
(2000) 09 P&H CK 0191
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 163 of 2000

Hari Kishan

APPELLANT

Vs

Union Territory, Chandigarh

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Punjab Capital (Development and Regulation) Buildings Rules, 1952 — Rule 5

Citation : (2001) 4 RCR(Civil) 767

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Anil Khetarpal, for the Appellant; Subhash Goyal, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner is the owner of site for Shop- cum-Flat No. 30, Sector 19-C, Chandigarh. The site was resumed vide order dated July 23, 1997. A copy of this order is on record as Annexure P2. The petitioner filed an appeal which was dismissed by the Chief Administrator vide order dated October 13, 1998. A copy of this order is at Annexure P6. The petitioner filed a revision petition which has been dismissed vide order dated November 24, 1999 on the ground that "the violations, on the basis of which the site was resumed, continue to exist even now". A copy of this order is at Annexure P9. Hence this petition.

2. The petitioner prays that the impugned orders viz. Annexures P2, P6 and P9 be quashed. Notice of motion was issued. A reply has been filed. It has been inter alia averred that the petitioner had violated Rule 5 of the Building Rules inasmuch as he had constructed a pucca slab on the Barsati floor on the portion which had to be compulsorily kept open to sky. It has been further pointed out that the petitioner has covered the open Courtyard with a RCC slab and there is unauthorised coverage over to rear Courtyard.

3. Mr. Khetarpal, learned counsel for the petitioner, states that the basic violation which had been committed by the petitioner in laying a pucca slab on the Barsati

floor has been removed. He further states that even the unauthorised coverage over the rear Courtyard has also been removed. So far as the coverage of the open Courtyard with RCC slab is concerned, the matter is sanctionable. Mr. Goyal, appearing for the respondents, admits the factual position.

4. After hearing counsel for the parties we find that the only subsisting violation can be regularised by the respondents under the Rules. The basic ground on account of which the order of resumption had been passed does not subsist. Still further, it was not such a gross and flagrant violation so as to call for the extreme penalty of resumption of the property.

5. Taking the totality of circumstances into consideration, we set aside the order of resumption. Resultantly, the orders at Annexures P2, P6 and P9 are quashed. It is further directed that in case the petitioner applies for the regularisation of the existing violation within four weeks from today, the competent authority shall consider and decide the matter in accordance with the relevant provisions of the Rules.

6. The writ petition is, accordingly, disposed of. No costs.

7. Petition allowed.