
(2008) 11 P&H CK 0150
In the Punjab And Haryana At Chandigarh

Smt. Hira Devi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Punjab Regional and Town Planning and Development Act, 1995 — Section 46(1)

Citation : (2009) 154 PLR 697 : (2009) 2 RCR(Civil) 235

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The instant petition filed under Article 226 of the Constitution prays for quashing order dated 3.7.2007 (P-7) passed by the Secretary to Government of Punjab, Department of Housing and Urban Development, Chandigarh-respondent No. 1. A further prayer for quashing order dated 29.12.2005 (P-5) passed by the Chief Administrator, Punjab Urban Development Authority (PUDA), Mohali [now Greater Mohali Area Development Authority (GMADA; and order dated 13.11.1992 (P-2) passed by the Estate Officer of the erstwhile Punjab housing Development Board, Chandigarh (PHDB) canceling the allotment of House No. HE-207-A, Phase IX, Mohali, has been made. Still further it has been prayed that direction be issued to the respondents to restore and regularize the allotment of afore-mentioned house in favour of the petitioner.

2. Brief facts of the case are that the petitioner belongs to lower strata of the society. She was allotted E.W.S. Group House No. HE-207-A, Sector 63-D in phase IX, Mohali, vide allotment letter dated 23.5.1977 (P-1) by the PHDB at a tentative price of Rs. 8,000/-. She paid Rs. 500/- at the time of making the application and rest of the amount was payable through monthly instalments over a period of 18 years. The case of the petitioner is that the entire price of the house in question has been paid. On the basis of her own belief that the construction of additional room was permissible with the prior permission, she added one room and stairs in her house albeit without permission. However, the Estate Officer, PHDB, passed an order dated 13.11.1992 cancelling her allotment

(P-2) on the allegation that she had raised unauthorized construction in the house like room and stairs. Thereafter notice u/s 46(1) of the Punjab Regional and Town Planning and Development Act, 1995 (for brevity, "the Act") was served on the petitioner on 16.5.2003 informing her that since allotment of the house stood cancelled, she was to appear before the Estate Officer, PUDA, on 1.7.2003 to show cause why she should not be evicted from the house in question.

3. The petitioner appeared before the Estate officer and sought time for filing appeal against the cancellation order dated 13.11.1992. Accordingly, she filed an appeal u/s 45(5) of the Act on 4.7.2003 before the Additional Chief Administrator, PUDA, Mohali. The appeal has been dismissed on 29.12.2005 (P-5). The Appellate Authority noticed the report of the Field Staff of the Estate Office, which was to the effect that the allottee had raised unauthorized construction of kitchen in the courtyard, veranda, stairs and store on the roof of the kitchen. She was given a number of opportunities to put an end to the unauthorized construction but all in vain and, therefore, the appeal for restoration of the allotment of the house has been dismissed and the steps for the eviction of the petitioner were being taken. Thereafter, the petitioner filed a revision petition u/s 45(8) of the Act (P-6). The revision petition has also been dismissed vide order dated 3.7.2007 (P-7). Respondent No. 1, who is the revisional authority has noticed the fact that the petitioner has now removed the unauthorized construction but still went on to dismiss the revision petition. Last two paras of the order make the approach of respondent explicit, which read as under:

I have gone through the file and heard both the parties. It is a matter of record that the violation of terms and conditions of allotment, the allotment was cancelled by the Estate Officer on 13.11.1992 after giving them opportunities for removal of unauthorized constructions. At no point of time, regularization of their unauthorized construction was under consideration. However, deliberately they did not comply with the orders of the Estate Officer as well as the Additional Chief Administrator rather they kept waiting for 14-15 years for removal of unauthorized construction. Their motive behind such delay was only to enjoy the benefits of unauthorized structures. Hence they deserve no sympathy, accordingly the revision petition is dismissed.

4. Thereafter the petitioner has been confronted with orders of eviction issued on 27.8.2007 (P-8) by invoking the provisions of Section 46(1) of the Act. When the matter came up for hearing on 4.10.2007, learned Counsel for the petitioner made a statement that unauthorized construction has been removed by the petitioner and the Division Bench passed an interim order staying her dispossession.

5. Having heard learned Counsel for the parties at a considerable length we are of the view that this petition deserves to succeed. It has come on record that the petitioner has deposited the whole amount of instalments to the entire

satisfaction of the Estate Manager, PHDB, Mohali. The only ground of cancellation of allotment given in the order dated 13.11.1992, passed by the Estate Manager, PHDB (P-2) is that the petitioner had raised unauthorized construction in the house in question, which included a room and stairs. In Clause 5 of the allotment letter dated 23.5.1977 (P-1) it is stipulated that no additions/alterations in the property was permitted without prior approval of the Board in writing. It was further stipulated that in case of violation, the Board was competent to resume the property and also take steps to remove the unauthorized additions/alterations. Clause 5 of the allotment letter reads thus:

5. No additions/alterations in the property allotted to you shall be made without prior approval of the Board in writing. In case of violation of this clause, the Board may resume the property and also take steps to remove the unauthorized additions/alterations at your cost which if not paid is recoverable from you as arrears of land revenue.

6. It is obvious from the perusal of Clause 5 that the power to resume is discretionary and it is coupled with the power to remove unauthorized additions/alterations. In every case such a power is not required to be exercised as per the tenor of the language used in Clause 5. From the facts it is clear that order of resumption was passed on 13.11.1992 (P-2) but no steps were taken till notice dated 16.5.2003 u/s 46(1) of the Act was issued to the petitioner to evict her. For more than 10 years order of cancellation of allotment remained unimplemented. The respondent authorities did not take any steps even to remove the unauthorized construction raised by the petitioner in accordance with the provisions made in Clause 5 of the allotment letter. It was thereafter that the petitioner filed an appeal which has been dismissed on 29.12.2005 (P-5) holding that she did not remove unauthorized construction even on that date. However, at the time of hearing of revision petition, the report of the Field Staff of the Estate Office was noticed stating that the unauthorized construction raised by the petitioner was removed by her. Despite removing of unauthorized construction, the Revisional Authority-respondent No. 1 upheld the order concerning cancellation of allotment.

7. It has been repeatedly held by the Courts that the power of resumption/cancellation of plots, houses and commercial sites etc. should be exercised only as a last resort. A Full Bench of this Court in the case of Ram Dass Vs. Sukhdev Kaur and Another, , has categorically laid down that the power of resumption is ultimate civil sanction and must, therefore, be used as a weapon of last resort. Inevitably it should be used with great caution and circumspection because in a sense the individualistic property rights have to give way to larger public purpose of planned and regulated urbanization (See paras 86 & 87 of the judgment).

8. The view taken by the Full Bench of this Court in Ram Puri's case (supra) has been approved by Hon"ble the Supreme Court in the case of Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, . Hon"ble the Supreme Court discussed the doctrine of proportionality in its historical perspective (paras 40 to 53) and

referred to various facets of the aforementioned doctrine. It has been held that the Court has to see that the legislature and the administrative authority maintain a proper balance between the adverse effects, which the legislation or the administrative order may have on the rights, liberties or interests of persons, keeping in mind the purpose which they were intended to serve. It has also been concluded that every case has to be examined on its own facts.

9. Applying the principles of proportionality to the facts of the present case, we are of the view that depriving the petitioner of her title to the small hutment allotted to her under the Economically Weaker Section Group Housing Scheme would be disproportionate to the object of planned development postulated by Clause 5 of the allotment letter and given effect by the administrative order dated 13.11.1992 (P-2), especially when the petitioner has removed the violations. The administrative order dated 13.11.1992 does not reflect taking of any prohibitive steps to stop the unauthorised construction or any effective steps of removing the same as per the power given by - lause 5 of the allotment letter, which has been reproduced above. We further find that for along period of over 10 years no steps were taken to implement the cancellation order dated 13.11.1992 (P-2). The only step taken was on 16.5.2003, which was an eviction notice sent u/s 46(1) of the Act, seeking eviction of the petitioner. Thereafter the petitioner availed the remedy of appeal and revision. It is evident from the order passed by the Revisional Authority on 3.7.2007 (P-7) that the unauthorized construction has been i removed and the aforementioned factual position is explained by the report of the Assistant Engineer, office of the Estate Officer, GMADA, Mohali, dated 24.5.2006. The report has been reproduced in Para 9 of the petition which reads thus:

The spot verification of HE-207-A, Phase-IX, was made. This house is on the First Floor. At the site, the allottee had already demolished the unauthorized construction of Kitchen, Veranda, Stairs and Store on the Kitchen, in the back courtyard. Now there is no misuse of unauthorized construction at the site. The house is residential.

10. The contents of Para 9 have not been denied and accordingly no dispute with regard to the authenticity of the report dated 24.5.2006 has been raised.

11. For the reasons aforementioned this petition succeeds and the impugned orders dated 13.11.1992, 29.12.2005 and 3.7.2007 (P-2, P-5 & P-7 respectively) as well as eviction notice dated 27.8.2007, u/s 46(1) of the Act (P-8) are hereby quashed. However, the petitioner cannot go unpunished for keeping the unauthorized construction for such a longer period, therefore, we are of the view that the ends of justice would be met if a penalty of Rs. 5,000- is imposed on her. Accordingly, it is directed that the petitioner shall deposit a sum of Rs. 5,000/- with respondent No. 3 within a period of two months from the date of receipt of a certified copy of this order and thereafter the house in question be restored to her by removing all encumbrances on her title.

12. The writ petition stands disposed of in the above terms.