
(2012) 02 P&H CK 0195
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No.16484 of 2009

Sham Lal Sharma

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Chandigarh (Sales of Sites and Buildings) Rules, 1960 — Rule 9

Citation : (2012) 2 Law Herald 1308 : (2012) 2 RCR(Civil) 4

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

Advocate : Mr. Rajbir Singh Guron, Advocate, For the Respondents: Mr. Amar Vivek, Advocate., Advocates for appearing Parties

Judgement

Mr. Hemant Gupta, J.—The challenge in the present writ petition is to the order dated 24.07.2003 (Annexure P4) passed by the Estate Officer, U.T. Chandigarh; the order in appeal passed by the Chief Administrator on 02.04.2008 (Annexure P6); order in revision passed by the Advisor to the Administrator on 15.10.2008 (Annexure P7) and subsequent order passed by the Advisor to the Administrator on 04.09.2009 on the representation of the petitioner.

2. The petitioner is a tenant in the building erected on plot No. 31, New Timber Market, Sector 26, Chandigarh. The said plot was allotted to Baldev Raj vide letter of allotment dated 30.09.1991. The petitioner is running his transport business under the name and style of M/s Chamba Shimla Transport.

3. Before examining the ground of resumption in respect of the user of the premises, learned counsel for the respondents has raised an objection that in fact, the petitioner claims to be a Director of M/s Chamba Shimla Transport, which is a company incorporated, but such fact has not been disclosed in the writ petition. We do not find that such description in respect of the petitioner or of the tenant materially changes the nature of the controversy arising in the present case, which is in respect of user of the premises for the transport purposes.

4. The site was allotted with the condition that the same shall be used for ?

timber? in terms of the Chandigarh (Sales of Sites and Building) Rules, 1960 (for short ?the Rules?). Rule 9 of the aforesaid Rules as originally framed categorized the buildings, in three categories i.e. (i) General Trade; (ii) Semi Industrial Trade and (iii) Special Trade. The trade of Transport and Timber was within the ?Special Trade? at serial Number 17 and 15 respectively. Sub Rule (3) of Rule 9 was amended vide Notification dated 5.6.2002. The user of the buildings was redetermined by inserting ScheduleII. ScheduleII was divided into two parts. Part A is in respect of New General Trade which included 107 categories. PartB defined New Special Trade category.

5. For facility of reference, the Rule 9 as it stood originally and after amendment reads as under:

Rule 9 as incorporated on Rule 9 after amendment on

17.2.1972 5.6.2002

9. Use of Site or Building. [Section 22 (2) (c)] The transferee shall not use the site or building for a purpose other than that for which it has been sold to him. In the case of commercial or industrial sites and commercial or industrial buildings and transferee shall not carry on any trade or employ any industry other No Change than that specified by the Estate Officer.

(2) Instead of specifying any particular Semi Industrial Trade or Special Trade. trade or industry, the Estate Officer may specify that the transferee shall not carry on any trade or employ any industry other than General Trade,

3) The expression ?General Trade, 3) The expression ?General Trade, ? SemiIndustrial Trade? and ?Special ?SemiIndustrial Trade? and ?Special Trade? shall mean one or more of the Trade? shall mean one or more of the trades respectively mentioned in trades respectively mentioned in Parts A, B and C of the Scheduled Parts A, B and C of the Scheduled I annexed to these rules and shall include and Parts A and B of Schedule II, annexed any other trade which is not so to these rules and shall include mentioned provided that such other any other trade which is not so trade is similar to the carried on in mentioned provided that such other the same fashion as mentioned in trade is similar to the carried on in the respective part of the Schedule. the same fashion as mentioned in the respective part of the Schedule.

Provided that the Chief Administrator, may, in the case of residential buildings, for reasons to be recorded in writing and with the prior approval of the Administrator, Union Territory, Chandigarh, allow such a building or portion thereof to be used for a purpose other than that for which the site was allotted subject to such conditions as he may by an order specify in this behalf. Provided further that trades shall be classified in two categories as indicated in Schedule (II) annexed to these rules and conversion from a particular trade in Schedule "I" to that in Schedule "II" shall be allowed on payment of conversion charges as determined by the Chandigarh Administrator.

Provided further that trades.

6. After the said amendment was carried out, the Administration has issued policy for conversion on 25.6.2002 endorsed on 17.7.2002 permitting conversion of use of the building from a particular trade in Schedule I to that in Schedule II on payment of charges in terms of second proviso as reproduced above. Such order was amended on 31.3.2006 (Annexure P.5). The policy of conversion as on 17.7.2002 and as on 31.3.2006, are being reproduced hereunder in juxtaposition:

Policy of Conversion as modified on Policy of Conversion as amended

26.5.2002/17.7.2002 31.3.2006

Direction regarding conversion of Trade (Fixation of Fees and Application for Permission etc. Under rules, 1973.

In supersession of Chandigarh Administration, Finance Department's Order dated 3rd May, 2002, bearing endorsement No. ?In partial modification of Chandigarh 28/8/3UTFI(3)2002/425657 Administration, Finance Department dated 14th May, 2002 and in Order dated 25th June, 2002 issued exercise of the powers conferred by Vide endorsement bearing No. the second proviso to subrule (3) of 28/8/3UTF1(2)2002/6479 dated Rule 9 of the Chandigarh (Sale of 17th July, 2002 and in exercise of Sites and Buildings) Rules, 1960 and powers conferred by second proviso sub rule (11) of Rule 17 of the to subrule (3) of Rule 9 of the Chandigarh Lease Hold of Sites and Chanidgarh (Sale of Sites and Buildings Rules, 1973 read with Buildings) Rules, 1960 and subrule Sections 3 and 22 of the Capital of (11) of Rule 17 of the Chandigarh Punjab (Development and Lease Hold of Sites and Buldings Regulation) Act, 1952, the Rules, 1973 read with Sections 3 Administration, Union Territory, and 22 of the Capital of Punjab Chandigarh hereby issues the (Development and Regulation) Act, following directions allowing 1952, the Administrator, Union conversion of trade for commercial Territory, Chandigarh, is pleased to sites and buildings and the payment allow all allottees of comercial of conversion of trade fee which may sites/premises in Chandigarh be revised from time to time: except Industrial Sites in Industrial Area, Phase I and II, 1. Definitions: Chandiarh, to pursue any trade (a) Schedule I refers to Schedule I mentioned in Schedule II, i.e. (A) appended to the Chandigarh (Sale of New General Trade and (B) New Sites and Buildings) Rules, 1960. Special Trade Category, appended (b) Schedule II refers to Schedule II to the aforesaid rules without appended to the Chandigarh (Sale of applying for conversion of trade Sites and Buildings) Rules, 1960 or and without paying conversion fee to Schedule [Rules 17(11)] appended subject to the following conditions to the Chandigarh Lease Hold of (emphasis supplied): Sites and Buildings Rules, 1973 as 1. Migration to seven trades as applicable. mentioned in Schedule II(B) New Special Trade Category from other

2. A conversion of trade from the Trades of Category (A) New General General Trade Category in Schedule Trade shall be allowed with prior I to the New General Trade Category (sic) permission of the Chief (sic)

7. Learned counsel for the petitioner has vehemently argued that in terms of the Policy of conversion issued on 31.3.2006, all commercial site, except industrial sites, can be used for any trade mentioned in ScheduleII, except the seven trades mentioned in ScheduleII Category (B). Since the Administration has permitted the commercial sites for any of the trades mentioned in ScheduleII, therefore, the resumption of site for use of transport is not sustainable.

8. Learned counsel for the respondents has vehemently argued that since there is a change of trade from timber to transport, the petitioner has to seek permission for change of user on payment of conversion fee.

9. We do not find any merit in the argument raised by learned counsel for the respondents. The trades of Timber and Transport were part of special trade in ScheduleI and now form part of the New General Trade in ScheduleII with effect from 5.6.2002 at serial numbers 98 and 99. The policy reproduced above, as notified on 17.7.2002, did not specifically provided conversion of special trade of Timber or Transport on payment of conversion charges. However, the situation has undergone change with the modifications incorporated by the Notification dated 31.3.2006. The Administration has taken a conscious decision for permitting the trades, mentioned in Schedule II. The allottee or occupier does not require prior permission to change user or payment of conversion charges except information as part of condition no 3 of the notification dated 31.3.2006.

10. Such modifications now permit use of commercial sites except industrial sites for any trade mentioned in ?(A) New General Trade? and ?(B) New Special Trade? of ScheduleII without applying for the conversion of trade and without paying conversion fee. The restriction is only in respect of migration to seven trades as mentioned in New Special Trade Category of Schedule II. The seven trades alone require prior permission of the Chief Administrator. Therefore, in terms of the Notification dated 31.3.2006, all allottees of commercial sites/premises are permitted to use the sites allotted for any purpose mentioned in Schedule II except in respect of seven trades.

11. In view of the said fact, we find that the order of resumption, passed by the authorities, is not tenable in view of the decision notified.

12. Consequently, the writ petition is allowed and the impugned orders are quashed. The petitioner may give intimation in terms of notification dated 31.03.2006 within one month.