lease deed dated 10.3.1978. Subsequently, Shri Mehrotra shifted to Delhi and Mr. Anil Sharma started using the premises for the office of a Chartered Accountant without the consent of the petitioners. The ground floor was let out to Shri M.V. Samuel for his residence vide a lease deed dated 18.9.1979, who sublet the said premises to Shri Vinod Chadha who started running a printing press in the name and style Neo Print India. Again this subletting was done without the consent of the petitioners.

2. The Estate Officer Chandigarh passed an ex-parte order of resumption dated 4.5.1995 for misuse of the said premises. It is alleged that the petitioners were never served a copy of the show cause notice before the resumption orders were passed. It is submitted that they were living in Canada at that time. It is the tenants themselves who challenged the order of resumption by filing CWP No. 7020 of 2005 and CWP No. 5509 of 2005. The same were dismissed. The review applications filed numbered as RA No. 137 of 2006 in CWP No. 5509 of 2005 and the RA No. 136 of 2006 in CWP No. 7020 of 2005 were also dismissed by the Hon"ble High Court on 29.5.2006. Special Leave Petitions filed against the said orders were also dismissed by the Hon"ble Supreme Court of India.

3. The petitioners filed two eviction petitions against the tenants in the year 1999 under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 on account of change of user and subletting. The tenant, who was running printing press, handed over vacant possession to the petitioners on 20.12.2006. Eviction orders were passed against tenants Shri Suresh Mehrotra and Anil Sharma by the Appellate Authority on 8.12.2010. It was only on 10.7.2010 that the petitioners became aware of the resumption proceedings. Immediately thereafter, an appeal is filed against the order of resumption which stands dismissed by the Chief Administrator. Subsequently, the revision was also dismissed by the Adviser to the Administrator. In the meantime, the Hon"ble High Court in C.R. Petition No. 947 of 2011 titled as Anil Sharma v. Gurinder Singh and others ordered eviction of Shri Anil Sharma upholding the orders passed by the Appellate Authority.

4. The petitioners herein have challenged the order of resumption dated 4.5.1996 inter-alia on the ground that it was passed ex-parte and that they were never served with a copy of the show cause notice. As soon as they became aware of the resumption order, the same was challenged. It is submitted that the misuse was on account of the tenants and the petitioners have made every effort to make sure that the misuse is stopped by seeking eviction of the tenants. As on date, there is no misuse of the premises and that the resumption order and all subsequent orders thereto should be set aside as the power of resumption is not to deprive a owner of his property but to seek compliance of the Statute contemplating determined use. Once the misuse has stopped, the purpose of resumption proceedings does not survive. Reply has been filed on behalf of the Estate Officer stating therein that there was misuse of the premises and that the residential premises was being used as a printing press and by a property dealer. It is submitted that after the SLPs were dismissed by the apex court upholding the order of resumption, the owners have come forward to have resumption orders set-aside.

5. In Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, , the Hon"ble Supreme Court has held that resumption or a cancellation of lease should be resorted to as a last resort. A Full Bench of this High Court reported as Dheera Singh Vs. UT Chandigarh Admn. and others, ", has gone into the question of resumption of building on account of misuse by the tenant. It has been held that

the Estate Officer before passing a resumption order shall be obligated to determine whether the breach of terms and conditions of allotment or violation of any building bye law by the allottee is "willful" and "deliberate" or it has occurred for the reasons beyond his control.

"(81) The doctrine of proportionality as ruled in Teri Oat Estates Pvt. Ltd. is now an integral part of Section 8-A to protect an allottee against unreasonable or arbitrary action by the Authority under that provision. It necessarily means and the respondents cannot be heard to say otherwise except that the power of resumption can be invoked as a last resort and the action of the Estate Officer is required to be judged on the touch-stone of Article 14 of the Constitution. It implies that the Estate Officer before passing a resumption order shall be obligated to determine whether the breach of terms and conditions of allotment or violation of any building byelaw by the allottee is "willful" and "deliberate" or it has occurred for the reasons beyond his control? In the case of the latter category it shall not be possible to invoke the power mechanically and resume the property. For example, if an allottee indisputably rents out his residential premises to a tenant for residential purposes only and the tenant in utter defiance to the terms of tenancy starts misusing the premises for commercial purposes against whom the landlord, without any inordinate delay, initiates eviction proceedings under the East Punjab Urban Rent Restriction Act, 1949 (as applicable to UT Chandigarh) inter alia on the ground of misuse of the premises, how can the allottee be held guilty of willful and deliberate violation of the building bye-laws? The only recourse in such an eventuality available with the Estate Officer shall be to keep the resumption proceedings in abeyance till the eviction proceedings are decided though he must keep track of the status of eviction proceedings from time to time. Any attempt deviate from such like fait accompli conditions shall vitiate the action rendering the resumption proceedings to nothing but a colourable exercise and/or abuse of power by the Estate Officer. Similarly, the first or stray violation(s) can hardly justify the impaling effect of "resumption" and any such casual attempt with a bureaucratic approach deserves serious view in exercise of power of judicial review."

6. A perusal of the record shows that the resumption order dated 4.5.1995 has been passed by the Estate Officer and a copy of the same has been served upon the tenants namely, Shri Sat Pal, proprietor of Printing Press, M/s. Sharma Associates and upon Shri Jaspinder Preet Singh and Gurinder Singh, the present petitioners at House No. 156, Sector 6-A, Chandigarh. At that time, the petitioners were residents of Brampton Ontario in Canada, so, there was no effective service either of show cause notice or of the orders of resumption. It has to be noticed that the petitioners made every effort possible to ensure that the misuse is stopped by filing eviction petitions against the said tenants. Undoubtedly, the order of resumption has been passed at the back of the petitioners without affording the petitioners adequate and proper opportunity of being heard in person. Moreover, the misuse was on account of the tenants and not on account of the petitioners themselves. As on date, there is no misuse of

the property. Resumption of a property in such cases is much too harsh.

7. Keeping in view the fact that misuse of the property was on account of the tenants and that the petitioners themselves were not defaulters. But the fact remains that there was misuse of the residential building. The Administration has taken active steps to initiate proceedings and the conclusion thereof. Therefore, for the forced litigation and the time spent by Administration to restore the site for the purpose for which, it was allotted, we find that the petitioners must pay cost of litigation assessed at Rs. 1,00,000/-. Therefore, the resumption order and the subsequent orders passed by Chief Administrator, Chandigarh and Adviser to the Administrator are set aside subject to payment of cost of Rs. 1.00 lac to the Estate Officer, Chandigarh within period of One month. With the above observations, the writ petition is allowed.