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**(2014) 11 P&H CK 0004**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 12401 of 1999**

K.K. Aggarwal

APPELLANT

Vs

Adviser to the Administrator

RESPONDENT

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**Date of Decision :** 26-11-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2016) 2 PLJ 331

**Hon'ble Judges :** Mr. Hemant Gupta and Mr. Hari Pal Verma, JJ.

**Bench :** Division Bench

**Advocate :** Mr. A.K. Chopra, Senior Advocate, with Mr. Gursheer Singh, Advocate, for the Petitioner; Mr. A.P. Setia, Advocate, for the Respondents

**Final Decision :** Allowed

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## Judgement

Hemant Gupta, J. - Challenge in the present writ petition is to the orders dated 24.09.1993 (Annexure P-6); 06.10.1998 (Annexure P-10); 05.05.1999 (Annexure P-12) & 02.08.1999 (Annexure P-19) in respect of resumption of Coal/Fuel Depot Site CP-351/1660, Sector 16-D, Chandigarh.

2. The aforesaid Coal/Fuel Depot site was allotted to Vidya Parkash Aggarwal, the father of the petitioner on 26.05.1955. Some additional land adjoining the said site was sold to Vidya Parkash Aggarwal vide Deed of Conveyance dated 16.11.1960. The allottee i.e. Vidya Parkash Aggarwal raised construction on the site/additional land and started business of coal depot in the building so raised. Thereafter, some more additional land, having access from V-4 road, was allotted to the father of the petitioner.

3. The assertion of the petitioner is that he has three shops facing V-4 road, which are part of the construction raised by his father and that the property in question and other family properties were partitioned amongst the legal heirs i.e. the petitioner and his brother namely C.M. Aggarwal, as per the award of the Arbitrator, which was made rule of Court on 16.03.1973. Such partition deed was

registered with the Sub Registrar, UT, Chandigarh. As per the partition, Coal Depot bearing No.39 and shop No.40, out of the property aforementioned, came to the share of the petitioner, whereas other two shops i.e. shop Nos.41 & 42 came to the share of his brother. It is also pointed out that shop Nos.41 & 42 were raised on the additional land allotted to the father of the petitioner, now owned and possessed by the brother of the petitioner.

4. Due to change in fuel requirements of the residents of the city, a representation was made by Chandigarh Authorised Coal and Fuel Depot Holders Association to the Chandigarh Administration for permitting change of use of the sites allotted for the purpose of coal depot. On 12.02.1988, the Administration permitted the use of coal depot premises as godowns for meeting general requirements of the city or as LPG godowns. Later in order to optimum use of the area, the petitioner started using the site as service station.

5. Subsequently, after serving a notice dated 18.11.1992 under Section 8-A of the Capital of Punjab (Development & Regulation) Act, 1952, an order of resumption of site and forfeiture of an amount of Rs. 4094/- was passed on 24.09.1993 (Annexure P-6). Appeal against the said order was dismissed by the Chief Administrator vide order dated 06.10.1998 (Annexure P-10). The petitioner has also made request for change of land use to permit the use of the premises as a service station. Still aggrieved, the petitioner filed a revision petition before the Adviser to the Administrator. Such revision petition was allowed vide order dated 05.05.1999 (Annexure P-12), when the order of resumption was set aside with the condition that the misuse in the premises is removed within three months and that the forfeiture amount be paid within 30 days. The petitioner deposited an amount of Rs. 4100/- through a bank draft on 04.06.1999, but the mis-use could not be stopped within the time granted.

6. However, the petitioner asserts that on 31.05.1999, the Chandigarh Administration has taken a decision to allow change in trade in respect of coal depot sites including running of service stations, restaurants or banks on the coal depot sites having additional access from V-4 roads on payment of prescribed conversion charges. Thereafter, the petitioner moved an application dated 12.07.1999 before the Adviser to the Administrator for modification of the order dated 05.05.1999, however, the same was declined vide order dated 02.08.1999 (Annexure P-19) for the reason that review is a creature of statute and power to review cannot be exercised unless the statute so provides. At this stage, the petitioner invoked the writ jurisdiction of this Court.

7. In the written statement, the use of coal depot sites as godowns for meeting general requirements of the city or as LPG godowns, subject to the clearance from the Indian Oil Corporation stands admitted. It is also mentioned that request for change of trade was rejected being in violation of land use. It is also mentioned that the conversion dated 31.05.1999 pleaded by the petitioner was not notified as it was only at the stage of inter-departmental communications.

8. On 21.11.2013, this Court passed an order directing the respondents to file status report with regard to the use of the premises in question. In compliance of the said order, an affidavit dated 29.10.2014 along with inspection report was filed. The relevant extract from such inspection report reads as under:

"1. Use of part one:

1. Shop of Ajit Wood Craft and workshop run by Sh. Charan Singh, who was present.

2. Some Ice Cream Rickshaw Parked in the site.

2. Use of part two is as under:

1. Resident of Chowkidar Sh. Sunil Kumar

2. Two rooms were locked signboard of colours infra exist on the door of Ist room and signboard of colour rush exist on the IInd room.

3. The clinic of dialysis center run by Dr. Ashok Aggarwal. The site in question is allotted as Cola Depot site. Misuse is still continue at the time of inspection."

9. The petitioner has also filed a miscellaneous application to place on record additional documents such as amendment in the Chandigarh (Sale of Sites and Buildings) Rules, 1960 (for short "the Rules") contemplating permissible use of the premises for General Trade other than seven prohibited Trades. Learned counsel for the petitioner has also produced a copy of the allotment letter, wherein the allotment of commercial sites i.e. Fuel/Coal Depot was made on 22.05.1955 in pursuance of an auction held on 15.02.1955.

10. Learned counsel for the petitioner relies upon a Division Bench judgment of this Court reported as Shri Sham Lal Sharma v. Union of India 2012 (2) RCR (Civil) 4, wherein considering the amendments in the Rules, it has been held that with the notification dated 31.03.2006, an allottee or occupier does not require any prior permission to change user or payment of conversion charges except seven Trades, as mentioned in New Special Trade of Schedule ? II. The said seven Trades alone require prior permission of the Chief Administrator. The Court observed as under:

"9. We do not find any merit in the argument raised by learned counsel for the respondents. The trades of Timber and Transport were part of special trade in Schedule-I and now form part of the New General Trade in Schedule-II with effect from 5.6.2002 at serial numbers 98 and 99. The policy reproduced above, as notified on 17.7.2002, did not specifically provided conversion of special trade of Timber or Transport on payment of conversion charges. However, the situation has undergone change with the modifications incorporated by the Notification dated 31.3.2006. The Administration has taken a conscious decision for permitting the trades, mentioned in Schedule II. The allottee or occupier does not require prior permission to change user or payment of conversion charges except information as part of condition no.3 of the notification dated 31.3.2006.

10. Such modifications now permit use of commercial sites except industrial sites for any trade mentioned in "(A) New General Trade" and "(B) New Special Trade" of Schedule-II without applying for the conversion of trade and without paying conversion fee. The restriction is only in respect of migration to seven trades as mentioned in New Special Trade Category of Schedule II. The seven trades alone require prior permission of the Chief Administrator. Therefore, in terms of the Notification dated 31.3.2006, all allottees of commercial sites/premises are permitted to use the sites allotted for any purpose mentioned in Schedule II except in respect of seven trades."

11. We have heard learned counsel for the parties at length and find that Coal/Fuel Depot was part of Special Trade in Schedule ? I. The amendment was carried out on 30.03.2001 in the Rules inserting Schedule ? II and contemplating that conversion from a particular Trade in Schedule ? I, as originally enacted to that of Schedule ? II, shall be allowed on payment of conversion charges, as determined by the Chandigarh Administration. The Coal Depot is mentioned at Sr.No.88 of New General Trade in Schedule ? II. Subsequently, another amendment was carried out vide notification dated 05.06.2002 substituting Schedule ? II, wherein the Coal Depot came to be mentioned at Sr.No.91 falling in the category of New General Trade. Later on, on 14.05.2002 and 25.06.2002, the Chandigarh Administration issued directions regarding conversion of trades for commercial sites on payment of conversion trade fee.

12. However, on 24.02.2006 notified on 31.03.2006, it was clarified that all allottees of commercial sites in Chandigarh except industrial sites in Industrial Area, Phase ? I & II can pursue any trade mentioned in Schedule ? II i.e. (A) New General Trade; & (B) New Special Trade Category without applying for conversion of trade and without paying conversion fee. It also contemplated that migration of seven trades, as mentioned in Schedule ? II (B) New Special Trade Category from other Trades of Category (A) New General Trade shall be allowed with prior permission of the Chief Administrator and subject to clearances mentioned therein.

13. In view of the said direction dated 24.02.2006 notified on 31.03.2006, the commercial site of Coal Depot can be used for any of the General Trade purposes without payment of conversion fee and without seeking prior permission of the Chief Administrator. Since the site in question is being used for General Trade, it cannot be said that the same is being misused.

14. Consequently, we find that the order dated 24.09.1993 (Annexure P-6) passed by the Estate Officer and affirmed by the Chief Administrator vide order dated 06.10.1998 (Annexure P-10) as well as the orders dated 05.05.1999 (Annexure P-12) & 02.08.1999 (Annexure P-19) passed by the Adviser to the Administrator are not sustainable in law on account of the subsequent events and are, thus, set aside.

15. But having said so, we find that rules or regulations regarding the

construction norms in respect of sites of the Coal Depot are not provided. Therefore, we deem it appropriate to direct the Chandigarh Administration to lay down the norms for raising construction on the sites of Coal Depot(s) so that such sites can be used purposefully and without compromising the layout of the city. The necessary norms/policy be framed within a period of three months.

16. With the said observations, the writ petition stands allowed.