
(2000) 12 P&H CK 0136
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5038 of 2000

Opinder Pal Singh

APPELLANT

Vs

The Adviser to the Administrator Union Territory, Chandigarh

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 10, 12(2), 12(3), 13, 8

Citation : (2001) 4 RCR(Civil) 11

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. Ravinder Chopra, for the Appellant; Mr. Ajay Tewari, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—On December 18, 1996, the petitioners purchased a Shop-cum-Office Site No. 64, Sector 46, Chandigarh for a total premium of Rs. 63 lacs. They deposited 25% of the amount viz. Rs. 15.75 lacs within the stipulated period of 30 days. Thereafter, on February 13, 1997, the letter of allotment was issued. Despite various requests, the possession of the site was not delivered. Ultimately, in October, 1997, the petitioners surrendered the site and asked for the refund. Nobody paid any heed. The petitioners sent a legal notice on March 4, 1998 claiming refund of the amount along with interest and damages. Instead of responding to the notice, the Estate Officer slapped a show cause notice dated April 30, 1998. A copy of this notice has been produced as Annexure P.6. The petitioners were called upon to "show cause by 2.6.1998 as to why the lease of the said site may not be cancelled and whole/part of the premium ground rent paid..... forfeited under Rule 12(3) of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973.....". The petitioners submitted a reply. Regardless, the third respondent passed an order dated June 3, 1998. The lease was cancelled and order for forfeiture of an amount of Rs. 6.30 lacs was passed. The petitioners filed an appeal which was dismissed by the Chief Administrator vide order dated

December 22, 1998. The petitioners filed a revision petition. On November 10, 1999, the Adviser to the Administrator decided this revision petition. She inter alia found as under :

"After hearing the parties and going through the submissions made, I find that the allotment letter was issued on 13.2.1997 by the Estate Officer but the possession of the plot was not handed over to the petitioners thereafter. The Estate Officer also did not act promptly in having the tree as well as electricity pole removed from the allotted site despite repeated requests from the petitioners. Non-removal of the tree as also the electricity pole has compelled the petitioners to surrender the allotment of the site. The Estate Officer should have taken prompt action on the request of the petitioners once it came to his notice that the site was not free from encumbrances. This inaction on the part of the Estate Officer has resulted in avoidable inconvenience to the petitioners. In view of the circumstances of the case, I reduce the forfeiture from 10% to 1/2%. Announced. Parties be communicated."

2. In view of the above order, the respondents were entitled to forfeit an amount of Rs. 31,500/-. When the petitioners approached the Estate Office for the refund, they were informed that only an amount of Rs. 2 lacs was payable. The petitioners filed an application before the Adviser seeking clarification of her order. This request was declined on February 23, 2000 with the observation that the statute does not provide for any review. Consequently, the petitioners have approached this court through the present writ petition. They pray that the orders passed by the three respondents, copies of which have been produced as Annexures P.8, P.9 and P.10 be quashed. They further pray for the issue of a writ directing the respondents to refund the total amount of Rs. 15.75 lacs alongwith interest @ 24% per annum.

3. A written statement has been filed on behalf of the respondents. It has been averred that "before auction, the respondents gave public notice regarding the location and the lay-out plan of the sites and it was for the petitioners to satisfy themselves about the actual position at the site before bidding therefor". As soon as the "respondents were made aware of the encumbrances at the site, they took steps to remove the same, by writing letters dated 27.2.1997, 30.4.1997 and 27.5.1997 to the Executive Engineer Horticulture Division-II, Chandigarh.....". It has been further averred that respondent No. 1 had "substantially reduced the forfeiture from Rs. 6,30,000/- to Rs. 31,500/- and had thereby given the benefit of Rs. 5,95,000/- to the petitioners. However, no order had been passed regarding the ground rent and interest. As per the said order, a sum of Rs. 3,96,248/- is refundable to the petitioners.....".

4. Counsel for the parties have been heard.

5. Mr. Ravinder Chopra, counsel for the petitioners submits that the respondents had failed to hand over possession as there were encumbrances at the site. They cannot order any forfeiture or claim ground rent or interest. The petitioners are

entitled to the refund of the full amount alongwith interest @ 24% as the respondents charge interest at the rate for any default that an allottee commits. On behalf of the respondents, Mr. Ajay Tewari, learned Counsel has very fairly stated that the respondent authorities have been "inefficient". However, even the petitioners should have exercised due care and caution before bidding for the site.

6. Admittedly, the sites were auctioned on December 18, 1996. Nothing has been produced on record to show that the intending bidders were ever made aware of any encumbrances at any of the sites. In fact, while dealing with the State or any of its instrumentalities, a citizen should be entitled to proceed on the assumption that the property shall be totally free from all encumbrances and that the possession shall be delivered without delay or demur.

7. What is the position in the present case ? The petitioners had deposited a substantial amount of Rs. 15,75,000/- soon after the auction. The respondents had issued the letter of allotment on February 13, 1997. Despite the fact that the petitioners had performed their part of the contract, the respondents had failed to hand over vacant possession of the site despite repeated requests. It was in view of the total inaction on the part of the respondents that the petitioners had made a prayer for refund of the amount. Instead of appreciating their difficulty and giving the money back, the respondents slapped a notice calling upon the petitioners to show cause as to why the lease be not cancelled and the amount be not forfeited. This threat was even carried out without any regard to the facts as established on the record. Vide order dated June 3, 1998 (Annexure P.8), the Estate Officer had in a wholly arbitrary manner cancelled the lease and ordered the forfeiture of an amount of Rs. 6,30,000/- alongwith interest and ground rent. Why ? The only reason disclosed in the order is that "there is no provision to accept the surrender of site". The petitioners filed an appeal. The Chief Administrator dismissed it in a wholly mechanical manner. Vide its order dated December 22, 1998, the authority observed that "the appellants had themselves surrendered the site. Since there is no provision for surrender, the Estate Officer has to cancel the lease of the site and to forfeit 10% of the premium and also the ground rent and interest upto the date of cancellation". A copy of this order is at Annexure P.9.

8. The petitioners did not give up. They filed a revision petition. The Adviser was less unreasonable. She came to a firm conclusion that the Estate Officer had not acted promptly. The tree as well as the electricity pole were not removed from the site in question. It was on account of the non-removal of the tree and the electricity pole that the petitioner were compelled to surrender the site. The Estate Officer should have taken action promptly. It is on account of the inaction that avoidable inconvenience had been caused to the petitioners. Thus, the amount of forfeiture was reduced from 10% to 1/2%.

9. Mr. Chopra submits that the petitioners were not at fault. Thus the respondents were not entitled to order the forfeiture of any amount whatsoever. Not even a penny.

10. We think the counsel is absolutely right in his contention. The attitude of the respondents appears to -"We are in the wrong. Yet you will pay for it". This is wholly unfair and arbitrary. Such an attitude cannot be accepted in any civilised society much less than in a democracy where people are governed by the rule of law and not of men. The orders passed by the Estate Officer and the Chief Administrator were totally arbitrary. Even the order passed by the Adviser for the forfeiture of 1/2% of the amount was wholly unwarranted. Why should the petitioners pay when they are not to blame in any manner whatsoever ? It is an effort on the part of the respondents to take advantage of their own wrong. It cannot be sustained in equity or in law.

11. This brings us to the question of payment of ground rent and interest. Mr. Chopra has referred to the provisions of Rule 10 of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973. The provision reads thus :

"Delivery of possession. - Actual possession of the site/building shall be delivered to the lessee on payment of 25 percent of the premium in accordance with Rule 8 or Rule 9 as the case may be :

Provided that no ground payable under Rule 13 and interest on the instalments of premium payable under sub-rule (2) of Rule 12 shall be paid by the lessee till the actual and physical possession of the site/building is delivered or offered to be delivered to him, whichever is earlier."

12. A perusal of the above provision shows that the actual possession of the building or site has to be delivered to the lessee on payment of 25% of the premium. Still further, the provision clearly provides that no ground rent or interest on the instalments of premium is payable till "the actual and physical possession of the site is delivered or offered to be delivered.....". In the present case, it is the admitted position that the respondents were unable to even offer to deliver the possession. Actually, the possession was never delivered. Yet, a substantial amount of money viz. more than Rs. 10 lacs is claimed on account of ground rent as well as interest. To say the least, it appears that the respondents have shown no regard for fairness or even the statutory provision contained in the rule. They have acted in a wholly arbitrary manner. The provision of the rule being totally clear, the claim for ground rent and interest is wholly untenable.

13. On consideration of the matter, we find that the respondents should have refunded the full amount to the petitioners in October, 1997 when they had asked for it. There was no justification for the order of forfeiture or the ground rent and interest. Still further, it appears that even after having passed the orders, the authorities had failed to communicate it to the persons concerned. To illustrate : the Chief Administrator had passed the order on December 22, 1998. It was issued from the office about six months latter vide endorsement dated June 11, 1999. Why was it kept back for a period of six months ? There is no answer. Such actions result in avoidable delay. These cause prejudice to the interest of the citizen. We cannot compliment the respondents on their conduct.

14. The amount of Rs. 15.75 lacs paid by the petitioners has been kept by the respondents for a period of almost four years. No justification for the inaction having been offered, we feel that the petitioners deserve to be compensated by the award of interest. Accordingly, it is directed that the amount shall be refunded to the petitioners alongwith interest (2) 15% per annum. Mr. Chopra submits that the Administration charges interest @ 24% per annum. It is undoubtedly so. However, we are not persuaded to be as unreasonable as the Administration is.

15. In view of the above, the petition is allowed. The impugned orders are set aside. The respondents are directed to refund the amount of Rs. 15.75 lacs alongwith interest at the rate of 15% within one month of the production of a copy of this order. The petitioners shall also be entitled to their costs which are Assessee at Rs. 10,000/-.

16. Petition allowed.