

(2011) 03 P&H CK 0819

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13940 of 1989 (O and M)

M/s Churia Ram Ramesh Kumar

APPELLANT

Vs

The Adviser to The Administrator, Union Territory Chandigarh
and others

RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 10, 10(4)
Constitution of India, 1950 — Article 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(1)

Citation : (2011) 163 PLR 307

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

CM. No. 3541 of 2011

Allowed. The applicant/respondents are allowed to place on record the additional affidavit on behalf of respondents No. 1 to 3.

CM. No. 3542 of 2011

Allowed. The applicant is exempted from filing the certified copies of Annexures A-1 to A-3.

Civil Writ Petition No, 13940 of 1989

1. The petition contains a challenge to the proceedings of the Chandigarh Administration that had the effect of causing dispossession of the premises / godown site No. 157, Sector 26, Chandigarh. The petitioner is a tenant of the transferee of the premises. The transferee had obtained the transfer from the original allottee M/s Sobha Singh, Arjun Lal. The original order of allotment was purported to be for use of the property as a godown and the action for

resumption by the Administration was that there had been a conversion of the user of the property by the transferee and his tenant to a purpose other than for which it was originally meant. The admitted case as seen from the respective pleadings of the parties was that the petitioner's landlord namely transferee had sought permission for such conversion and there has been a direction by the Chief Administrator for payment of Rs. 48060/- as difference of price of the two trades and the decision was conveyed to the transferee Sh. Mange Ram Aggarwal on 20.1.1978. The complaint was that the amount was not paid as demanded, and therefore, the conversion sought for was not approved. Consequently, the order was passed directing the resumption of the premises against the transferee. Against this order, it appears that Mange Ram Aggarwal had preferred an appeal u/s 10(4) of the Capital of Punjab (Development and Regulation), Act 1952 (hereinafter referred to as "the Act").

2. The conversion order itself appears to have been passed on a direction from the Chief Administrator in an appeal filed by Mange Ram Aggarwal to the Administrator, where he was directed to approach the Estate Officer for seeking such conversion. Evidently, he had not paid the amount determined by the Estate Officer; instead, he had filed the revision to the Administrator in petition No. 69 of 1981. This petition was dismissed on 18.7.1988 vide Annexure P-I. When there had been no compliance with the direction and when the revision also stood dismissed, a notice was given u/s 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, requiring the transferee Mange Ram as well as the petitioner, who was tenant holding the possession of the property, to deliver possession of the property on the ground that the property had been ordered to be resumed vide order dated 16.11.1976, by the Asstt. Estate Officer, exercising the powers of Estate Officer, Chandigarh.

3. Against this notice, revision had been filed by the petitioner seeking permission to pay the amount which was directed to be paid by his landlord. Copy of the revision petition filed before this Court shows that the petitioner was making an offer to pay Rs. 48060/- for getting the change of the trade for the use of the site in dispute as a shop instead of a Godown. This revision petition was dismissed on 25.10.1989 refusing the offer of the petitioner and holding that the order of resumption had become final. The order also cited the judgment referring the Full Bench judgment in the case of Brij Mohan v. The Chief Administrator, Union Territory, Chandigarh and others (1980) 82 P.L.R. 621 that created the right to the tenant to be heard before order of resumption was made but the remedy of the tenant, it was pointed, was by way of filing an appeal before the Chief Administrator and that the tenant would be precluded from approaching the Advisor directly by way of revision petition. It could be noticed that the attempt of Administration was to quibble with procedural rigmarole and was not addressing the issue of what was the exigent. If allottee's conversion was possible on payment of conversion charges and when the tenant was making the offer, the tenant could not have been fended off by saying that he could not approach the Advisor to the Administrator by an offer of payment directly but he

could have only preferred the appeal against the original order of resumption. The issue now would be whether the Administration could be allowed to take this as constituting any legal bar to secure the relief which would otherwise be possible.

4. The petitioner has a second string to the bow, as it were by urging that even during pendency of these proceedings, there has now been a change in law by way of amendment of Rules framed under the abovesaid Act of 1952. Relevant rules which are brought through application filed for reception of the document reveal that the Administration has now issued direction for conversion of trade for commercial sites and buildings in a prescribed form vide order dated 25.6.2002. Pursuant to this order and in partial modification of the order dated 25.6.2002 the provision insofar as it is relevant is :

1.

2. The conversion of trade will be applicable to ground floor of all commercial sites / premises only.

3. The allottee/ traders will, however, give an intimation to the Estate Officer, Union Territory, Chandigarh in writing about the trade being pursued by them.

5. To a query from the Court about how the administration is prejudiced in the situation where the amended rules provide for such conversion and that too without making any payment, the learned counsel for the Administration made reference to some orders which have been rendered by this Court which are to the effect that if administration had passed an order of resumption and that has become final, a tenant cannot annul the same through a writ petition. The learned counsel for the petitioner made reference to Civil Writ Petition No. 10992 of 2002 titled Smt. Pushpa Devi v. Advisor to the Administration, Union Territory Administration, Chandigarh and others decided on 18.7.2002. The case related to the very same premises where a permission for conversion was sought at the instance of the person claiming through a Will said to have been executed by a transferee, which was refused by this Court. I will not take this anyway as fatal to the right of the tenant to hold his possession. This order has been passed even before the above writ petition filed by the tenant could be taken up for hearing. Probably, the petitioner in that case must have brought the attention of the Court to the pendency of this writ petition so that final adjudication could have been made, in the context of the Full Bench ruling of this Court, in Brij Mohan v. The Chief Administrator, Union Territory, Chandigarh and others (1980) 82 P.L.R. 621 : AIR 1980 PLR 236. The Hon"ble Full Bench ruled that a tenant of building which is sought to be resumed is entitled to be heard before an order is passed and if the tenant was aggrieved against order he could even file appeal u/ s 10 against order. In this case, this Court exercises an equitable jurisdiction under Article 226 of the Constitution of India and if it bears out there has been change in law that makes possible conversion and the property has not bear actually resumed from the hands of a tenant, who was entitled to be heard, and

the Court was in season of the issue, the Court shall protect the possession in term of the law which is now applicable.

6. To balance the scales, only a direction would be given to the petitioner in terms of the order already contained in the revision by the Administrator, that he would pay the amount which was originally determined namely of Rs. 48,060/-, I do not think that it is even necessary to make any provision for payment of interest, since as per the latest rules, there is no requirement for making any payment.

7. The learned counsel appearing on behalf of the Administration has referred to the judgment of this Court in the case of Mohan Lal Ghansham Dass v. Chandigarh Administration, Chandigarh and others (1979) 81 PLR 28 to hold that where a tenant had no right to unauthorized possession and eviction order has been passed against the owner to whom the sites have been allotted but later on resumed for having violated the terms of the allotment, a tenant can not claim the right to continue in possession of the superstructure which was unauthorized. I have already pointed out in this case that there was nothing unauthorized about the tenants' possession. Even if prior sanction was not obtained, the law provided initially that he could make a conversion on payment of charges, the offer had been indeed made by the tenant. I do not find any contumacious conduct on the part of the tenant.

8. The orders of resumption/eviction are quashed. The writ petition is allowed subject to the direction for payment as mentioned above.

The same shall be made by the petitioner within two weeks from the date of receipt of copy of this order.