

(1988) 12 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6352 of 1986

Satbachan Singh Lochab

APPELLANT

Vs

The Chief Commissioner, Union Territory, Chandigarh and
others

RESPONDENT

Date of Decision : 16-12-1988

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8A

Citation : (1988) 12 P&H CK 0049

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : Ravinder Chopra and Mr. Arun Chandra, for the Appellant; Ashok Bhan for Mr. Rakesh Garg and Mr. Ajay Mitral, for the Respondent

Final Decision : Allowed

Judgement

Jai Singh Sekhon, J.—The Petitioner's father late Shri Arjan Singh was allotted Plot No. 48, Street E, Sector 21-C, Chandigarh. He was granted various extensions for the construction of the plot and ultimately the construction was to be raised by or before 31st March, 1970. It is alleged that aforesaid Arjan Singh fell sick and after prolonged illness died on 27th October, 1969 at Nairobi (East Africa), where he was residing. The Petitioner has been living in England and was thus ignorant about the affairs of his father. After the death of his father, the Petitioner obtained a probate of his father's will from the Court at Nairobi, besides obtaining succession certificate in respect of the property left by his father in India from the High Commissioner of India in Nairobi on 21st July, 1971. The Petitioner then instructed his Solicitors M/s. Little & Co., Bombay to approach the Estate Officer, Chandigarh, for the transfer of the plot in his name. Accordingly, the Solicitors wrote letters, Annexure P-1 and P-2 to the Estate Officer in this regard. The Petitioner has also been writing directly from England to the Estate Officer for the transfer of the ownership of the plot. Ultimately, the Estate Officer vide his letter dated 1st August, 1977, asked the Petitioner to

submit the original death certificate of his father. The Petitioner then submitted the original death certificate before the Estate Officer. It is further alleged that earlier the Solicitors had also sent a copy of the death certificate to the Estate Officer. Instead of transferring the ownership of the plot in favour of the Petitioner, the Estate Officer issued notice, Annexure P-7. u/s 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter called the Act), asking the Petitioner as to why the plot in dispute should not be resumed due to his failure to complete the construction of the plot within the extended period which expired on 31st March, 1970. The Petitioner then sent a reply to the said notice from England contending that after the death of his father he was trying to obtain the ownership rights in the plot in dispute and that the construction could not be completed due to circumstances beyond his control. The Estate Officer however, vide his order, 19th February, 1980, Annexure P-10, cancelled the allotment of the plot. The appeal filed by the Petitioner before the Chief Administrator, Chandigarh Administration, was also dismissed on 29th April, 1980. vide Annexure P-11. The revision filed by the Petitioner before the Chief Commissioner, Union Territory, Chandigarh also met with the same fate on 7th March, 1983, vide Annexure p-12. It is alleged that the Petitioner got the order of the Chief Commissioner somewhere in the early part of 1984 in England as the order was not pronounced in the Court, but communicated to the counsel later on. The Petitioner then invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for the issuance of a Writ in the nature of Certiorari quashing the orders Annexures P-10, P-11 and P-12 of Respondents Nos. 3, 2 and 1 respectively. He further prayed that a writ in the nature of Mandamus directing the Respondents to restore the original allotment of the plot and transfer its ownership in the name of the Petitioner issued and that reasonable time for the construction of the plot be granted.

2. In the joint return filed by all the Respondents, the allotment of the plot or extending the time uptill 31st March, 1970, were not disputed. On the other hand, it is maintained that the ownership of the plot was not transferred in the name of the Petitioner due to non-furnishing of the original death certificate of his father Arjan Singh. It was further maintained that the notice of resumption of plot was issued before the receipt of the death certificate of Arjan Singh and the above referred orders were passed by the Estate Officer, the Chief Administrator and the Chief Commissioner correctly in accordance with law.

3. I have heard the learned Counsel for the parties, besides perusing the record. The majority view of Full Bench of this Court in Ram Puri, Chandigarh v. Chief Commissioner, Chandigarh and Ors. while upholding the constitutional validity of Section 8-A of the Act, as well as the Rules framed thereunder had observed as under: -

Adverting specifically to Section 8-A the restrictions for the exercise of the powers vested thereby exist not only in the express provision thereof, but are equally discernible from the larger purpose of the Act, its preamble as also the

other sections thereof when read with the statutory rules thereunder. The larger purpose of the planned development and regulation of the new capital city, as spelled out in the preamble of the Act, is the fixed Pole Star to which the ultimate exercise of the power of resumption u/s 8-A is hitched. What deserves highlighting herein is that this power of resumption u/s 8-A is merely a discretionary and an enabling power. The statute does not lay down any mandate that it must necessarily be exercised in a particular situation. In Sub-section (1) thereof it is first in the discretion of the Estate Officer that he may issue a notice to show cause why an order of resumption of site or building may not be made. Equally under Sub-section (2) after considering the cause shown against such a notice it is optional for the Estate Officer to order such resumption or not. The word used in both the Sub-sections is "may" and not "shall". Mr. Anand Swaroop rightly pointed out that this power of resumption is indeed the last arrow in the quiver of a number of sanctions to enforce the planned development and the regulation of the capital and to be only resorted to in a situation commensurate with its necessary exercise. To put it in plain language it is not mandatory for the authority to order resumption, but only in extreme cases it enables it to do so when the other powers and sanctions to enforce the purpose of the Act have failed, or in the circumstances it is the only remedial power which can be applied. Therefore, it is farcical and and imaginary to assume that the authority would necessarily use this power arbitrarily and whimsically and that they will use this hammer to swat a fly. As Section 8-A now stands (in sharp distinction to the deleted Section 9) it mandatory requires a notice to show cause to the person concerned whenever the exercise of this power is contemplated. Not only is such a person entitled to have a reasonable opportunity of contesting such a notice, but the law in terms confers on him the power to lead evidence in support of his stand. The mandate as laid on the Estate officer is to record his reasons in case he orders resumption Apart from these inbuilt safeguards u/s 8-A, it is the statutory rules which provide for an appeal against the order of resumption by the Estate Officer, to the Chief Administrator. It is the after that the rules zealously provide for a revision to the Chief Commissioner, who is the executive head of the Union Territories Obviously in a proper case the right to approach the Court under Article 226 of the Constitution of India is equally open.

4. Thus, in view of the rule of law laid down by the Full Bench of this Court, there is no option but to conclude that the provision of Section 8-A of the Act regarding the resumption of plot are required to be sparingly used by the Estate Officer. In the case in hand, aforesaid Arjan Singh, the original owner of the plot died on 27th October, 1969, i.e. much earlier to the extended date of construction i.e. 31st March. 1970. Obviously, thereafter the Petitioner on the basis of the will of his father obtained probate and the succession certificate of the property of his deceased father He could not by any stretch of imagination start or complete the construction on the plot in dispute till its right of ownership had been transferred in his name. Strange enough, after getting his application for transfer of ownership, the Estate officer instead of disposing of this petition resorted to

issuing the show cause notice regarding the resumption of the plot due to its non-construction. Thus, the above referred impugned order of the Estate Officer, the Chief Administrator as well as of the Chief Commissioner, Chandigarh, having not taken into consideration the above referred impediments on the part of the Petitioner in the right context, are liable to be set aside. In view of the factum that the Petitioner was living in England while his father died at Nairobi in East Africa and he has to obtain the probate of the will of the deceased from the Court at Nairobi and that he had instructed his solicitors at Bombay to approach the Estate Officer, Chandigarh, for transfer of ownership of the plot, there is no force in the contention of learned Counsel for the Respondent that due to unreasonable laches on the part of the Petitioner he is not entitled to any relief under Article 226 of the Constitution.

5. In *Shri Brij Bhawan v. The Union Territory Administration, Chandigarh and Ors. Mr. M.R. Agnihotri, J.*, relying upon the observations of the Full Bench of this Court in *Ram Puri's case (supra)*, allowed reasonable time to the Petitioner in that case for construction of the building on the plot in dispute on the ground that since its possession was not delivered to the owner by the requisite Authorities there was no question of his completing the construction of the building within the stipulated period. Again, *Mr. M.R. Agnihotri, J.*, in *C.W. P. No 3880 of 1982 (D.K. Kejriwal v. The State of Haryana and others)* decided on 21st September, 1987, had taken a similar view regarding the resumption of an Industrial plot in the Urban Estate at Gurgaon, on the ground of non-delivery of possession.

6. As already discussed, in the present case also, the inability of the Petitioner to complete the building on the plot in dispute on or before 31st March, 1970, relate to the ailment of his father resulting in his death on 27th October, 1969 and thereafter due to the fault of the Estate Officer in not transferring the ownership of the plot in dispute to the Petitioner. It is noteworthy that even till today the ownership of the plot in dispute has not been transferred by the Estate Officer in the name of the Petitioner, but instead the plot has been resumed.

7. Obviously, the provisions of Section 8A of the Act were inserted by the Legislature vide Central Act No. 17 of 1973 keeping in view Chandigarh being the Capital of Punjab and Haryana and U.T. Administration, it requires rapid development of buildings etc. in order to cope with the growing population, as remarked by the Full Bench of our own High Court in *Ham Puri's case (supra)*. The Estate Officer was expected to resort to resumption proceedings in rare cases where the other coercive measures had failed to persuade the owner to construct the building.

8. For the foregoing reasons, the order of resumption, Annexure P-10, the order of the Appellate Authority Annexure P-11 and the order of the Chief Commissioner Annexure P-12 are hereby quashed and a Writ of Mandamus is issued directing the Respondents not to resume the plot in question but to transfer its ownership on the basis of probate, in favour of the Petitioner within a

period of two months from today. The learned Counsel for the Petitioner undertakes to apply for sanctioning of the plan of the building within one month of the order of transfer and to complete the building within a period of two years from the date of sanctioning of this plan. It is further ordered that it shall be the responsibility of the Petitioner to do so within the stipulated period and that he will not apply for further extension of time in this regard. It is further clarified that in case of the failure of the Petitioner to comply with the above referred undertaking, the Authority shall be at liberty to proceed against the Petitioner in accordance with law.

9. Consequently, the writ petition is allowed, but without any order as to costs.