

(2001) 05 P&H CK 0185
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16116 of 1999

Vijay Soni

APPELLANT

Vs

Chief Commissioner, Union Territory, Chandigarh

RESPONDENT

Date of Decision : 11-05-2001

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8
Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 13

Citation : AIR 2002 P&H 38 : (2001) 2 ILR (P&H) 456 : (2001) 4 RCR(Civil) 287

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. S.M. Sharma, for the Appellant; Ms Anita Sharma, for the Respondent

Judgement

Jawahar Lal Gupta, J.—Is the action of the Chandigarh Administration in imposing penalty @ 100% for less than a year's delay in deposit of the ground rent arbitrary and unfair ? This is the short question that arises for consideration in this petition.

2. The petitioners were allotted the Shop-cum-office Site No. 130-131, Sector 8-C, Chandigarh on a lease hold basis at a premium (price) of Rs. 60 lacs. The petitioners had paid 25% of the amount of consideration. Thereafter, on March 21, 1995, the letter of allotment was issued. A copy of the letter has been produced as Annexure P.1 with the writ petition. The remaining amount viz. 75% of the premium had to be paid in three yearly instalments on or before March 10 of the years 1996, 1997 and 1998. The petitioners had also to pay an annual ground rent @ Rs. 1,50,000/-.

3. It appears that there was some delay in the payment of the third Instalment which was due to be paid during the period in 1998. The Estate Officer issued an order dated October 27, 1998 directing the petitioners to make the deposit of the amount due on account of the instalment towards the payment of the premium along-with a penalty of 10%. He further directed the petitioners to pay the

amount due on account of ground rent with a penalty @ 100%. The payment was directed to be made by November 18, 1998. A copy of the order is at Annexure P.2. Aggrieved by the order, the petitioners filed an appeal before the Chief Administrator. It was dismissed on February 26, 1999. A copy of this order is at Annexure P.3 with the writ petition. A revision petition was filed. It was partly allowed. The penalty of 10% for delay in deposit of the instalment was reduced to 5%. However, in respect of the penalty for delay in deposit of the ground rent, the Adviser chose not to interfere with the order passed by the subordinate authorities. A copy of the order has been produced as Annexure P.4 with the writ petition. The petitioners allege that the action of the respondents in imposing a penalty @ 100% for delay of about eight months in depositing the ground rent is wholly arbitrary and unfair. On these premises, the petitioners pray that the impugned action be annulled.

4. A written statement has been filed on behalf of the respondents by the Assistant Estate Officer. It has been inter alia averred that Rule 13 authorises the authority to impose a penalty. The action is in conformity with the rules and, thus, calls for no interference.

5. Counsel for the parties have been heard.

It is the admitted position that the petitioners had to make the deposit by March 10, 1998. Since there was a delay in making the deposit, the Estate Officer had issued a show cause notice. Vide order dated October 27, 1998, a penalty to the extent of 100% on the unpaid ground rent of Rs. 1,50,000/- was imposed. Was this fair?

6. Rule 13 of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973 is relevant. It is inter alia provided that in addition to the premium, the lessee shall pay annual rent @ 2-1/2% of the premium for a period of 33 years. This rent has to be paid annually on the due date. The proviso to clause (ii) authorises the Estate Officer to extend the time for payment of rent "upto six months on the whole on further payment of 6% per annum interest from the due date upto the date of the actual payment" for good and sufficient reasons. Thereafter, Clause (iii) provides as under :-

"If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100% of the amount due which may be imposed and recovered in the manner laid down in section 8 of the Capital of Punjab (Development and Regulation) Act, 1952 as amended by Act No. 17 of 1973."

A perusal of the above provision shows that in case of default, the lessee is liable to pay penalty "not exceeding 100% on the amount due....."

7. In the present case, the authority has chosen to impose penalty at the maximum rate without indicating any reason whatsoever. Still further, it is the admitted position that the petitioners had been depositing the instalments and the ground rent regularly. They had paid 25% of the amount of premium viz. Rs.

15 lacs before the letter of allotment was issued. Thereafter, the first and the second installments were paid in the years 1996 and 1997. Even the ground rent was paid. During this interval, as has been stated by the petitioners, they had raised construction and, thus, spent a substantial amount of money, they were facing paucity of funds. Resultantly, there was delay in making the deposit in the year 1998: Within almost a month of the due date, the petitioners were given a show cause notice. They had furnished a reply. No reasons were assigned for not accepting the explanation. A penalty of 100% was imposed. The Chief Administrator had dismissed the appeal mechanically. The Adviser accepted the explanation of the petitioners and reduced the penalty for delay in making the deposit of the instalment from 10% to 5%. However, she rejected the same explanation for reduction of penalty in respect of the ground rent. Why ? No reason was given. If the explanation given by the petitioners was good in so far as the delay in deposit of the instalment is concerned, why was it rejected in respect of the delay in making a deposit of the ground rent ? There is no answer. Still further, if a penalty at the rate of 5% was adequate in case of delay in deposit of the instalment of premium, why was it considered appropriate to impose penalty @ 100% in case of ground rent ? The order does not give any reason.

8. So far as the payment of ground rent is concerned, the rules treat it differently from the payment of instalments. Rule 13 permits the Estate Officer to grant extension of six months in making the deposit. For that delay, only interest @ 6% is charged. In the present case, the delay was a little more than six months. However, a penalty of 100% has been imposed. We find that the action is absolutely arbitrary and untenable.

9. It is true that Regulation 13 confers discretion on the authority. But the power cannot be exercised arbitrarily. It is not unbridled. Each order must indicate reasons. It must be reasonable, just and fair. Otherwise, the court shall have to intervene to annul the action. The order, in the present case is, wholly arbitrary.

10. Resultantly, we quash the order of the respondents in imposing a penalty of 100%. In the circumstances of the case, we are satisfied that a penalty of 20% would have met the ends of justice. Consequently, the petitioners are held liable to pay a penalty of 20%. They have already made a deposit of 50% of the amount of penalty. The excess amount shall be refunded to the petitioners immediately within one week from the date of receipt of a copy of this order. In case of failure to refund the amount within the above-mentioned period, the petitioners would be entitled to the amount along-with interest @ 10% from the date of deposit till the date of refund. The interest shall be payable by the officer responsible for the delay.

The writ petition is, accordingly, disposed of. In the circumstances, there will be no order as to costs.

11. Petition disposed of.