(1998) 10 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8777 of 1993

Madan Singh APPELLANT

Vs

Union Territory and Another RESPONDENT

Date of Decision : 29-10-1998

Acts Referred:
Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 17

Citation : (1999) 122 PLR 22 : (1999) 3 RCR(Civil) 175

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Ram Sharan Dass, for the Appellant; Lisa Gill, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Soon after the partition of the country in the year 1947, it was considered imperative to create a model capital city for the then State of East Punjab. This task was entrusted to the famous ''Architect Monsieur Le Carbousier''. Simultaneously, legislative measures were taken for giving statutory protection to the planning of the new capital for the State which has acquired world fame as ''city beautiful'' and with a view to regulate the sale of building sites as well as the construction of buildings, Capital of Punjab (Development and Regulation) Act, 1952, (for short ''the Act'') was enacted. Simultaneously, supplementary legislation in the shape of the Punjab New Capital (Periphery) Control Act, 1952 (for short ''the Periphery Act'') was enacted. The statement of objects and reasons contained in the Bills presented to the Assembly for enactment of the Act and the Periphery Act reads as under:-

Capital of Punjab (Development and Regulation) Act, 1952:

"The construction of the new Capital of Punjab at Chandigarh is in progress. It is considered necessary to vest the Slate Government with legal authority to regulate the sale of building sites and to ensure that the purchasers construct buildings in accordance with bye-laws and generally observe the conditions of sale. It is necessary also to provide for the maintenance of the amenities provided in the Capital before the properly constituted local body takes over the administration of the city. The Capital of Punjab (Development and Regulation) Act, 1952, seeks to carry out the above objects."

The Punjab New Capital (Periphery) Control Act, 1952.

"The Punjab Government are constructing a new Capita! named "Chandigarh". The Master Plan providing for the future extension of the Capital will extend over a much greater area than the area acquired so far, for the construction of the first phase of Capital. To ensure healthy and planned development of the new City, it is necessary to prevent growth of slums and ramshackle construction on the land lying on the periphery of the new city. To achieve this object it is necessary to have legal authority to regulate the use of the said land for purposes other than the purposes for which it is used at present."

2. The concept of plan development of the city of Chandigarh is unequivocally reflected in the provisions of the Act and the rules and regulations framed thereunder. The multitude of restrictions imposed on the transfer of land and buildings allotted by the Central Government/Chandigarh Administration, on the nature of construction which can be made on the sites allotted/sold to the members of public and several punitive measures incorporated in the Act and the rules are a clear pointer to the intention of the Legislature to preserve the character of the city beautiful as a model city in the country.

3. The plans prepared under the supervision of Le Carbousier envisaged division of city into different independent and self-sufficient sectors. This is the reason why all the sectors except Sector Nos.1 to 6 have market centres and various public facilities at a central place. With a view to preserve the character of the various sites and buildings and to make available public utility services in each sector, the Legislature and the rule making authority have imposed rigorous restrictions on the size of building etc. to be constructed on commercial plots and use thereof. Simultaneously, provisions restricting the use of premises for purposes other than for which the same were allotted have rigorously been enforced, though the late, there has been slackness on the part of the respondents resulting in suffocation of market places.

4. The importance of maintaining the true character of Chandigarh as a model planned city has also been recognised by the Supreme Court in Babu Singh Bains etc. v. Union of India and otheirs etc. (1997)115 P.LR. 250 as is borne out from the following observations made by their Lordships:-

"The City of beauty, Chandigarh, carefully architectured and meticulously executed as a modal city in India by famous architect, Shri Le Corbursier; when it was getting desideration compounded by disfiguration stepped in to stamp out erosion and to restore its natural environment. These cases are instances of blatant misusage of the buildings or plots in the planned structures."

5. In the background of this, we intend to examine whether the orders Annexures P.3 to P.5 passed by the Assistant Estate Officer, The Chief Administrator and the Adviser to the Administrator, Union Territory deserve to be invalidated on the ground set out in the writ petition.

6. A perusal of the record shows that built up service booth No. 12, Sector 33-C was leased out to the petitioner-Madan Singh son of Bakshish Singh and Jagdish Brahmbhatt son of Soma Bhai w.e.f. 3.9.1980 for the trade of Cold Drinks for a premium of Rs.64,500/- on the basis of the highest bid given by them at the auction held on 3.8.1980. Paragraphs 2, 16, 17 and 29 of the letter of allotment Annexure P.1 issued by the Assistant Estate Officer, Chandigarh reads as. under:-

"2. A commercial site details thereof are given below is hereby allotted to you on the lease hold basis on the terms and conditions mentioned hereinafter:

Sector Sr. No. Area in Premium Yearly rent Trade of Site Sq. Yds. & for 33 years dimension 33-C Buiil up Service 49-1)6 Rs. 64500/- Rs.1612.50 Cold Booth No. 12 Drinks XX XX XX XX XX 16. The site and the building erected thereon shall be used only for the purpose of Cold Drinks only for which it has been leased.

17. In the event of default, breach or non-compliance of any of the conditions of lease, the lease may be cancelled and the site resumed and the whole/part amount paid to Government towards the premium/rent of the site may be forfeited to Government. After the cancellation of lease, it shall be responsibility of the lessee to remove the malba/structure, if any, within such reasonable period as may be prescribed by the Estate Officer, not exceeding 3 months from the date of cancellation of lease, failing which the Estate Officer shall be competent to remove the malba or to proceed to auction the site alongwith the building thereon and after deducting the market price of the site make over the proceeds of the auction to the lessee. In case of any dispute arising out of determination of the amount to be paid to the lessee following the auction of the site and building thereon; the Chief Administrator shall act as the sole arbitrator and his decision shall be final and binding on the parties.

XX XX XX XX XX 29. The terms and conditions of this allotment letter shall be in addition to the provisions of Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder which shall be binding on the lessee."

7. It appears that immediately after issuance of letter of allotment, the booth in question was let out by the lessee to Shri Deepak who started using the same for General (Karyana) Trade. On discovery of this fact, the Assistant Estate Officer initiated proceedings under Rule 20 of the Chandigarh Lease-Hold of Sites and Buildings Rules, 1973 (hereinafter referred to as ''the 1973 Rules'') against the petitioner and his co-allottee Jagdish Brahmbhatt as well as the tenant. They were issued show cause notices and given opportunity of producing evidence and of being heard on 1.6.1984 and 10.7.1984. However, neither the lessees nor their tenant appeared to contest the notices. Therefore, the Assistant Estate Officer cancelled the lease of the site and forfeited 10% of the premium on the

ground of misuse. The appeal and the revision petition filed by the petitioner and Shri Jagdish Brahmbhat have been rejected by the Chief Administrator and the Adviser to the Administrator respectively. The relevant extract of these orders are reproduced below:-

Order Annexure P.3 dated 25.3.1985 passed by the Assistant Estate Officer, exercising the power of the Estate Officer.

"Whereas Shri Madan Singh and others and the occupiers Shri Deepak of Capital Confectionery were given a show cause notice as to why the lease of said site be not cancelled under Rule 20 of the Chandigarh Lease-Hold of Sites and Building Rules, 1973 and an amount not exceeding 10% of the premium of the site, interest and ground rent be not forfeited.

Whereas Shri Madan Singh and others and Shri Deepak were further given an opportunity of producing the evidence and of being heard on 1.6.1984 and on 10.7.1984.

None is present on behalf of the allottees/occupier despite valid service of notice. Since the misuse has not been vacated, I hold the default wilful and decide the case ex parte. Therefore, in exercise of the powers vested under Rule 20 of the Chandigarh Lease-Hold of Sites and Building Rules, 1973, I, Anand Sharma, HCS, Assistant Estate Officer, exercising the powers of Estate Officer hereby cancel the lease of the site in question and further forfeit 10% of the premium of the site i.e., Rs.6,450/- (Rupees Six thousand four hundred and fifty) plus ground rent and interests to the date of cancellation i.e., 10.7.1984."

Order Annexure P.4 dated 28.7.1992 passed by the Chief Administrator:

"The case has been fixed for hearing today and is being taken up in the presence of the parties. Whereas, Shri Ram Saran Dass, Advocate, is present on behalf of the appellant. Miss Bharti Joshi and Atul Arora, Law Officer are present on behalf of the Estate Officer. The counsel for the appellant has stated that the misuse of the demised premises has been stopped by the appellants. He has prayed that the misuse having been stopped, the site be restored to the appellants. The representative of the Estate Officer has controverted the assertion made by the counsel for the appellant stating that the misuse of the demised premises is being continued by the occupiers. She has also stated that the site was got inspected on 23.6.1992 and that the misuse were found to be existing there at that time. She has again stated that service booth No. 12, in Sector 33-C, Chandigarh was sold by the Estate Officer for the general trade of Cold-drinks against which appellant had been running a Karyana Shop and now a STD pay phone has been installed there in the name of M/s Chopra Aromatic Agency. The counsel for the appellant has argued that the booth was sold for general trade and that running a shop under the present trade does not constitute misuse. The representative of the Estate Officer has pleaded that the booth was sold for a specific trade and running of a shop for a purpose other than the cold drinks constitute a misuse. She has prayed that the present appeal be dismissed as the misuse has not been stopped by the appellant.

4. I have considered the arguments of both the parties and have also gone through the record of this case. Therefrom, I find that Service Booth No. 12, Sector 33-C, Chandigarh was leased out to the appellant for running a cold-drink shop. The appellant instead of running a cold drink shop, previously started a confectionery shop and now STD pay phone has been installed in the said booth under the name M/s Chopra Aromatic Agency. The appellant in spite of services of show cause notice to them did not stop the misuse and the misuse is reported to be still continuing there. The ground for passing the order of cancellation of lease of the appellant was, the misuse of the said booth which is still being continued. The misuse being wilfully continued by the appellant and having not been stopped by them. I do not find any justification to interfere with the impugned order passed by the Estate Officer. The appeal is accordingly dismissed."

Order Annexure-P.5 dated 12.5.1993 passed by the Adviser to the Administrator:

"The counsel for the petitioner argued that the full premium of the built-up Booth No. 12, Sector 33-C, Chandigarh stands paid. Since the booth was not required for personal use, the petitioners rented out the same for the purpose for which it was allotted and the tenant could not carry on with the. business of cold-drinks and started confectionery business along with the cold-drinks. The Estate Officer, Chandigarh cancelled the lease of the site on the ground of misuse. The orders of the Estate Officer as well as of the Chief Administrator were against the law and facts of the case as the petitioners had already got the misuse stopped and booth vacated before passing the impugned order by the Estate Officer. The Estate Officer without going into the facts, passed the impugned order. At present in the booth in dispute cold drinks business is going on alongwith the STD Pay Phone and both are of the same category i.e. General Trade and as such there is no misuse. A prayer was made for setting aside the impugned order, restoring the site and for giving up the forfeited amount.

5. The representative of the Estate Officer argued that the site was inspected and it was found that the Booth is being misused as STD Pay Phone by the occupier in the premises. Since the premises is being misused, the revision merits no consideration.

6. After hearing the parties, going through the record of the Estate Office, I do not find that the demised booth is being used as STD Pay Phone whereas this booth was allotted for cold-drink produces. Since misuse as per report of the Estate Officer is still continuing, I do not see any reason to interfere with the orders of the Chief Administrator dated 28th July, 1992, passed in an appeal preferred by the petitioners. Consequently, the revision petition is dismissed."

8. The petitioner has challenged the impugned orders on the following grounds:-

(a) The Assistant Estate Officer did not have the jurisdiction to cancel the lease after the tenant had vacated the misuse in response to the show cause notice.

(b) The trade for which the booth was leased out i.e. cold drinks and the trade which was being carried on in the booth i.e. General (Karyana) falls in the same category i.e. general trade and, therefore, use of the booth for General (Karyana) Trade cannot be termed as misuse of the premises leased out by the administration.

(c) The STD Pay Phone run by the tenant comes under the general trade and, therefore, the petitioner cannot be punished on the ground of alleged misuse of premises.

(d) The impugned order is violative of the principle of natural justice because reasonable opportunity of hearing was not given to the petitioner.

9. The respondents have defended the impugned orders by stating that the petitioner and his co-allottee are guilty of allowing the misuse of the premises in violation of the provisions contained in the Act and the 1973 Rules under which lease was granted to them.

10. When the case was heard on September 9, 1998, learned counsel for the respondents sought adjournment to produce the latest inspection report of the site to show whether the misuse is still continuing. On September 24, 1998, Mrs. Lisa Gill filed the latest inspection report prepared by the Inspector. Prem Chand on the basis of inspection made by him on 22.9.1998. A copy of the same was made available to Shri Ram Sharan Das. That report reads as under:

"I have inspected the booth No. 12, Sector 33-C, Chandigarh on 22.9.1998 and found the booth locked. After that I contacted the occupier of this booth in Sector 28, Chandigarh who is running his business in S.C.O. No. 149, Sector 28-D, Chandigarh. He told that he is using the booth No. 12/33-C, Chandigarh as godown of Sufla Salt Bags."

11. The petitioner has not produced any material before the Court to show that the inspection report does not give true picture with regard to the use of the booth. Therefore, we do not find any reason to discard the latest inspection report showing that the booth is now used as godown of Sufla Salt Bags and in this manner the misuse is continuing.

12. Shri Ram Sharan Dass argued that the use of the booth for General Karyana Trade or STD Pay Phone booth or as a godown of Sufla Salt Bags does not amount to misuse of the leased out premises and, therefore, the order passed by the Assistant Estate Officer cancelling the lease should be declared as without jurisdiction. He then argued that the cancellation of the lease should be declared illegal because the so-called misuse of premises had been stopped prior to the passing of order Annexure-P.3 and the subsequent discovery of other misuse cannot be made a ground to sustain the order of cancellation. He assailed the orders passed by the appellate and the revisional authorities on the ground of violation of the principles of natural justice and non-application of mind.

13. Mrs. Lisa Gill argued that cancellation of lease in view of the admitted misuse of the premises does not suffer from any legal or jurisdictional error. She submitted that the repeated misuse of premises should be treated as sufficient to deny relief to the petitioner under Article 226 of the Constitution of India.

14. Though it may appear slightly repetitive, we deem it necessary to mention that the built-up booth was leased out to the petitioner for the trade of cold drinks and in view of terms and conditions incorporated in the allotment letter, the lessees were never under any doubt that the booth cannot be used for any other purpose and further that non-compliance of any of the conditions of lease may entail cancellation of the same. The letter Annexure-P.2 dated 5.11.1980 written by the Estate Officer, Chandigarh on which reliance has been placed by Shri Ram Sharan Dass is of no avail to the petitioner in view of the clear stipulation made in paragraphs 2 and 16 of the letter of allotment and the very fact that the booth was used for General Karyana Trade made the lessees and their tenant liable to punitive action. The Assistant Estate Officer gave notices to them but they did not respond and, therefore, the order Annexure-P.3 passed by him cannot be declared illegal for want of jurisdiction or on the ground of arbitrary exercise of power.

15. There is no dispute between the parties that the built-up booth was leased out to the petitioner and Jagdish Brahmbhatt under the 1973 Rules for the trade of cold drinks. Rule 14 of the 1973 Rules provides for execution of lease deed by the lessee after payment of 25% premium. Failure of the lessee to do so can lead to the cancellation of lease and forfeiture of 25% of the premium. However, the fact of the matter is that the lease of the petitioner and Jagdish Brahmbhatt was not cancelled due to non-execution of lease deed. Therefore, it is reasonable to presume that they had executed lease deed in form-''C prescribed for the purpose. Rule 17 contains the general conditions of lease. Sub-rule (11) of Rule 17 which restricts the use of building for a purpose other than for which the lease is granted and clause 11 of form-''C which contains the proforma of lease which must have been executed by the lessees of building read as under:-

"17 General conditions of lease.-

XX XX XX XX XX (11) No building, whether existing or to be constructed on any site demised under these rules, shall be used for a purpose other than that for which lease has been granted.

Provided that the Chief Administrator, Chandigarh may specify by notification in the official gazette certain categories of Cottage Industries which may be run in the residential houses, on such terms and conditions, as may be deemed necessary.

XX XX XX XX XX FORM C Building (By allotment/auction) XX XX XX XX XX (11) The Lessee shall not without the written consent of the Lessor carry on, or permit to be carried on, in the building any obnoxious trade or use the same or permit the same to be used for any purpose other than that for which this lease is granted or do or suffer to be done therein anything whatsoever which in the opinion of the Lessor may be nuisance, annoyance, or disturbance to the Lessor or persons in the neighbourhood or which may materially impair the utility or value of the property.

XX XX XX XX XX"

16. A conjoint reading of these provisions and Rules 9 of the Cnandigarh (Sale of Sites and Buildings) Rules, 1960, which too contains similar restrictions on the use of sites and buildings show that the petitioner could neither use nor could permit the use of building for any purpose other than for which the lease was granted and in view of the fact that the lease was granted only for the trade of cold drinks, the carrying on of General Karyana Trade or running of STD Pay Phone clearly amounted to violation of the Rule 17(11) of 1973 Rules read with the conditions of lease deed. Thus, there was ample justification for passing of the order Annexure-P.3.

17. The argument of Shri Ram Sharan Dass that the various trades carried on by the tenants of the petitioner fall in the category of general trade and, therefore, the petitioner cannot be held guilty of misuse is based on a totally erroneous assumption, namely, that the premises leased out for one particular item of general trade can be used for any other item. The various entries which fall under the heading General Trade shows that each trade has a separate and district entity and the premises leased out for one particular trade cannot be used for another trade falling under the broad category of general trade else, the very purpose of specifying separate trades which can be carried on in the booth/ shop will be frustrated. This will also destroy the idea of providing public services and facilities to the residents of the sector at a central place. If premises leased out for one particular trade falling under the category of general trade are allowed to be used for another trade falling in the said category, a situation may arise in which in one sector majority of the lessees and/or their tenants may be carrying on identical trade forcing the residents to buy other goods from other sectors or go to other sectors for availing services. Therefore, we are unable to agree with Shri Ram Sharan Dass that the respondents have erred in holding the petitioner guilty of having acted in violation of the conditions of allotment.

18. The aforementioned conclusions recorded by us are fully supported by the decisions of this court in M/s Gulati Tea Company v. Shri Ajay Kumar (1986)89 P.L.R. 430 and Dr. A.P. Sanwaria v. Union of India and Ors., (1996)113 P.LR. 621 and of the Supreme Court in Babu Singh Bains etc. v. Union of India (supra).

19. The orders passed by the appellate and the revisional authorities cannot be invalidated on the ground of violation of the principles of natural justice because both the authorities gave reasonable opportunity of hearing to the representatives of the petitioner and his co-allottee and then found that the booth was being used for STD Pay Phone without permission for change of user. We, therefore, do not find any valid ground to nullify the orders passed by the

respondents.

20. The aforesaid conclusion of ours is supported by the fact that the booth is now being used as godown of Sufla Salt Bags. The inspection report dated 24.8.1998 prepared by inspector-Shri Prem Chand has not been controverted by the petitioner. Therefore, we have no hesitation to hold that the petitioner is not entitled to any relief under Article 226 of the Constitution.

For the reasons mentioned above, the writ petition is dismissed.

