
(2014) 06 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11327 of 2001 (O & M)

Gurwant Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 4 RCR(Civil) 297

Hon'ble Judges : Surya Kant, J; Lisa Gill, J

Bench : Division Bench

Advocate : R.C. Chaudhary, Advocate for the Appellant

Judgement

Surya Kant, J.—The petitioner impugns the orders dated 17.01.2000, 19.07.2000 and 26.06.2001 passed by the Estate Officer, PUDA, Additional Chief Administrator, PUDA and the revisional authority, respectively. Vide the first order dated 17.01.2000 (Annexure P-3), the Estate Officer, PUDA resumed the petitioner's house constructed on plot No. 612, Phase-I, Mohali and forfeited 10% price of the plot. Vide subsequent impugned orders, the petitioner's appeal and revision petition against the resumption order were dismissed.

2. The facts giving rise to the controversy may be briefly noticed.

3. Residential plot No. 612, Phase-I, Mohali, measuring 5 marla was allotted to the petitioner in the year 1980. The petitioner constructed the house as per the sanctioned plan and is living with his family. The petitioner raised two unauthorized constructions i.e. (i) a small store on the rear side (ii) a car shed. The petitioner was issued show cause notice and finding his response unsatisfactory, the Estate Officer, PUDA resumed the site alongwith the construction. The appeal and revision petitions preferred by the petitioner were also dismissed. The authorities viewed that since the petitioner failed to demolish the unauthorized and illegal construction, the order of resumption was lawfully passed.

4. While admitting this petition on 02.08.2001, this Court stayed the operation of the impugned orders.

5. We have heard learned counsel for the petitioner and gone through the impugned orders. The respondents have neither put in appearance nor filed any reply.

6. It requires no detail discussion that the resumption can be resorted to as the last punitive measure against building violations. A Full Bench of this Court in Dheera Singh Vs. UT Chandigarh Admn. and others, held as follows:--

"The doctrine of proportionality as ruled in M/s. 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."

7. The question that arises for consideration in this case is, thus, whether there existed extreme circumstances warranting resumption of the petitioner's site?

8. It appears from the impugned orders that the petitioner has constructed a pucca store on the rear side. Learned counsel for the petitioner has, during the course of hearing, handed over the photostat copy of the SCHEDULE, which according to him, has been revised after filing of this writ petition. The aforesaid SCHEDULE prescribes composition fee/charges for compounding the violations of PUDA (Building) Rules, 1996. Serial No. 10 of the SCHEDULE deals with ventilating shaft and serial No. 12 thereof reads as follows:--

9. It, thus, appears to us that the respondents authorities (PUDA) themselves have permitted the construction of temporary store up to maximum 40% area of courtyard of 100 square feet, whichever is less. It also appears that after passing of the impugned orders or during the pendency of this writ petition, much water has flown and building bye-laws have been substantially amended keeping in view the growing need of the allottees. Since the respondents have now permitted the construction of temporary store on the rear courtyard and the only violation appears to be that the petitioner has constructed a pucca store instead of temporary one, we are of the considered view that it is not a case, where the authorities should have taken the harsh action of resumption of the site. Consequently, we allow this petition and set aside the impugned orders passed by the authorities. Keeping in view the amended provisions of Building Rules, 1996 relied upon by the petitioner, we direct him to apply for compounding/

regularization of the unauthorized structure, if so permissible, under the existing bye-laws. The authorities shall inspect the site and if satisfied that the construction raised by the petitioner is permissible under the revised bye-laws or compoundable under the new provisions, an appropriate order to this effect shall be passed subject to deposit of prescribed charges. However, if the authorities find that the store constructed by the petitioner is pucca in nature and is not in conformity with the SCHEDULE relied upon by him, in that event, the petitioner shall be granted six months time to convert the existing store in conformity with the existing bye laws.

Ordered accordingly.