
(2012) 03 P&H CK 0341

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5726 of 2009 (O and M)

Promila Devi

APPELLANT

Vs

The Union Territory, Chandigarh and Others

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Citation : (2012) 03 P&H CK 0341

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the order dated 02.05.1991 (Annexure P-22) passed by the Estate Officer, Chandigarh; order dated 30.04.2008 (Annexure P-11) passed by the Chief Administrator, Chandigarh and the order in revision dated 20.08.2008 (Annexure P-12) passed by the Advisor to Administrator, U.T. Chandigarh. The brief facts, which give rise to the present writ petition is that a commercial site No.117, Sector 28-D, Chandigarh, was purchased by the petitioner in an auction conducted on 06.02.1972. A show cause notice dated 6.5.1987 was issued on the address, which was C/o M/s Kaushal Bazar, Sector 17-D, Chandigarh, as to why the building be not resumed for the reason that material changes have been made in the building. It has also been pleaded that the petitioner has appointed one Pritam Singh son of Gurbachan Singh as her General Power of Attorney and also appointed Smt. Kulwant Kaur as her Special Power of Attorney. The General Power of Attorney of the petitioner died on 08.10.1986. But no show cause notice or communication for resumption was received by the petitioner or her attorney, which led to passing of an exparte order of resumption by the Estate Officer on 02.05.1991. The order of resumption also did not come to the notice of the petitioner or her attorney, which led to filing of appeal after gross delay. Such appeal was dismissed by the learned Chief Administrator on 30.04.2008

being barred by time. Such order has been affirmed in revision.

2. Learned counsel for the petitioner has argued that the building was resumed for the reason that there are material changes i.e. Wooden partition in the building constructed by the petitioner, whereas such violations have since been removed and are also permissible in the revised instructions issued.

3. Mr. Kaushal could not dispute the factual position that at present wooden partitions are permissible and also such violations have been removed. Keeping in view the fact that the ex parte order of resumption was passed, which led to delay in filing of appeal and consequently revision, we find that the penalty of resumption of site for the misuse which has since been stopped, causes irreparable loss and injury to the petitioner. In *Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others*, the Hon'ble Supreme Court applied doctrine of proportionality while considering the resumption of a building. The Court held as under: 24. It is, therefore, not a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard-and-fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not.

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43. In terms of the provisions of the Act, the respondents are entitled to: (1) resumption of the land, (2) resumption of the building, and (3) forfeiture of the entire amount paid or deposited. Having regard to the extreme hardship which may be faced by the parties, the same shall not ordinarily be resorted to.

44. The situation, thus, in our opinion, warrants application of the doctrine of proportionality.

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46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority

"maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve."

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49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the fundamental freedom has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle. (See *Om Kumar vs. Union of India* (2001) 2 SCC 386.)

Keeping in view the fact that the basis of resumption of building are no longer in existence, therefore, resumption at this stage would cause much more loss than the misuse at one stage. The valuable rights of the petitioner in these circumstances can be jeo paradised by allowing the resumption to continue. Consequently, the writ petition is allowed and the orders of resumption Annexures P-22, P-11 & P-12 are set aside.