
(1996) 10 P&H CK 0101
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11354 of 1993

Shri H.K.L. Vijan, Manager, Tarun Model School	APPELLANT
Vs	
Chandigarh Administration and Others	RESPONDENT

Date of Decision : 30-10-1996

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8A
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 4(1)

Citation : (1997) 115 PLR 111

Hon'ble Judges : K. Sreedharan, C.J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Salil Sagar, for the Appellant; G.S. Jaswal, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—What is challenged in this petition filed under Article 226 of the Constitution is the order passed by the District Judge, Chandigarh upholding on appeal the order of eviction, passed by the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the Public Premises Act). The eviction has been ordered on the ground that the petitioner is in unauthorised occupation of the premises in dispute.

2. Briefly stated the facts leading to the filing of the petition are these:

Site No. 25 Street-D in Sector 27-D at Chandigarh was allotted/transferred to Inder Nath Gulati respondent No. 4 on the terms and conditions set out in the allotment letter dated 13.1.1958 and the deed of conveyance executed on 28.5.1965. This allotment was made u/s 3 of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter called the 1952 Act). As per the terms and conditions of allotment, the transferee could construct a building on the site and use the same for residential purposes only. However, in contravention of the terms of allotment the transferee let out the house constructed on the site to the petitioner for running a school. For this contravention, the Estate Officer in

exercise of its powers u/s 8-A of the 1952 Act served a notice in writing calling upon the transferee and the petitioner who is his tenant to show cause why any order of resumption of the site be not made and an amount not exceeding 10% of the total amount of consideration money forfeited. Section 8-A of the 1952 Act empowers the Estate Officer to resume the allotment/transferred premises if a transferee commits a breach of any condition of sale/transfer and also to forfeit an amount not exceeding ten per cent of the total amount of consideration money. In pursuance to the aforesaid notice the petitioner and the transferee (respondent 4) filed their replies and the Estate Officer exercising his powers resumed the site in question as per his order dated 4.6.1992. The petitioner as also respondent 4 feeling aggrieved by the order of resumption filed their separate appeals before the Chief Administrator. The appeal filed by the petitioner is stated to be pending whereas the one filed by respondent 4 has been dismissed and he has further filed a revision petition before the Advisor to the Administrator which is said to be pending.

3. Meanwhile the Estate Officer issued notice to the petitioner and also to respondent 4 under sub-section (1) of Section 4 of the Public Premises Act calling upon them to show cause why they should not be evicted from the premises in dispute as according to him they were in unauthorised occupation thereof. The ground mentioned in the notice as to why the petitioner and respondent 4 were considered unauthorised occupants reads thus :-

"The site in question has been resumed by the Assistant Estate Officer vide his order dated 4.6.1992."

The Estate Officer exercising his powers under sub-section (1) of Section 5 of the Public Premises Act was satisfied that respondent 4 and the petitioner were in unauthorised occupation because of the resumption of the premises in dispute. Accordingly he ordered respondent 4 and the petitioner and all other persons who may be in occupation of the said premises to vacate those premises within fifteen days of the date of the order. This order was passed on 30.9.1992. Feeling aggrieved by this order of eviction, the petitioner and respondent 4 filed separate appeals before the District Judge who by a common order dated 23.8.1993 dismissed both of them holding that after the order of resumption, the premises became public premises and the petitioner tenant became an unauthorised occupant thereof. The argument that since an appeal was pending against the order of resumption and the resumption proceedings not having become final, the Estate Officer could not initiate the eviction proceedings under the Public Premises Act did not find favour with the District Judge. It is against this order that the petitioner has filed the present petition. Shri Inder Nath Gulati the transferee is arrayed as respondent 4 in the petition.

We have heard counsel for the parties.

4. The sole argument advanced on behalf of the petitioner is that the Estate Officer in exercise of his powers under the Public Premises Act could resume only

the site which was allotted to the transferee but not the building which was later constructed by him and of which the transferee is the owner. The contention indeed is that if possession is to be taken, the Chandigarh Administration should file a suit and that the petitioner could not be evicted by taking recourse to the summary procedure under the Public Premises Act. In support of his contention the learned counsel relied upon a decision of the Supreme Court in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, . In our opinion, the argument is devoid of merit and the same cannot be accepted. The power of the Estate Officer to resume the site on the commission of breach of any condition of sale/transfer has not been disputed before us. There is no gainsaying the fact that the site was allotted to respondent 4 and he let out the same after constructing a residential building thereon to the petitioner for running a school. It is also not in dispute that this was in breach of the conditions of sale/transfer. This being so, the Estate Officer exercised his powers u/s 8-A of the 1952 Act and resumed the site. When the site was resumed the building being imbedded therein automatically got resumed as it must by necessary implication go along with the site and the two cannot be separated unless the owner of the building chooses to bring it down and remove the malba. Once the site and the building thereon stood resumed the premises became public premises and the petitioner an unauthorised occupant thereof as he had no authority to remain in occupation. This being so, the Estate Officer could justifiably exercise his powers to evict the petitioner from the public premises. We may observe that the order of resumption is under challenge before the authorities under the 1952 Act and those proceedings have not been impugned before us and the eviction proceedings under the Public Premises Act alone are under challenge. In *Express Newspapers'* case (supra) the Government of India had given on perpetual lease plots No. 9 and 10 on Bahadur Shah Zafar Marg to the Express Newspapers (P) Ltd. and the latter with the sanction of the lessor i.e. Union of India had constructed the Express Buildings thereon. Thereafter it was alleged that the sanction granted was illegal and void and that upon forfeiture of the lease a notice of re-entry was issued by the Engineer Officer, Land & Development Officer, New Delhi purporting to be on behalf of the lessor. It was this notice that was quashed and the learned Judges of the Apex Court observed that upon forfeiture of the lease, the premises could not be regarded as public premises belonging to the Central Government under the Public Premises Act. The contractual relations of the parties are governed by the terms of the lease agreement and if the lessor is to obtain possession it had to file a suit. In the present case the site was allotted u/s 3 of the 1952 Act and it was in the exercise of statutory power u/s 8-A of that Act the same was resumed on a breach of a condition of allotment. The relations of the parties here are governed by statute and on resumption the allottee/transferee of the site and all persons in possession thereof are divested of their title and right to possession and become unauthorised occupants. The purpose of giving this power of resumption to the Estate Officer is that after exercising the same he can recover possession without being driven to file a suit. The judgment of the Supreme Court is on different

facts and therefore of no help to the petitioner.

5. There being no infirmity in the order of the Estate Officer and that of the District Judge who has affirmed the same on appeal, we find no merit in this petition which stands dismissed. There is no order as to costs.