
(2014) 07 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 6083 of 1993 (O&M)

Kharaiti Lal

APPELLANT

Vs

Adviser to The Administrator and Others

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8-A
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 176 PLR 548

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : Rajiv Kataria, Advocates for the Appellant; Harsh Rekha Kapoor, Advocates for the Respondent

Judgement

Ritu Bahri, J.—This petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash the order dated 02.07.1990 passed by respondent No. 3 (P-3) and order dated 25.08.1992 passed by respondent No. 2 (P-4) and order dated 12.05.1993 passed by respondent No. 1 (P-5) and further prayer is for issuance of direction to the respondents to permit the petitioner to run the business of tailoring as a small scale industrial unit in the residential house. The petitioner is a tenant in House No. 2, Sector 15-A, Chandigarh for the last about thirty years and is having his residential house in the said accommodation. The petitioner is doing the work of tailoring at his residence in a style where the show window sale counter board etc are put in. The petitioner takes stitching orders from various places and stitches those clothes at his residence without causing any inconvenience or nuisance etc to any neighbours or any other person. The main building is being occupied by the petitioner for having his residence in the house, whereas in a small room he has his sewing machine and does this job without the help and aid of any other worker.

2. A notice for resumption of house under Section 8-A of the Capital of Punjab

(Development and Regulation) Act, 1952 (for short "the Act") was issued to the petitioner as well as to the owner of the house Smt. Gurbir Kauf, as per the orders of the Estate Officer, U.T. Chandigarh. The petitioner, gave reply to the said notice and stated that it had already become the policy of the State Government to allow such small business as an industry in the residential accommodations. The news item as published in the newspaper. "The Tribune" is dated 29.3.1979 (P-1) which clearly shows that the Chandigarh Administration allowed these small scale industries to be run in the residential houses. In the year 1975, the Chandigarh Administration in black and white issued memo dated 04.11.1975 wherein 14 small scale units were allowed to be run in residential houses which includes the tailoring business. A copy of letter dated 11.12.1980 issued from the office of Home Secretary to respondent No. 3 is P-2 wherein the above said memo has been referred. Feeling unsatisfied with the reply given by the petitioner, the Estate Officer resumed the above said house and passed an order dated 02.07.1990 (P-3). Aggrieved against the order dated 02.07.1990, the petitioner preferred an appeal before respondent No. 2, which was also dismissed on 25.08.1992 (P-4). The petitioner filed a revision against the above said orders which was also dismissed vide order dated 12.5.1993 (P-5).

3. On 21.12.1992, the petitioner made an application for permission to establish the business of tailoring in the residential accommodation. Similar applications were made in different cases e.g., that of Mrs. Arvinder Kapoor who was granted permission by respondent No. 3 in the year 1989 vide P-7 and before that also Mrs. Arvinder Kapoor has also get her business registered as a small scale industrial unit in the residential accommodation vide P-8 dated 07.07.1983. The petitioner's tailoring business is registered as small scale industrial unit by the Chandigarh Administration under the number 535303976 dated 04.11.1992 (P-9) under the name and style of M/s. Bhatnagar Tailors Proprietary .

4. Learned counsel for the petitioner submits that once the tailoring unit of petitioner has been registered as per Annexure P-9, the resumption orders are liable to be set aside.

5. Reference has been made to DB judgment passed by this Court in a case of M/ s Naresh Department Store Vs. Chandigarh Administration and others, whereby no notice was given under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 and resumption order was passed against the landlord and this Court set aside the impugned order by allowing the writ petition.

6. Reference has been made to a DB judgment of this court in a case of Kamlesh Gaba v. Chandigarh Admn and others 2012 (2) RCR (Civil) 377 wherein the booth was allotted for pan and cigarette. However, the allottee was using for sale of confectionary and stationary article. His booth was resumed by the Administration. This Court quashed the order of resumption by following the judgment of this Court Sham Lal Sharma v. Union of India, 2012 (2) RCR (Civil) 4.

7. In the present case, learned counsel appearing for U.T. has placed on record the copy of the inspection report dated 09.01.2014 whereby that after visiting the spot, it was found that building is constructed upto Ground floor in which one room i.e. Garage Portion was being used for tailoring shop by K.L. Bhatnagar at the time of visit one sale counter, four swing machines and one inter locking machine were installed, the stitched clothes are displayed on the wall inside the garage. The occupier of the shop also employed four workers for tailoring purpose including himself and the area of the garage is 12 X 15 sq feet approx. rest of the building was used for residential purpose. The inspection report dated 09.01.2014 is taken on record as A-1.

8. In the written statement filed, it has been stated that the petitioner cannot derive any benefit from the judgment of Arvind Kumar and the respondent in reply to para No. 7 of the writ petition, have not denied that vide P-9, the petitioner's tailoring business was registered as small scale industrial unit by the Chandigarh Administration. On the other hand, it is stated that the petitioner has not taken any permission from the Rent Controller under Section 11 of the Rent Act, therefore, no part of the residential house can be used for commercial activity. There is no denial of the letter dated 11.02.1980 issued from the office of Home Secretary to respondent. No. 3 whereby the Home Secretary has informed the Estate Office that 14 small scale units were allowed to be run in residential houses which includes the tailoring business. Thus, this letter enables the petitioner to run a small scale unit. There were certain conditions mentioned in Annexure P-9 for Household Industries, which reads as under:-

"1. The maximum floor area under the industrial unit should not be more than 20% of the covered area on the ground floor upto a maximum of 300 sq feet.

2. The cost of machinery to be installed should not exceed Rs. 20,000/-.

3. The Industries will not be source of nuisance of cleanliness in the locality and the Administration will reserve the right to withdraw the permission in the case of any complaint from the residents of the locality.

4. The industry will not employ more than four workers.

5. The industry will not required connection of more than 1 KW.

6. The persons desirous of shifting their premises from one residential house to another should obtain prior permission from the Estate Office, Chandigarh.

7. The unit will not display any sign boards.

8. No sale counter set up."

9. In the written statement filed by the respondents, they have not stated that the petitioner had violated any of the above said conditions, mentioned in Annexure P-9. Moreover, the case of the respondent is that he is misusing the above stated building. The misuse of the building is not mentioned in any of the conditions mentioned above.

10. Further, the report dated 06.03.2014 has been given in this Court which is taken on record as A-2 and it reads as under:-

"I have inspected the above said house on 06.03.2014 at 9.35 AM and found that building is constructed upto Ground floor in which one room i.e. Garage Portion was being used for tailoring shop by K.L. Bhatnagar at the time of visit one sale counter, four swing machines and one inter locking machine were installed, the stitched clothes are displayed on the wall inside the garage.

At the time of inspection, Sh. Kharati Lal was present there and he stated that he alongwith my son, two other worker are working tailoring work. The area of the garage is 12 X 15 sq feet approx. Rest of the building is used for the residence of Sh. Kharati Lal and family."

11. As per report, none of the conditions have been violated except for the one he had set up a sale counter.

12. The short question for consideration before this Court is that whether the minor violation of the conditions can led to passing of resumption order without giving notice to the tenant.

13. This aspect has been considered by a DB of this Court in a case of Shri Sham Lal Sharma v. Union of India, 2012 (2) RCR Civil 4 wherein the site was allotted by the Chandigarh Administration for timber trade. Allottee using the site for transport business and the site was resumed. The writ petition was allowed and the order of resumption was set aside, and it was held that it is no ground to resume the site. According to policy of conversion issued on 31.03.2006 all commercial site except industrial sites, can be used for any trade mentioned in Schedule-II, except the seven trades mentioned in Schedule-II category (B).

14. Thus, the ratio of the above said two judgments i.e. Shri Sham Lal Sharma's case (supra) and Kamlesh Gaba's case (supra) is that even in a case of conversion of change in commercial use of the plot, the resumption order cannot be passed.

15. In the present case, pursuant to the policy, the petitioner's small scale unit had been registered vide Annexure P-9. No conditions had been violated by the petitioner for running his business as per report A-1 and A-2 except for one condition that he had set up a sale counter. Thus, this is not a case of major violation with regard to using more than 30% has been made by the petitioner. Hence, resumption order is liable to be set aside, which was passed without giving notice to the petitioner.

16. In this regard, Division Bench of this Court in M/s Naresh Department Store Vs. Chandigarh Administration and others, had examined this aspect and held as under-

"12. "Resumption" is an act of taking back the property. In the very nature of things (it) is a harsh and extreme penalty. It should be resorted to as a last

resort. As the last weapon. It results in the loss of property. It also leads to the extinction of rights of the occupant in the premises. It is not only that the allottee loses his ownership but even the right of the tenant to remain in possession is defeated. The legally authorized tenant becomes an unauthorised occupant."

17. In the present case no notice has been given to the petitioner and further his unit was registered vide Annexure P-9 and he has not violated any conditions mentioned in Annexure P-9. The respondents, therefore, were not justified in passing the resumption order. In the consequence, order dated 02.07.1990 passed by respondent No. 3 (P-3) and order dated 25.08.1992 passed by respondent No. 2 (P-4) and order dated 12.05.1993 passed by respondent No. 1 (P-5) are set aside.

Accordingly, the writ petition is allowed.