
(1994) 11 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9011 of 1991

Navdeep Kaur Sandhu and Others

APPELLANT

Vs

The Advisor to The Administrator and Others

RESPONDENT

Date of Decision : 22-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1995) 109 PLR 423

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : M.S. Sandhu, for the Appellant; Ashok Aggarwal Rajinder Goel and Vinod Gupta for the Respondent Nos. 1 to 3, for the Respondent

Judgement

G.C. Garg, J.—The primary controversy raised in this writ petition is about the penalty of forfeiture at 10% and the interest charged.

2. Shop-cum-Office No. 66-67, Sector 17-A, Chandigarh was put to auction on lease-hold basis on July 17, 1977 under the provisions of Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter to be referred as "the Act") read with Chandigarh Lease-hold of sites and Buildings Rules, 1973 (For short "the Rules"). Petitioners and respondents 4 to 8 turned out to be the highest bidders. Their offer of Rs. 6,90,000/- was accepted. The petitioners paid 25% of the premium at the spot. The balance was to be paid in three equated yearly instalments alongwith ground rent; The Petitioners failed to pay the first instalment and consequently proceedings for resumption of the site were taken. The site was initially resumed in the year 1979 on failure of petitioners to pay the instalments on the due dates, but the order was recalled. The petitioners even thereafter did not make payment of the instalments due. Proceedings were/ therefore, initiated under rule 12(3) of the Rules and the order of resumption Annexure P-2 was passed. In addition, penalty of forfeiture at 10% of premium was also ordered. On appeal, order of resumption was set aside but the order qua forfeiture was upheld. Revision taken against the appellate order was

dismissed. The petitioners seek quashing of these orders in this writ petition.

3. Respondents 1 to 3 by filing written statement have sought to justify the orders passed.

4. Learned counsel for the petitioners submitted that Rule 2 of the Capital of Punjab (Development and Regulation) (Service of Notice) Rules, 1974 provides that a notice required to be served upon any person under any of the provisions of the Act or the Rules made thereunder, shall, if practicable, be served personally on the persons to whom it is addressed, or failing him, his recognised agent or any adult member of his family residing with him. Learned counsel for the petitioners submitted that before passing the order of resumption Annexure P-2, a notice was required to be served on the lessees and in the absence of notice which ought to have been served on the petitioners personally and in their absence on their recognised agent or any adult member of the family residing with them, the order of resumption would be illegal and void. It was submitted that in this case no notice whatsoever was served on any of the petitioners or proforma respondents before order Annexure P-2 was passed. In support of his above submission, learned counsel for the petitioners relied upon *Harnam Singh v. Union Territory of Chandigarh* (1994) 102 P.L.R. 481 Haryana Rent Reporter, 426 to contend that where an allottee was not provided any opportunity of hearing before passing the order of resumption, the same cannot be sustained. Before passing an order of resumption, a notice is required to be served on the lessee as required by sub-rule (3) of rule 12 of the Rules which has not been done. The contention of the learned counsel, in my view, has no merit. A notice dated March 26, 1982 under rule 12(3) of the Rules was sent through registered post to the lessees requiring them to show cause either personally or through an authorised agent on April 12, 1982. It seems that none of the lessees turned up. Another registered A.D. notice dated April 1, 1982 was issued, again requiring the lessees to appear on May 5, 1982 at 11 A.M. It was also intimated that in case the petitioners failed to appear, ex parte proceedings will be initiated against them. Since the petitioners did not put in appearance, it was on this date, order Annexure P-2 was passed resuming the site and imposing penalty of 10% by way of forfeiture. The original file in that behalf was produced before me. It could not be shown that the notices were sent at wrong address. The file also did not show that the same were received back undelivered. Presumption, in my view, can fairly be drawn that the notices reached the addressees. This apart, the petitioners filed an appeal against the order, Annexure P-2 and specifically raised this contention before the appellate authority. It was rebutted by the official respondents. However, during the course of hearing before the appellate authority, the petitioners stated that bulk of the amount of the instalments had already been paid after cancellation of lease and undertook to make payment of the balance amount in case the resumption order was set aside. Having regard to this offers the appellate authority gave a chance to the petitioners to make payment of the arrears outstanding against them, especially having regard to the fact that a building had been erected in the meantime, restored the lease of the

site on the said condition but allowed the forfeiture to stand. A reading of this order goes to show that for the concession shown by the appellate authority the point of non-service of notice was not pressed any further. Still not satisfied with the order of the appellate authority, the petitioners filed revision petition before the Advisor to the Administrator, Union Territory, Chandigarh and in the revision, though various grounds were taken yet only two points were pressed, namely, the imposition of penalty by way of 10% forfeiture was not desirable and that compound interest was denied and the learned Advisor after considering the matter and on perusing the record came to the conclusion that the petitioners had been afforded proper opportunity by the Estate Officer as also by the Chief Administrator, Chandigarh while passing the impugned orders and dismissed the revision in that behalf. As regards compound interest, it was however, ordered that the Estate Officer shall settle the accounts in the presence of the petitioners with a view to satisfy them that compound interest had not been charged. Thus, from the resume of the above, it seems to me that it is too late in the day for the petitioners to contend that they had not been served with a notice before passing of the order, Annexure P-2. In the situation as aforesaid, the petitioners cannot draw any support from Hamam Singh's case (supra).

5. Learned counsel for the petitioners next submitted that a bare perusal of Annexures P-2 and P-3, goes to show that order Annexure P-2 is an order under , rule 20 of the Rules and not under sub-rule (3) of rule 12 thereof and once that is so, it was submitted, the impugned orders could not be sustained. In support of this, the learned counsel relied upon a Division Bench judgment of this Court in Civil Writ Petition 2162 of 1990 (Sushil Kumar and Rajinder Kumar v. The Advisor to Administrator, Chandigarh (U.T.) and Ors., decided on January 15, 1991, wherein it was held that lease of the site could be cancelled for non-payment of the amount of instalments of premium under rule 12(3) of the Rules and reference to rule 20 in the order of the Estate Officer was misplaced and that being so, the petitioners therein were not liable to pay the amount of forfeiture. The order impugned in that case was modified to that extent. Reliance was also placed on Punjab Book Centre v. Union Territory, Chandigarh and Ors. (1981)83 P.L.R. 371 especially paras 8 and 9 thereof, wherein it was held that rule 20 was in the nature of general provisions whereas sub rule (3) of rule 12 of the Rules was a special provision to deal with consequences of default in the payment of instalments of premium and thus rule 20 will give way to rule 12(3) of the Rules. As noticed above, in the present case, the petitioners failed to make payment of any of the three instalments that had fallen due before service of notice under sub-rule (3) of rule 12 of the Rules. It was thus intended to take action against them for having failed to make the payment of the instalments within the stipulated period. Thus, though order Annexure P-2 does, mention that it was passed in exercise of powers vested under rule 20 of the Rules and though similarly order Annexure P-3 recites that the Assistant Estate Officer passed the order Annexure P-2 in exercise of powers conferred upon him under rule 20 of the said Rules, yet in my view, reference to rule 20 in these two orders is

misplaced and is in the nature of typographical mistake. Reference ought to have been made in these orders to the provisions of sub-rule (3) of rule 12 and rule 20 in exercise of which the order was passed, for, the order of forfeiture and resumption was passed on petitioners" having failed to make the payment of the instalments that had fallen due before the date of passing of the order. The order further goes to show that notice under sub-rule (3) of rule 12 of the Rules was served on the petitioners requiring them to show cause about the default in making payment of the three instalments, that had fallen due and as indicated in the impugned orders. Reference to rule 20 in order Annexure P-3 is simply because of the mistake that had crept in order Annexure P-2. Learned counsel for the petitioners could not refer me to any material on the record to show that the order of resumption and forfeiture was passed on the ground other than the default in the payment of instalments on the due dates. Thus, the judgment relied upon by the learned counsel in Punjab Book Centre's case and Sushil Kumar's case (supra) have no application to the facts of this case.

6. Learned counsel for the petitioners by reference to letter of allotment, Annexure P-1 submitted that the official respondents could not charge higher rate of interest from the petitioners than the one indicated in the allotment letter i.e. 7% per annum. According to the learned counsel, interest at the rate of 12% had been charged which is contrary to conditions contained in the letter of allotment, Annexure P-1. Reference was specifically made to clause 5 of allotment letter Annexure P-1. It was also submitted that rule 12 providing for charging of interest at the rate of 12% was added w.e.f. December 15, 1979 whereas the lease was granted to the petitioners in July 1977 and thus, the interest at the rate of 12% could not be charged. On a consideration of the matter, I am of the opinion that balance of 75% of the premium together with interest thereon at the rate of 7% was payable in three equated annual instalments and the instalments had been fixed by taking into consideration the aforesaid rate. If the instalments had been paid on the due dates, no problem would have arisen. However, the petitioners failed to pay all the instalments by the due dates and till the amendment was carried in rule 12(3) (a) i.e. upto December 14, 1979, the petitioners were charged interest only at the rate of 7% on the amounts that fell due till that date and thereafter they were charged interest at the rate of 12% on the amounts due. Reference to Annexure R-9 would show that no interest was charged either at the rate of 7% or @ 12% on the amount of interest. In other words, Annexure R-9 annexed with the written statement clearly goes to show that the official respondents have charged simple interest initially at the rate of 7% and thereafter at the rate of 12% per annum. Clause 29 of the allotment letter, Annexure P-1 clearly lays down that the terms and conditions of the allotment letter were in addition to the provisions of the Act and the Rules framed thereunder which would be binding on the lessees. Thus, the provisions of the Rules providing for higher rate of interest w.e.f. December 15, 1979 would apply with full force to the case of the petitioners. From a reading of the conditions of allotment letter it can only be inferred that the petitioners

had been given an option to make payment of the balance of 75% of the lease money in three equated instalments with interest at the rate of 7% per annum. From this it cannot be inferred that the petitioners will be liable to pay interest at this rate even if they committed default in the payment of instalments on the due dates. Thus, it cannot be said that the petitioners had been charged compound interest.

7. Another contention raised by the learned counsel for the petitioners was that petitioners 1 and 3 were minors when the order Annexure P-2 was passed and no notice could be served on them in the absence of appointment of a guardian or next friend. I am afraid, the contention is fallacious and deserves to be repelled. Provisions of the CPC which provide appointment of court guardian or next friend, are not applicable to the controversy in the present petition. Minors were the lessees and they were served with a notice. Moreover, not only the minors but their father who happens to be one of the lessees alongwith the minors had been served with a notice under rule 12(3) of the Rules.

8. Besides the above, learned counsel for the petitioners still raised another contention, namely, that the official respondents retained with them an amount of about one lac from the year 1985 and once it came to their notice that the petitioners had paid amount in excess, they ought to have straightaway refunded the said amount instead of retaining it and in case they decided to retain it, they were liable to pay interest at the rate they charged from the petitioners, till the excess amount was adjusted towards the ground rent. A perusal of the record would go to show that this contention was not raised before any of the authorities nor was it made aground of attack in this writ petition. Learned counsel appearing on behalf of the official respondents pointed out that because of the orders passed by the authorities, account of the petitioners was overhauled after passing of the orders Annexure P-4 by the Advisor to the Administrator on February 21, 1991 and it was at that point of time that the excess amount was noticed and the same was adjusted against ground rent for the years 1985 onwards and whatsoever amount was found due to the petitioners at that time, the same was refunded to them. Be that as it may, it could not be disputed that the petitioners had to their credit an excess amount of Rs. 1,00,383.03 as on May 3, 1985 and as on that day, they were at least entitled to receive a sum of Rs. 83,133.12 on August 10, 1985 after adjustment of ground rent of Rs. 17250/- which became due on that day. The official respondents ought to have either refunded this amount or have granted interest on the due amounts on the due dates at the same rate i.e. @ 12% per annum by giving them a credit thereof. But they did not do so. In my view, in all fairness, the petitioners are at least entitled to this relief. Accordingly, it is directed that the official respondents will grant interest to the petitioners on the amount of Rs. 83,183.12 w.e.f. August 10, 1985 till the same was adjusted towards the grounds rent and on the amounts remaining due from year to year after adjustment of the ground rent and if any amount falls due to the petitioners now after adjustment of ground rent the same shall be refunded forthwith to them.

9. In the end, learned counsel for the petitioners relying upon a judgment of this Court in Goyal and Company Vs. Union Territory and Others, submitted that once the property was ordered to be restored, forfeiture automatically goes and the petitioners were, therefore, not liable to pay forfeiture amount of Rs. 69,000/- as ordered by the Assistant Estate Officer vide Annexure P-2 and maintained in appeal and the revision. The contention however, cannot be accepted in view of the law laid down by a Division Bench of this court in Ashok Kumar Vs. Union of India (UOI), wherein it was observed as under:-

" There can be no manner of doubt that rule 12(3) of the Rules permits forfeiture only when there is an order of resumption and it cannot, therefore, stand without there being such an order of resumption. The question that, however, arises to be considered in the present case is whether or not the order of resumption was a valid order. If invalid not only must the order be set aside but the forfeiture too must go with it. If, however, such an order of resumption is valid, it could only have been set aside as a measure of concession granted by the appellate or revisional authority and as a concession, it is obvious that it could be conditional too. Payment of an amount equal to a certain proportion of the premium would in such a case be as a valid a condition of restoration of the site as payment of the entire amount outstanding in respect of it within a specified period. To hold otherwise, could lead to consequences, which may not be in public interest, as, on the one hand, it may defer the appellate or revisional authority from affording a defaulter another opportunity of clearing his outstandings and thus, save his site from resumption and on the other hand, if all that the defaulter has to do is to clear his outstanding without any further ado and have the resumption set aside, it would be a positive disincentive to allottees to pay their dues as per the terms of the allotment. Seen in this light, M/s. Goyal and Company's case" (supra), must be read to be an instance of the order of resumption being invalid and not the rule that where an order of resumption is set aside as a concession, the condition regarding forfeiture of the premium alongwith the entire outstanding amount due must be taken to be invalid."

10. A reading of Annexure P-3 clearly goes to show that resumption was set aside and the site alongwith building was restored to the petitioners but forfeiture was specifically allowed to stand. The revisional authority also did not grant any relief to the petitioners in the matter of forfeiture. Thus, the petitioners are not entitled to the grant of relief of forfeiture only on the ground that the order of resumption had been set aside. If the order of resumption had been set aside on merits of the controversy raised before the authorities, then the judgment in M/s. Goyal and Company's case (Supra) would have applied with full force and the petitioners would not have been liable to forfeiture. In other words, they would have been liable to forfeiture on the order of resumption being set aside.

11. For what has been discussed above, this petition is partly allowed as indicated above. No costs.