

(1990) 01 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8389 of 1988

Surat Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 25-01-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Haryana Urban Development Authority Act, 1977 — Section 15, 16, 17, 17(1), 18
Punjab Urban Estates (Development and Regulation) Act, 1964 — Section 3, 3(2), 8

Citation : AIR 1991 P&H 112

Hon'ble Judges : S.S. Sodhi, J;J.B. Garg, J

Bench : Division Bench

Advocate : V.K. Bedi and Anil Khetarpal, for the Appellant; V.K. Vashishit, for the Respondent

Judgement

S.S. Sodhi, J.—The matter here pertains to the use or rather misuse of residential sites and buildings in the Faridabad Complex and Panchkula for a non-residential purpose, namely commercial, by running shops there.

2. This bunch of writ petitions is by the petitioners who are running shops in their residential sites or buildings which, for this reason stand resumed by the Estate Officer under the relevant provisions of the Haryana Urban Development Authority Act, 1977 (hereinafter referred as "the Act"). Now in seeking to assail such orders, the main contention raised is with regard to the constitutional validity of the Act. Particularly those provisions thereof in pursuance of which the impugned orders of resumption have been passed.

3. As the issues raised in most of these these petitions are common, it would suffice to set forth here the relevant facts of Surat Singh's case (C.W.P. 8339 of 1988).

4. The petitioner Surat Singh was allotted plot 691 Sector 8, in the Urban Estate of Faridabad on March 13, 1977. The conveyance deed in respect of this plot was executed on September 16, 1981 and thereafter the" occupation certificate was

issued to the petitioner on August 17, 1982. Some time in 1985, he started using one room in the building constructed on this plot as a shop. A notice was thereupon served upon the petitioner on April 10, 1977 under S. 17(3) of the Act calling upon him to show cause why his plot building should not be resumed as he had opened a shop there. The petitioner, in his reply of April 30, 1987 took up the plea that he had no other means of livelihood except to run the shop. Another notice under S, 17(3) of the Act was then served upon the petitioner on November 16, 1987, again calling upon him to show cause why his plot/building should not be resumed. The petitioner submitted his representation against this notice and then appeared before the Estate Officer on February 26, 1988. The Estate Officer, thereafter, by his order of April 8, 1988 (Annexure P/1) ordered the resumption of the plot. This order was later upheld in appeal by the administrator on August 9, 1988 (Annexure P/2).

5. The plea raised by Mr. V. K. Bali, learned counsel for the petitioner in the first instance, was that there was no bar to the use of residential site or building as a shop, as the allotment letter contained no prohibition with regard to the change in the use of the land allotted. This contention cannot, however, stand scrutiny. As rightly stated in the return, the allotment was made under the Punjab Urban Estate (Development and Regulation) Act, 1964 read with the rules framed therein, namely, the Punjab Urban Estate (Sale of Sites) Rules, 1965. Clause 15 of the letter of allotment of March 13, 1973 (annexure P/3) being "this allotment is subject to the provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964 and the rules framed therein as amended from time to time and you will have to accept and abide by them."

6. A reference to the provisions of Punjab Urban Estate (Development and Regulation) Act, 1964 would show that under S.3(2) thereof, the State Government is empowered to sell or transfer, any land or building, belonging to it, in an urban estate, on such terms and conditions, as it may, subject to any rules made under the Act, it thinks fit to impose. The relevant rule in this behalf is Rule 9 of the Punjab Urban Estate (Sale of Sites) Rules, 1965 which reads as under :--

"The transferee shall not use the site or the building erected thereon for a purpose other than that for which it has been sold to him."

7. While dealing with this matter, it would also be pertinent to take note of the provisions of S. 58 of the Act by virtue of which action taken under the Punjab Act of 1964 would be deemed to have been taken under the Act. This would be apparent from a reading of sub-section (2)(a) of S. 58 of the Act, which is as under :--

"(2) Notwithstanding the provisions of sub-section (1).--

(a) anything done of any action taken including any notification, order, scheme, permission or rule made, granted or issued under any provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964, , shall, so far as it is not

inconsistent with the provisions of this Act, continue in force and be deemed to have been done or taken under the provisions of this Act, unless and until it is superseded by anything done or any action taken under this Act."

8. Further, it will be seen that change of user also stands barred by Clause 9 of the Deed of Conveyance which is in these terms :--

"Transferee shall not use the said site for any purpose other than for which it had been allotted and nor shall use the building constructed on it for purposes other than that for which it had been constructed except in accordance with the rules/regulations made under the Haryana Urban Development Authority Act, 1977."

9. Such thus being the situation, the petitioners cannot be heard to say that there was no bar to the change of user of the plots allotted to them.

10. The petitioners next sought to complain of discrimination on the ground that the State of Haryana was using residential build-ings as its offices, but no notice of resumption had been served upon the owners of such buildings. This again is a plea which stands controverted in the return filed by the respondents where, it has been stated that action is being taken against all allottees who have committed violations of the terms and conditions of their allotment and that notices have been served upon all those who have made zonal violations.

11. The main and material point urged was with regard to the power of resumption conferred upon the Estate Officer under S. 17 of the Act. The argument raised in this behalf being that the power granted thereunder was unguided and arbitrary, with there being no guidelines for the exercise thereof. The issue raised here in fact, stands settled by the judgment of the Full Bench of this Court in Ram Puri, Chandigarh Vs. Chief Commissioner, Chandigarh and Others, where the Court had occasion to deal with a similar power of resumption under the Capital of Punjab (Development & Regulation) Act, 1952. The question posed being, "Whether the ultimate sanction of the resumption of sites of buildings (including within its sweep the divestiture of title) can be made available to the authority for the larger purpose of the crying need of planned urban development in order to prevent the mushroom growth of slum or the haphazard accumulation of what has been rightly termed as concrete jungles." It would be relevant to quote and compare here the provisions of the two Acts, with regard to the power of resumption :--

Haryana Urban (Development & Regulation) act, 1977.

S. 17(1) Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, under S. 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty, which shall not exceed ten per cent of the amount due from the transferee, be not imposed upon him.

(2) After considering the cause, if any, shown by the transferee and after giving

him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-s. (2) or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing call upon the, transferee to show cause within a period of thirty days, why an order of

Capital of Punjab (Development & Regulation) Act, 1932.

S. 8-A(I). If any transferee has failed to pay the consideration money or any instalment thereof on account of the sale of any site or building or both, under S. 3 or has committed a breach of any other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both, should not be made.

(2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-s. (!) and any evidence he may produce in support of the same and after giving him a

resumption of the land or building or both, as the case may be and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cenf of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building or both, should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-s. (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-s. (3) of the whole or any part of the money paid in respect of such sale.

, (5) Any person aggrieved by an order of the Estate Officer under S. 16 or under this section may, within a period of thirty days of the date of the appeal to the Chief Administrator in such form and manner as may be prescribed :

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) The Chief Administrator, may, after hearing the appeal, confirm, vary or

reserve the order appealed from and may pass such order as he deems fit.

(7) The Chief Administrator may either on his own motion or on an application received in this behalf at any time within a period of six months from the date of the order, call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit;

Provided that the Chief Administrator shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard.

reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-s. (1) of the whole or any part of the money paid in respect of such sale,"

12. It will be seen that the impugned provisions of S. 17 of the Act are couched in the same terms as S. 8-A of the Capital of Punjab (Development & Regulation) Act, 1952.

13. In dealing with the power of resumption, it was observed :--

"What deserves highlighting herein is that this power of resumption under 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-s. (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-s. (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"...."

The Court further observed :

"It appears that, in essence, the conflict herein is between the individualistic property rights and the larger public weal of planned and regulated urbanization. The head-on clash is between the doctrine of laissez faire against the somewhat urgent need of the welfare State to provide a planned and regulated urbanization for its citizenry. Inevitably, private interest must give way to public weal and the larger interest of social control must override the out-moded theories of laissez faire."

14. It was accordingly held that the enabling power of resumption under S. 8-A of the Act was a reasonable restriction on the fundamental right to hold, acquire and dispose of property.

15. The rationale of the Full Bench in Ram Puri, Chandigarh Vs. Chief Commissioner, Chandigarh and Others, aptly and amply covers the issue canvassed here and no constitutional invalidity can consequently be imputed to

the power of resumption under the Act.

16. On principle too, it cannot, but be observed that the larger and overriding purpose of planned urban development renders the ultimate sanction of resumption inevitable. Planned urban development is now a clear and definite objective and is indeed rendered imperative by consideration of social welfare, environmental protection and for providing and maintaining essential amenities for its resident.

17. Before proceeding further, it would be pertinent to mention here, that the suggestion of the Court that the petitioners forbear from misuser of their residential sites or building, on reasonable time being granted to them to locate and shift to alternative authorised premises for the purpose, was very pointedly and straightway declined. It being bluntly stated by the counsel for the petitioner, that they would not countenance any such suggestion except on alternative commercial sites being allotted to them. In declaring so, the learned counsel failed to appreciate that to even imply so, much less any such direction, being given, would amount to putting a premium on unauthorised use of premises by allottees in contravention of the terms of their allotment, which no Court can be a party to.

18. Faced with this situation, counsel for the petitioner then sought to contend that for similar defaults different consequences ensue in terms of Ss. 17 and 18 of the Act and that there was no rational distinction in the matter of resumption, between one occupying his own house and another occupying a building belonging to the Haryana Urban Development Authority.

19. A plain reading of provisions of Ss. 17 and 18 of the Act would show that they deal with entirely different species of property and situations. Section 17 concerns buildings constructed by the owner of the plot whereas S. 18 deals with the power to evict persons from premises of the Haryana Urban Development Authority. As observed earlier, the ultimate sanction of having buildings conform to their specified and authorised use as per the requirements of a planned city, is resumption and this is what S. 17 provides for. In the case of buildings belonging to the Haryana Urban Development Authority, the remedy would obviously be eviction and that is so provided for under S. 18 of the Act. The point sought to be made by the counsel for the petitioner here was that under S. 18(3) of the Act, if the person against whom an order of eviction has been passed, applies and shows that he has complied with the terms contravened by him, the Collector may cancel the order made against him, whereas, no such provision exists in respect of a person against whom an order of resumption has been made under S. 17 of the Act. The answer to this again clearly lies in the fact that the power of resumption is merely an enabling and discretionary power, not one to be mandatorily enforced for violation of the terms of allotment. No discrimination of any such ground can thus be assumed.

20. Finally, there was an attempt by Mr. Jawahar Lal Gupta, appearing for some

of the petitioners to seek to extend the principle enunciated by the Supreme Court in the well-known slum dwellers" case *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, regarding the right to life, to allottees of residential plots and buildings in planned urban estates who, in violation of the terms of their allotment change the user thereof on the plea that they had no other means of livelihood. The observations quoted in this behalf being :-- (para 32)

"An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningful ness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood....."

21. To consider this passage in the manner suggested would indeed result in the negation of the very concept of planned urban development which is now such a well-recognised social norm of a welfare State. It would be reading these observations wholly out of context to construe them as a licence to violate rules and regulations covering planned development of a city even if the plea is that it was the lack of any other means of livelihood that impelled the violators to do so. *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, is clearly rendered inapplicable by the context here. The challenge thus to the constitutionality of the provisions of the Act, on this account, too, cannot, therefore, be sustained.

22. It remains now to deal with petitions which on their peculiar facts impel separate consideration. There is in the first instance a group of writ petitions, namely; 4962, 4964, 4969, 5101, 5493, 5715, 5835, 6723, 6929, 7076, 7169, 7372, 7376, 7446, 10700 and 10818 of 1988, which pertain to orders of resumption having been passed in respect of buildings which are in the occupation of the tenants, with the petitioners being such tenants. The point urged by their counsel Mr. Jawahar Lal Gupta being that not only the owner, but also the tenant of a building in respect of which an order of resumption is sought to be passed, is entitled to be heard. This is indeed in accord with settled law. It

has been so laid down by the Full Bench of our Court in Brij Mohan Vs. The Chief Administrator, Union Territory, Chandigarh and Others, , where, in dealing with resumption under S.8-A of the Capital of Punjab (Development & Regulation) Act, 1952, it was held that as the proposed order of resumption had the dual consequence of depriving the owner of the right of ownership in the site or building and also the occupant of his possession over such sites or buildings, both the owner as also the tenant in actual possession of such site or building, would be affected by the order and thus entitled to be heard before an order of resumption is passed.

23. There is no material on record to show that notices of resumption were also served upon the petitioners. In occupation of such sites or buildings as tenants. This being so, the orders of resumption, if any, passed against such petitioners are hereby quashed and if no such orders have so far been passed, a direction is hereby issued to the Estate Officer to refrain from passing orders of resumption without also affording a hearing to the petitioners.

Next there is Civil Writ Petition 10223 of 1988 where the additional point urged by Mr. M. L. Merchea counsel for the petitioner was that the petitioner Parveen Kumar Mangla was a minor and the impugned order of resumption had been passed without notice to his guardian. This plea has not been specifically controverted. The impugned order of resumption passed against this petitioner is consequently hereby quashed with the direction to the Estate Officer to consider the matter afresh after giving notice to the guardian of the petitioner.

In the result, Civil Writ Petitions 4962, 4964, 4969, 5101, 5493, 5715, 5835, 6723, 6929, 7076, 7169, 7372, 7376, 7446, 10700, 10818 and 10223 of 1988 are accepted to the extent indicated, while all the other writ petitions are hereby dismissed. There will be no order as to costs.

24. Petition dismissed.