
(2012) 02 P&H CK 0312
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11119 of 2011

P.S. Sawhney

APPELLANT

Vs

Chandigarh Housing Board and others

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Haryana Housing Board Act, 1971 — Section 66

Citation : (2012) 3 RCR(Civil) 66

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

Bench : Division Bench

Advocate : P.S. Sawhney, for the Appellant; Aman Sharma, Advocate and Mr. Sanjay Kaushal, Senior Standing Counsel For the U.T., Chandigarh, for the Respondent

Judgement

Hemant Gupta, J

1. The challenge in the present writ petition is to the demolition notice dated 26.5.2011 (Annexure P.3) passed by the Secretary, Chandigarh Housing Board, exercising the powers of the Chief Administrator, Chandigarh. The brief facts leading to the issuance of the said notice are that the wife of the petitioner is an allottee of Flat Number 130, Sector 45-A, Chandigarh. A show cause notice (Annexure R.2) is said to have been served upon the petitioner on 1.10.2010 calling upon the petitioner to appear before the Secretary, Chandigarh Housing Board, on 4.10.2010 in respect of the violations allegedly raised in the said building allotted to the wife of the Petitioner in the year 1990. In the said show cause notice, the following violations were pointed out :-

1. Store constructed in the rear court yard.
2. M.S. Gate opened in rear courtyard more than permissible width.
3. M.S. Gate opened towards Government land at back.
4. Government Land encroached with edge.

2. The petitioner appeared before the Board, but did not submit any written reply. Subsequently, the demolition notice (Annexure P.3) dated 26.5.2011 is said to have been issued, which is the subject matter of challenge in the present writ petition.

3. The argument raised by the petitioner is that the dwelling unit of the petitioner has been inspected by the officials of the Chandigarh Housing Board without giving notice of 24 hours in terms of the document (Annexure P. 10) communicated to the petitioner as information disclosed to the Petitioner under the Right to Information Act, 2005.

4. It is also argued that the respondents are issuing notices sometimes under the Haryana Housing Board Act, 1971 and sometimes under the Capital of Punjab (Development & Regulation) Act, 1952. Therefore, in the absence of clarity in respect of the applicability of law, the notices issued are not tenable.

5. The applicability of the Capital of Punjab (Development & Regulation) Act, 1952 was examined by this Court in a judgment rendered in CWP No. 16970 of 2007 titled "Paramjeet Singh Rai v. Union Territory, Chandigarh and others" decided on 04.03.2010, wherein one of us (Hemant Gupta, J.) was a member. It was held that the territorial area of Union Territory Chandigarh includes City of Chandigarh, as mentioned in the Act and also the rural areas having agricultural and abadi land in terms of Section 4 of the Punjab Re-organisation Act,

6. The argument of the petitioner that the provisions of the Act are not applicable, is not sustainable in view of the fact that the building is situated within the Area of Chandigarh. Therefore, the Capital of Punjab (Development and Regulation) Act, 1952 is applicable to the property in question.

7. The Haryana Housing Board Act, 1971 was extended to Union Territory of Chandigarh by way of a notification published by the Central Government on 13.3.1975 with modifications in exercise of the powers conferred by Section 87 of the Punjab Reorganization Act, 1966. In exercise of the powers conferred u/s 74 of the said Act, the Administrator framed Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 (for short "the Rules"). Rule 11 of the said Rules contemplates that an allottee, hirer or any other person occupying the property shall abide by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the Rules made thereunder. The relevant clause reads as under :-

11. Use of Property. - (1) The allottee or the hirer shall be bound to comply with the conditions as to use, if any, imposed either under the letter of allotment or hirer-purchased tenancy agreement, or lease deed as the case may be, as well as any conditions imposed on the Board by the Government while transferring land to the Board. (2) The allottee, hirer and any other person occupying the property shall abide by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder :-

Provided where the person occupying the property is other than allottee or hirer, as the case may be, the responsibility to abide by the above stated Act and Rules shall be joint and several on the part of occupant, allottee or hirer as the case may be.

8. In terms of Rule 11 of the Rules, the provisions of the Act, are to be followed by an allottee, hirer or any other person. The proviso to Section 15 of the Capital of Punjab (Development & Regulation) Act, 1952, empowers the Chief Administrator to regulate the building to be allotted or demolished if the building has been erected or re-erected in contravention of any of the Building Rules. Therefore, the Chief Administrator is competent to issue a show cause notice to an occupier not to raise construction in violation of the Building Rules.

9. Section 66 of the Haryana Housing Board Act, 1971 as applicable to Chandigarh, deals with the power of entry into or upon any land and/or dwelling house. Section 66 of the said Act, reads as under :-

66. Power to entry. - The Chief Executive Officer or any person either generally or specially authorised by the Chairman in this behalf may, with or without assistants or workmen, enter into or upon any land, in order -

- (a) to make any inspection, survey, measurement, valuation or inquiry;
- (b) to take levels;
- (c) to dig or bore into sub-soil;
- (d) to set boundaries and intended lines of work;
- (e) to make such levels, boundaries and lines of works and cutting trenches; or
- (f) to do any other thing, whenever it is necessary to do so, for any of the purposes of this Act or any rules made or scheme sanctioned thereunder :-

Provided that -

- (i) no such entry shall be made between sunset and sunrise;
- (ii) no dwelling house and no public building which is used as a dwelling place, shall be so entered, except with the consent of the occupier thereof, and without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry;

(Emphasis Supplied)

(iii) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment occupied by women to remove themselves to some part of the premises where their privacy will not be disturbed;

(iv) due regard shall always be had, so far as may be compatible with the exigencies of the purposes for which the entry is made, to be the social and

religious usages of the occupants of the premises entered.

10. Second proviso, as reproduced above, provides that no dwelling house shall be entered without giving written notice of at least 24 hours before making such entry. It is the said clause, which is pressed by the petitioner to contend that while giving notice on 1.10.2010, the petitioner was not given any notice of 24 hours, therefore, the proceedings have been conducted in violation of the statutory provisions.

11. We do not find any merit in the argument raised. The show cause notice served upon the petitioner did not relate to the violations inside the dwelling unit. Violations No. 2, 3 and 4 are outside the dwelling unit, whereas violation No.1, though is within the boundary wall, but can be noticed without entering into the dwelling unit. Therefore, we do not find that there is any violation on the part of the officials/officers of the Chandigarh Housing Board in giving notice on 1.10.2010.

12. However, it is noticed that no order has been passed after the show cause notice was issued on 1.10.2010, calling upon the allottee/ occupier to appear before the Secretary, Chandigarh Housing Board, exercising the powers of the Chief Administrator, Chandigarh, on 4.10.2010. An order is required to be passed and communicated to such occupier. It is, thereafter, the order of demolition could be issued.

13. However, in the present case, we find that without passing an order after giving an opportunity of hearing to the petitioner on 4.10.2010, an order of demolition of the building has been passed on 26.5.2011. We find that the order of demolition without communicating the reasons for demolition is not fair and reasonable.

14. Consequently, we set aside the order dated 26.5.2011 with liberty to the Chandigarh Housing Board to pass an order in pursuance of the show cause notice dated 1.10.2010 after providing fresh opportunity of hearing to the petitioner. With the said direction and liberty, the writ petition stands disposed of.