
(1974) 05 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2504 of 1971

Tej Ram Sharma	Vs	APPELLANT
The State of Haryana and others		RESPONDENT

Date of Decision : 01-05-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1974) 05 P&H CK 0029

Hon'ble Judges : R.S. Narula, J;M.R. Sharma, J

Bench : Division Bench

Advocate : B.S. Malik, M/s. H.L. Sibal and S.C. Sibal with him, for the Appellant;
C.B. Kaushik for Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—Though the facts giving rise to the filing of this petition under Article 226 of the Constitution are rather lengthy, the ultimate point on the decision of which the fate of this case depends is very brief. The petitioner, owned a large tract of land, out of which the major portion was acquired by the Government before 1961. On a plot measuring 17 Kanals out of his remaining land, the petitioner set up & stone-crusher in 1961, and started carrying on the business of crushing stones under the style or Kailash Stone Mills. The land under the said crusher was also acquired in 1967, and Civil Writ 553 of 1963, filed by the petitioner impugning the acquisition was 1 dismissed by this Court on February 29, 1968. The petitioner was, however, allowed on his representation to continue to work his crusher till Sector 25 (in which the land fell) was developed and other factories came up there. This permission was granted On March 25, 1968. Under advice received by the petitioner, he made an application on October 22, 1968 (Annexure " D"), on the prescribed form for allotment of his earstwhile land under the Punjab Urban Estates (Development and Regulation) Act (22 of 1964) (hereinafter called the 1964 Act) read with the Punjab Urban Estates Sale of Sites) Rules, 1965 (hereinafter referred to as the 1965 Rules). He

remitted ten per cent of the value of the plot with his application as required under the 1965 Rules. By order, dated July 5, 1969 (Annexure "G"), a plot in Sector 24 was allotted to the petitioner in pursuance of his above-mentioned application instead of giving him the land for which he, had definitely asked. Petitioner's representation, dated July 7, 1969, against that Order was accepted by order, dated July 26, 1969 (Annexure "H"), and plots Nos. 63 and 64 comprising the existing site of the petitioner's, crusher were allotted to him in exchange of the plot originally given to him in Sector 24. The petitioner had made the initial deposit of Rs. 10,000/-, and made subsequent deposits towards part-payment of the price of the plot. In all he paid Rs. 30,240/- in that connection by October 22, 1969. Notice, dated July 15, 1970 (Annexure "J"), was served on the petitioner to discontinue the stone-crusher at the site allotted to him. On May 31, 1971, another notice Annexure "L" was served on the petitioner by respondent No. 3 asking him to stop the crusher and to vacate the building on the plot within seven days failing which the same would be demolished. Respondent No. 5 gave notice, dated June 2, 1971 (Annexure "M"), asking him to vacate certain structures which had been set up by the petitioner. Ultimately by order, dated June 30, 1971 (Annexure "N"), the site allotted to the petitioner was resumed and the sum of Rs. 30,240/- paid by the petitioner was forfeited by the Estate Officer, Faridabad. The order reads :--

Industrial Plots Nos. 63 and 64 Sector 25 at Faridabad were allotted to Shri Tej Ram Sharma vide this office memo No. 18732/ AUE/EO, dated Faridabad the 5th July, 1969. These plots were allotted for starting a factory for the manufacture of Spun Pipes. The allottee is using these plots for running a stone-crusher in contravention of the terms of allotment. Repeated efforts to get him to shift the stone-crusher have failed. A show-cause notice was served to the party vide this office memo No. 14322/EO, dated 3rd June, 1971, by which the party was asked to show cause within a week from the issue of the notice why plots Nos. 63 and 64 Sector 25 at Faridabad be not resumed and amount already deposited forfeited to Government for contravention of the terms of allotment. But no reply in this respect has been received although stipulated period has since been expired.

I, therefore, resume the site, i.e., industrial plots Nos. 63 and 64 Sector 25 in Faridabad and further forfeit the amount of Rs. 30,240/- deposited by the party towards part-payment of the cost of the plot.

2. The allotment of the plot in question to the petitioner, the payment by the petitioner or a substantial part of its price, and the passing of the order for resumption on account of the alleged breach of the terms of allotment of the plot are the facts which are beyond dispute. The petitioner's case is that the impugned order was passed without any notice to him, and without affording him any opportunity of showing cause against the proposed resumption of the plot and forfeiture of the amount paid by him. He has also claimed in the writ petition that section 10 of the 1964 Act under which the impugned order has been

passed is unconstitutional.

3. There are some other minor points taken up by the petitioner, but it is unnecessary to go into any of those points in view of the fact that the impugned provision of the 1964 Act under which the order of resumption and forfeiture has been passed appears to us to be wholly unconstitutional. Section 10 of the 1964 Act reads :--

In the case of non-payment of consideration money or any instalment thereof on account of the transfer of any site or building u/s 3 or of any rent due in respect of the lease of any such site or building or in case of the breach of any other conditions of such transfer the Estate Officer may, if he thinks fit, resume the site or building so transferred and may further forfeit the whole or any part of the money, if any, paid in respect thereof.

A similar provision is contained in section 9 of the Capital of Punjab (Development and Regulation) Act (27 of 1952) (hereinafter called the 1952 Act). That section is in the following words:--

In the case of non-payment of consideration money or any instalment thereof on account of the transfer of any site or building u/s 3 or of any rent due in respect of the lease of any such site or building or in case of the breach of any other conditions of such transfer or breach of any rules made under this Act, the Estate Officer may, if he thinks fit, resume the site or building so transferred and may further forfeit the whole or any part of the money, if any, paid in respect thereof.

4. It would be noticed that there is no practical difference between the two provisions. Section 9 of the 1952 Act has been struck down by their Lordships of the Supreme Court in Messrs Jagdish Chand Radhey Shyam v. The State of Punjab AIR 1973 SC 2587. Their Lordships have held that the Government is not entitled to forfeit the money paid and resume the site under the provisions contained in section 9 of the 1952 Act as that section violates Articles 14 and 19(1) of the Constitution. As already pointed out there is no practical distinction between section 10 of the 1964 Act on the one hand and section 9 of the 1952 Act on the other. Applying the law laid down in the judgment of the Supreme Court in the Case of Messrs Jagdish Chand Radhey Shyam (supra), we hold that section 10 of the 1964 Act also violates Articles 14 and 19(1)(g) of the Constitution, and the impugned order passed under that provision must, therefore, be declared to be unconstitutional, void and of no effect.

5. For the foregoing reasons, we allow this petition without any order as to costs, and set aside and quash the impugned order, dated June 30, 1971 (Annexure "N"), where by the site allotted to the petitioner purports to have been resumed and the amount paid by him purports to have been forfeited.