
(2000) 07 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10429 of 1988

Rajinder Kumar and Sons

APPELLANT

Vs

Union Territory of Chandigarh

RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8A
Punjab Capital (Development and Regulation) Buildings Rules, 1952 — Rule 5

Citation : AIR 2000 P&H 297 : (2000) 4 RCR(Civil) 164

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

Bench : Division Bench

Advocate : R.S. Mittal and Palika Monga, for the Appellant; Subhash Goyal, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—The petitioner was allotted a site for a 3 bays building in Sector 17, Chandigarh. Vide order dated July 16, 1980, the lease was cancelled primarily on the ground that it had made partitions in violation of the Rules. A part of the money paid by the petitioner was also ordered to be forfeited. A copy of this order has been produced as Annexure P. 7. The petitioner filed an appeal. Vide order dated April 20, 1982, a copy of which has been produced as Annexure P. 11, the appeal was dismissed. He filed a revision petition. It was dismissed vide order dated October 27, 1988. A copy of the order has been produced as Annexure P. 13. Aggrieved by the three orders, the petitioner has approached this Court through the present writ petition.

2. The petitioner alleges that the action of the respondent-authorities suffers from the vice of discrimination. The petitioner has committed no violations. In any case, similar constructions raised by different site owners have been allowed by the Administration. There is no ground to treat the petitioner differently. Secondly, it has also been alleged that the order is contrary to the statutory provisions. It is the claim of the petitioner that the various pleas raised by it had

not been considered. Thus, the petitioner prays that the impugned orders be quashed.

3. A written statement has been filed on behalf of the respondent. The name and the designation of the officer who has filed the written statement has not been mentioned. However, it has been inter alia averred that "no one is allowed to construct pucca partitions inside the building unless the permission is granted by the Chief Administrator of Chandigarh. The petitioner without prior permission of the Chief Administrator made pucca partition in the shop....." A "show window was converted into a sale booth and mazzanine floor was also constructed by two tenants of the petitioner....." Thus, a notice u/s 8A of the Capital of Punjab (Development and Regulation) Act, 1952 was issued to the petitioner on March 13, 1979 by the Assistant Estate Officer. Thereafter, a notice under Rule 20 of the Chandigarh Lease hold of Site Building Rules, 1973 was issued on March 13, 1980. The petitioner sent his reply on March 17, 1980 and again on May 12, 1980. The Administration was not satisfied. Thus, the Assistant Estate Officer passed the order dated July 16, 1980 by which the lease was cancelled. It has been admitted that the appeal and the revision petition were dismissed. In reply to the petitioner's allegation regarding discrimination, it has been mentioned that "the case of SCO No. 52-52-54 Section 17-C does not help the petitioner in this case. The owner of this SCO constructed the building in accordance with the sanctioned plan. Similarly, owner of SCO No. 89-91 Section 17-D also constructed the building in accordance with the sanctioned plan". It has been further admitted that "building plan of these two buildings were sanctioned with some partitions". The petitioner raised the partitions "without getting the plan sanctioned from the competent authority". It has been further averred that the petitioner had submitted the plan with partitions for sanction. However, he was not permitted. Later on, he had submitted a modified plan which was sanctioned. According to the respondent, the making of partitions was violative of the rules and, thus, the impugned orders were validly passed.

4. The petitioner has filed a replication to controvert the claim made on behalf of the respondent.

5. Counsel for the parties have been heard.

6. A perusal of the order dated April 20, 1982 passed by the Chief Administrator shows that the primary ground for ordering the cancellation of the lease was that the petitioner had made "unauthorised partitions in the building erected on....." It was held that that "unauthorised additions and alterations constitute breach of Rule 5 of the Punjab Capital (Development and Regulation) Building Rules, 1952". This finding was affirmed by the dismissal of the revision petition vide order dated October 27, 1988. The short question that arises is --is the action of the respondent legal and valid?

7. On behalf of the petitioner, a two-fold submission has been made. Firstly, it has been contended that similar partitions have been allowed by the respondent

in case of various buildings in Section 17 itself. Secondly, it has been submitted that this plea had been specifically raised in the petitions submitted before the respondent-authorities. They have failed to consider it. The counsel maintains that the impugned orders should be quashed on this short ground alone.

8. Mr. Subhash Goyal, learned counsel for the respondent does not dispute the fact that partitions as made by the petitioner have been allowed in the case of Shop-cum-office No. 52-53-54, Sector 17-C and SCO No. 89-91, Sector 17-D. Chandigarh. It is also not disputed that the petitioner's premises, and those referred to above are in Sector 17 itself. All the three are similarly situate. Besides the factum of admission by the counsel, it is clear from a perusal of the averments in Para 8 (i) of the written statement that the Administration had allowed partitions in these two buildings.

9. No reason for treating the petitioner differently has been disclosed. In fact, it is admitted that in the plan as submitted by the petitioner, the partitions had been indicated. The petitioner was called upon to file a revised plan. As against this, in case of the two buildings referred to above, the plan with partitions was approved. Both, the petitioner as well as the owners of the other shops had been allotted sites for 3 bays' buildings. They were in the same sector. They were all subject to the same rules. They were similarly placed. Yet, they were treated differently despite the fact that there was no basis for doing so. No reason for a differential treatment has been disclosed. Yet, the lease in favour of the petitioner has been cancelled while others were permitted to raise the partitions and are continuing to use the properties. Since no basis for a differential treatment has been disclosed, the action is apparently discriminatory. It is violative of Article 14.

10. Still further, the petitioner has averred that the Administration itself has partitioned various bay buildings. Various instances have been quoted. Even these averments have not been controverted. In the light of this factual position, the charge of discrimination as made by the petitioner is not without substance. In fact, it is fully established.

11. We may also notice that in the revision petition filed by the petitioner, various instances have been quoted. These have only been repeated in the writ petition. However, the competent authority while considering the matter has not even adverted to the factual position in respect of the various pleas referred to by the petitioner. Why? The counsel has no answer.

12. There is another aspect of the matter. The petitioner has been asserting that while auctioning plots, it was being repeatedly stated that raising of partitions was permitted. At the time of the hearing of the revision petition, a copy of the letter embodying the minutes of the meeting held on February 7, 1982 was produced by the petitioner's counsel. The correctness of the contents was not doubted by the authority. Yet, it was observed that the petitioner was not entitled to take advantage of it as it had not "disclosed-the source" from which the copy

had been obtained. If the Administration itself had taken a decision or was considering the requests for permission to make partitions in the shops, there was no reason to penalise" the petitioner by imposing the extreme penalty of cancellation of lease and forfeiture of the part of the money deposited by it.

13. Mr. Mittal has also pointed out that, the executive decision of 1982 was given statutory recognition subsequently. In the statutory rules framed by the Administration, permission for partitioning a 3 bays building into six shops has been provided for. That being the position, the action in raising three partition walls cannot be said to be illegal or unfair.

14. We have repeatedly asked the counsel for the respondent as to why the petitioner was asked to submit revised plans when others had been allowed to raise partitions. He has no answer. The inference is obvious.

15. In a society governed by rule of law, all equals have to be treated equally. In the present case, the equals have been treated unequally. This is clearly contrary to the mandate of Article 14. We cannot uphold the action.

16. Faced with this situation, Mr. Subhash Goyal has submitted that the petitioner may make a representation to the respondent-authorities for re-consideration of his claim in accordance with the rules which are prevalent now. Mr. Mittal contends that the action of the respondent being illegal, the Impugned orders should be quashed. The petitioner has no cause of action for making any representation. If the Administration gives any notice, the petitioner shall raise such defences as may be possible.

17. We agree with the submission made by Mr. Mittal. At the moment, we are only concerned with the validity of the impugned orders. These, as observed above, suffer from the vice of discrimination. Consequently, the petition is allowed. The impugned orders are set aside. The parties are left to bear their own costs.