
(2007) 05 P&H CK 0191
In the Punjab And Haryana At Chandigarh

Tarlochan Singh and Others	Vs	APPELLANT
U.T. Chandigarh and Another		RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 149 PLR 601

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.S. Bhalla, J.—Invoking extraordinary writ under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondents to refund the amount of Rs. 3.60 lacs, which has been charged by them illegally on account of conversion charges of Shop-cum-flat to Shop-cum-Office. The petitioners have further prayed for deciding the legal notice dated 21st December, 2005 (Annexure P-14) served upon the respondents in accordance with law.

2. The facts required to be noticed for the disposal of this petition are that respondents allotted one commercial site in Sector 30-C, namely, S.C.O. No. 76 on 11th June, 1968 for a sum of Rs. 34,000 for a trade of printing Press-cum-General in favour of one Smt. Bimla Devi, wife of Ram Gopal, resident of Chandigarh. A copy of the allotment letter is annexed with the writ petition as Annexure P-1. She sold the same, vide registered sale deed dated 27th July, 1998 in favour of Shri G.P. Bansal, son of Shri Krishan Dass Bansal, resident of Delhi for a consideration of Rs. 2,25,000/-. It is the case of the petitioners that the allotment letter and the sale deed executed by its original allottee clearly spells out that right from the very beginning the premises was Shop-cum-Office and at no point of time, it was ever described as Shop-cum-Flat. The petitioners purchased the said Shop-cum-Office No. 76 from the above mentioned G.P. Bansal, - vide registered sale deed dated 17th June, 2003 for a consideration of

Rs. 42 lacs, a copy of which is annexed with the petition as Annxure P-3. After the registration of the sale deed, the petitioners applied for transfer of Shop-cum-Office in their favour and the same was allowed,- vide letter dated 26th June, 2003. The petitioners, in order to change the trade, which was earlier shown as Printing Press-cum-General applied to the respondents for conversion of trade in the said S.C.O. No. 76 and enclosed draft of Rs. 50,000/- along with the same and also submitted the drawing for its approval. In response to the above letter, the respondents on 27th October, 2004 addressed a letter to the petitioners to first get the Shop-cum-Flat into Shop-cum-Office. In response to the letter, the petitioners sent a reply that they had applied for conversion of trade and their premises was already Shop-cum-Office and not Shop-cum-Flat and therefore, it is totally wrong and irrelevant to get the conversion from Shop-cum-Flat to Shop-cum-Office, but this request was not accepted by the respondents and the petitioners again applied and requested that only the conversion charges of the trade be charged from them. The petitioners moved a representation to the respondents, but they did not approve the building plan and also did not allow the conversion of trade. The petitioner again, vide two separate representations requested the respondents to withdraw the conversion from Shop-cum-Flat to Shop-cum-Office by written request/representation dated 6th December, 2004, but to no effect. It is further pointed out that the respondents through their Sub-Divisional Officer Buildings again addressed a letter to the petitioners to get the premises converted from Shop-cum-Flat to Shop-cum-Office and in response to this letter, in order to avoid any delay in conversion of the trade, as the petitioners were to open the Guest House, deposited the conversion charges from Shop-cum-Flat to Shop-cum-Office to the tune of Rs. 3,60,000/- under protest subject to reserving their right to get it adjusted towards conversion fee of the trade. In response to the above said letter, the respondents issued a letter dated 10th January, 2005 regarding conversion of S.C.O. site No. 76 from Shop-cum-Flat to Shop-cum-Office after receipt of Rs. 3,60,000/-. A copy of the letter dated 10th January, 2005 is annexed with the petition as Annexure P-13. The petitioners many a times, requested for the refund of the said illegal amount, which they have taken by force and under the garb of conversion of trade, but the respondents on one or the other pretext refused to refund the same. Thereafter the petitioners on 21st December, 2005 sent a legal notice through their counsel, but the respondents have not refunded the amount and this necessitated the filing of the petition in hand.

3. On the other hand, the petition was contested by the respondent and through the written reply pointed out that the petitioners have no locus standi to refund the amount of conversion charges of Shop-cum-Flat to Shop-cum-Office, which the petitioners have willingly deposited and thereby got converted the trade from General to Guest house and now they cannot be allowed to agitate upon the matter. It is further admitted by the respondents that Plot No. 76, Sector 30-C, Chandigarh, was initially allotted in the name of Bimla Devi, wife of Ram Gopal, but in the allotment letter issued to her, some how the aforesaid site was

wrongly described as S.C.O. instead of S.C.F. as under the Zoning Plan/Control Sheet, the said site is provided as S.C.F. It is also admitted that the original allottee sold the said site in favour of G.P. Bansal and it has been again asserted by the answering respondents that the site in question was S.C.F. as per the Zoning Plan, but some how in the allotment letter, it was wrongly described as S.C.O. It has been admitted that the aforesaid G.P. Bansal then sold the site in favour of the petitioners. The respondents have also admitted that petitioners applied for the transfer of the rights in their favour consequent upon the purchasing of the site from the said Shri G.P. Bansal. The respondents have also admitted that the petitioners applied for the conversion of the trade from General to Guest House and also deposited the token money of Rs. 50,000/-. The respondents have also admitted that in response to the letter of the petitioners, the petitioners were informed that the petitioners shall have to first get the S.C.F. converted into S.C.O. and then for conversion of the trade, which was duly complied with without any protest as is clear on perusal of the letter whereby demand of conversion was acknowledged to the petitioners and conversion allowed, which the petitioners duly accepted without any protest. It is further pointed out that the petitioners deposited the amount for conversion of S.C.F. and also deposited without any protest and it is only after the needful was done, the petitioners cannot be allowed to agitate upon the matter that the site in question was not S.C.F. and the respondents have to go with the Zoning Plan/Control Sheet where in the site has been described as Shop-cum-Flat and the plan has also been sanctioned. If some how on the allotment letter instead of S.C.F., it was mentioned as S.C.O., it does not mean that the petitioners got any vested rights specifically. Moreover, conversion charges were without any protest and by denying the other assertions raised in the petition, it was prayed that the petition be dismissed.

4. The petitioners chose to file replication wherein they challenged the stand taken by the respondents and denied the assertions made in the written statement and reiterated their stand taken in the petition.

5. I have heard the learned Counsel for the parties and have also gone through the record of the case meticulously.

6. The entire case of both the parties revolves around the contents of the allotment letter (Annexure P-1). Before proceeding further and in order to arrive at a right conclusion, it is necessary to reproduce the relevant portion of this allotment letter, which runs as under:

Registered A.D. Union Territory Chandigarh Administration. No. 7324/CP/1854, dated 19th June, 1968 Smt. Bimla Devi w/o Ram Gopal, C/o Shri Gopal and sons Sector 22-D, Chandigarh. Sub: Allotment of Commercial Sites at Chandigarh Memo: Reference your bid at the auction held on 26th May, 1968 following commercial site is hereby allotted to you on the conditions mentioned hereunder:

Transfer of rights in S.C.O. Site No. 76 Sector 30-C, Chandigarh, held by Shri Govind Prasad Bansal is hereby noted in your favour on the basis of sale deed on the following conditions:

- (1) You shall abide by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 as amended upto date and the rules framed thereunder.
- (2) You will complete the construction of the main building by,
- (3) You shall be liable to pay an amount in arrears if due towards the price of the plot.
- (4) You shall execute/register redemption deed in respect of loan within 90 days.

In the event of your failure to comply with the above mentioned conditions further action u/s 8-A of the Capital of Punjab (Dev. & Reg.) Act, 1952 Chandigarh Amendment Act, 1972 for the resumption of the site shall be initiated against you.

(Sd.). Estate Officer, U.T. Chandigarh.

8. A perusal of the transfer order clearly spells out that the property in question, i.e. S.C.O. No. 76 was transferred in the name of the petitioners showing it to be as S.C.O. No. 76, Sector 30-C, Chandigarh. Learned Counsel for the respondents has submitted that a bona fide error took place with regard to the character of the property at the time of issuance of letter falls to the ground in view of the transfer order dated 26th June, 2003 (Annexure P-4). The fact that the property was transferred in favour of the petitioners showing it to be S.C.O. No. 76, has added another nail to the coffin of the case of the respondents with regard to the character of the property. This transfer took place on 26th June, 2003. Even at this stage, the mistake, if at all, occurred in the issuance of the letter, has not been rectified by the department nor the department has taken action against the erring officer/officials, who have issued allotment letter and the transfer order by closing their eyes. The zoning plan and the control sight was available in the department even at the time of issuance of the allotment letter and the transfer order and now when the petitioners applied for the change of trade and respondents woke up all of a sudden with regard to the character of the property taking a plea that in fact, it was not Shop-cuni-Office, but the property in question is a Shop-cum-Flat. Moreover, both the vendees purchased the property in question purported it to be Shop-cum-Office and not Shop-cum-Flat and at the cost of repetition, I would again like to observe that ultimately property was transferred in the name of the petitioners as Shop-cum-Office No. 76 and no notice i.e., after passing of the order till today, was ever issued to the petitioners with regard to the correction in the allotment letter as well as transfer order. It was on the basis of this transfer order that the petitioners assert their rights for the change of the trade and for this purpose, he deposited a sum of Rs. 50,000/-, but it is strange to note that the respondents took up a plea, which was neither available in the allotment letter nor in the transfer order. Just to

defeat the legitimate right of the petitioners, they were forced to pay a sum of Rs. 3.60,000/-, which is for the conversion charges, in spite of the fact that the petitioners through letter dated 15th October, 2004 (Annexure P-5) informed the Estate Officer that they want to convert the first and second floor of the said S.C.O. to Guest House from General Trade, Meaning thereby that, the petitioners wanted to change their trade and the question of converting the building from Shop-cum-Flat to Shop-cum-Office does not arise. The building plan was also submitted by them in this regard and, - vide order dated 27th October, 2004, the petitioners were called upon to remove the objections enabling the office to expedite their case with regard to the sanctioning of building plan and as per objections raised by the respondents, conversion of Shop-cum-Flat into Shop-cum-Office be submitted first and thereafter conversion letter into Guest House be submitted afresh. The petitioners were not required to remove these objections since the character of their building was Shop-cum-Office and not Shop-cum-Flat, as is being asserted by the respondents. Vide letter dated 29th October, 2004 (Annexure P-7), the petitioners categorically asserted their right by informing, S.D.O. (Building), Chandigarh Administration, Union Territory, Chandigarh that the concerned site is Shop-cum-Office and not Shop-cum-flat and all the relevant papers have been submitted for approval of plans and he was requested not to harass them in any manner. He was also informed that a sum of Rs. 50,000/- has been paid as part payment towards the conversion of Guest house.

9. Another letter dated 18th November, 2004 (Annexure P-8) was written by the petitioners to the Estate Officer, Union Territory, Chandigarh Administration, Chandigarh, wherein they informed that the building is lying unused and they are suffering heavy loss and requested the Estate Officer that the S.D.O. (Building) may be asked to release their drawings and they be intimated the conversion charges from Shop-cum-Office to Guest House so as to enable them to deposit the same. Since no action has been taken in this regard and in order to avoid delay in the conversion of the said premises into Guest house, the petitioners paid a sum of Rs. 3,60,000/- through Bank Drafts of State Bank of Patiala on account of fee for conversion of Shop-cum-Office. They also asserted through letter dated 23rd December, 2004 (Annexure P-12) that if this fee, at a later stage, is not found applicable to their Shop-cum-Office, the amount deposited shall be adjusted towards the conversion fee of 1st and 2nd floor to Guest house. They also requested to intimate the fee, for the conversion of 1st and 2nd floor of the above said Shop-cum-Office to Guest house. All this clearly spells out that the petitioners have been asserting at every stage that they are not bound to pay the charges for the conversion of the site from Shop-cum-Office to Shop-cum-Flat and through letter dated 10th January, 2005 (Annexure P-13), respondents acknowledged the receipt of Rs. 3,60,000/-. All this clearly spells out that in view of what has been discussed above, it is ipso facto, clear that the petitioners were required to knock the door of the respondent-department only for change of trade and they were not required to pay conversion charges from

Shop-cum-Flat to Shop-cum-Office since the original allotment letter and the transfer order clearly spells out that the building in question was Shop-cum-Office and the question of any conversion to Shop-cum-Flat for the change of trade was not required and the petitioners were pressurised to pay a sum of Rs. 3,60,000/-. However, for the change of trade, the petitioners are required to pay charges in accordance with rules and regulations.

10. For the reasons recorded above, the petition is allowed and the respondents are directed to refund the amount, which has been charged by the respondents on account of conversion charges of Shop-cum-Flat to Shop-cum-Office after adjusting the amount required to be charged for the conversion of trade. The amount, so calculated, be refunded to the petitioners, within a period of two months from the date a certified copy of this order is received by them.