
(1999) 04 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7565 of 1996

Vijay Kumar and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 05-04-1999

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 5B

Citation : (1999) 122 PLR 444 : (1999) 4 RCR(Civil) 311

Hon'ble Judges : G.S. Singhvi, J; Amar Dutt, J

Bench : Division Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; Paramjit Singh Brar, for Respondent Nos. 1 and 2 and C.P. Sapra, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The facts necessary for deciding whether the order Annexure P.8 and the judgment Annexure P. 10 should be nullified are that Bungalow No. 66, situated on the Mall, Ambala Cantt. was leased out to the predecessors-in-interest of the petitioners for residential purposes. Presently, it is in the occupation of the petitioners. On 22.9.1994, Shri Sharan Singh, S.D.O., GDE III submitted a report to the Defence Estate Officer, Ambala Circle that the occupants of Bungalow No. 66 have made unauthorised construction by demolishing old walls and roofs and erected new walls and roofs by placing RCC slabs and by putting floor in certain rooms without obtaining permission from the competent authority. On receipt of this report, notice Annexure P.1 dated 17.11.1994 was issued to the petitioners requiring them to remove/demolish the unauthorised construction. A site plan showing the unauthorised construction was enclosed with the notice. On 30.11.1994, the Estate Officer, Ambala Circle, Ambala Cantt. issued notice u/s 5B(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the 1971 Act") to the petitioners requiring them to show cause why an order of demolition be not made. The petitioners not only denied the allegation of raising unauthorised

construction but also stated that they have carried out minor repairs and no addition or alternation of structure has been made. Shri Sharan Singh, who was examined as the only witness on behalf of the competent authority, reiterated the contents of his report. In the cross-examination, he stated that there is no increase in the plinth area. After considering the statement of Shri Sharan Singh, the Estate Officer, Ambala Circle passed order Annexure P.8 dated 19/20.6.1995 for demolition of the work got done by the petitioners. The appeal filed by them u/s 9 of the 1971 Act has been dismissed by the learned District Judge.

2. The petitioners have challenged the impugned orders on the following grounds:

(i) The order passed by the Estate Officer is violative of the principles of natural justice because no notice or opportunity of hearing was given to them to put up their defence against the allegation of having carried out repairs in violation of the provisions of the Cantonments Act, 1924 (hereinafter referred to as "the 1924 Act").

(ii) The order passed by the Estate Officer is perverse because it is based on no evidence.

(iii) The Estate Officer as well as the appellate authority have failed to apply the provisions of Section 185(1) of the 1924 Act for compounding of the alleged violation of Section 179(21) of the 1924 Act.

3. Respondents No. 1 and 2 have defended the order of demolition passed by the Estate Officer by stating that the petitioners carried out major repairs by replacing the roofs and floors without seeking prior permission from the competent authority. In a separate written statement filed on behalf of respondent No. 2, it has been averred that the petitioners are not entitled to invoke writ jurisdiction of this Court because they are guilty of violating the provisions of Section 179 of the 1924 Act.

4. After hearing Shri M.L Sarin, Shri P.S. Brar and Shri C.P. Sapra and perusing the record, we are of the opinion that the order Annexure P.8 deserves to be invalidated on the ground of violation of the principles of natural justice and the appellate judgment deserves to be set aside on the ground that the jurisdictional defect with which the original order is afflicted cannot be cured by the appellate order.

5. A perusal of notices Annexures P.1 and P.3 shows that proceedings were initiated against the petitioners on the premise that they have made huge unauthorised construction on the site in question. Along with the notices, copies of site plans depicting the unauthorised structures erected by the petitioners were enclosed. However, before the Estate Officer, no evidence was produced by the authorities of the Cantonment to prove the allegation that the petitioners have made unauthorised construction consisting of six rooms, two toilets, one kitchen, one water tank and porch. Rather, the only witness, namely Shri Sharan Singh, who appeared on behalf of the Cantonment Board, stated on oath that the

petitioners have changed the roofs of the rooms, repaired the floors and carried out wood work. According to him, the repairs done/carried out by the petitioner fell within the purview of major repairs. In the cross-examination, he made a categorical statement that there is no increase in the plinth area. If we read his statement in conjunction with the inspection report dated 22.9.1994, it is not possible to decipher any inconsistency between the two. However, the consistency in the version of Shri Sharan Singh is not sufficient to uphold the order of demolition passed by the Estate Officer on the premises that the petitioners have carried out repairs like changing of the roofs and floors and carrying out wood work because no notice was given to them in respect of the allegation that they have carried out major repairs without seeking prior permission from the competent authority. Thus, they did not get opportunity to defend themselves qua such allegations. In fact, the only allegation, with which the petitioners were accused, was that they have raised construction in the form of six rooms, two toilets, one kitchen, one water tank and porch. That allegation cannot be held as established because no evidence was produced by the authorities of the Cantonment Board before the Estate Officer to prove that the petitioners had constructed rooms, toilets etc. Moreover, as the order of demolition has not been passed by the Estate Officer on the ground that the petitioners have made unauthorised construction in the form of rooms, toilets, kitchen and porch, we cannot sustain the order of demolition.

6. The learned Additional District Judge, Ambala, who decided the appeal filed by the petitioners also committed the same error. He too decided the matter by assuming that the petitioners were guilty of having carried out major repairs. While doing so, he ignored the fact that notice issued to them u/s 5B(1) of the 1971 Act did not contain such allegation.

7. In view of the above discussion, we do not consider it necessary to examine the question whether the repairs carried out by the petitioners fall within the ambit of major repairs and whether the petitioners are guilty of having violated Section 179 of the 1924 Act.

8. For the reasons mentioned above, the writ petition is allowed. Orders Annexure P.8 and P.10 are quashed. The petitioners shall get costs of Rs. 5,000/- from the respondents. However, we give liberty to the competent authority to initiate fresh action in the matter and pass appropriate order in accordance with law after giving reasonable opportunity of hearing to the petitioners. The, petitioners are also given liberty to seek compounding of the alleged illegal construction raised by them.