

Before M.M. Kumar & Jora Singh, J.J.

RAKESH KUMAR & OTHERS,—Petitioners

versus

**FINANCIAL COMMISSIONER, REVENUE, PUNJAB AND
OTHERS.—Respondents**

C.W.P. No. 413 of 2008

24th October, 2008

Constitution of India, 1950—Art. 226—Capital of Punjab (Development and Regulation) Act, 1952—S. 8-A—Pepsu Townships Development Board Disposal of Property Rules, 2003—Rl. 22—Petitioner constructing shops on plot allotted for residential purpose—Violation of Clause (iii) of Acceptance letter which provides that petitioner will not use of site for purpose other than for which it was sold—Estate Officer has power to resume building or site and to forfeit money paid by allottee—However, such power has to be used as a measure of last resort—Petitioner undertaking to demolish construction & to raise construction of building in accordance with building plans sanctioned by M.C.—Petition allowed while directing petitioners to pay balance amount in four half yearly installments.

Held, that the petitioners had succeeded in the Open Auction for purchase of site No. 106-A, Guru Nanak Colony, Rajpura, District Patiala for a sum of Rs. 25.25,000 on 19th April, 2004. They have already paid substantial amount. They commence raising of construction which is found to be in violation of the site plans sanctioned by the Municipal Council. The site plan was sanctioned on 10th June, 2004 and the petitioners started raising construction thereafter. A perusal of Rule 22 of the Rules would show that in case an allottee fails to make payment due to the Board then the property allotted to him can be resumed by the Board. Likewise, if there is a violation of any of the conditions of allotment then resumption can be made. The case of the respondents is that since there was violation of clause (iii) as the use

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of the site for a purpose other than for which it was sold, has been changed it was liable to be resumed.

(Paras 7 & 8)

Further held, that a Full Bench of this Court considered the provisions of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 which clothed the Estate Officer with the power to resume building or site and to forfeit the money paid by the allottee. Section 8-A of the 1952 Act in sum and substance postulate a similar situation as has been provided by Rule 22 of the Rules. The Full Bench came to the conclusion that although it does not violate fundamental rights of a citizen guaranteed under Article 19(1)(f) of the Constitution, however, the same has to be used as a measure of last resort.

(Para 9)

Arun Jain, Senior Advocate with Amit Jain, Advocate *for the petitioners*.

Suvir Sehgal, Addl. A.G., Punjab, *for respondents Nos. 1 and 2*.

P.S. Dhaliwal, Advocate, *for respondent Nos. 3 and 4*.

M.M. KUMAR, J.

(1) The principal issue raised in the instant petition centers around the power of respondent Nos. 3 and 4 to resume the property purchased by the petitioners in the open auction under the terms and conditions of the allotment letter as also under the Pepsu Townships Development Board Disposal of Property Rules, 2003 (for brevity, 'the Rules')

(2) Facts in brief are that the petitioners purchased site No. 106-A, Guru Nanak Colony, Rajpura, District Patiala, in the open auction being the highest bidder. The offer of the petitioners was accepted by the Pepsu Townships Development Board (for brevity, 'the Board'). They deposited a sum of Rs. 6,32,000 being 25% of the sale price. The balance of Rs. 18,93,000 was payable in six half yearly instalments. On the issuance of acceptance letter on 19th April, 2004 (P-1) they deposited the requisite charges required for sanction of building plans, development charges,—*vide* receipt dated 27th May, 2004. After sanction

of the site plans they started raising construction on the site in question. On 6th July, 2004, the Board issued a show cause notice to the petitioners under Rule 22 of the Rules to show cause as to why the building in question be not resumed alleging that the petitioners had changed the land use of the site by constructing shops in violation of the building plans approved by the Municipal Council, Rajpura. The petitioners filed a detailed reply on 6th July, 2004 (P-4). However, the Board passed an order of resumption on 2nd August, 2004 (P-5), which is the primary order challenged in the instant petition. The appeal filed by the petitioners before the Divisional Commissioner, Patiala Division, Patiala, was accepted and the order of resumption dated 2nd August, 2004 (P-5) was set aside by holding that it was a non-speaking order which has been passed in a hasty manner without affording any opportunity to the petitioners to adduce evidence in support of their plea reflected in their reply dated 6th July, 2004 (P-4). However, the Financial Commissioner-respondent No. 1 set aside the order passed by the Divisional Commissioner by entertaining the revision petition filed under Rule 13(2) of the Rules. The operative part of the order dated 13th August, 2007 (P-8) is being extracted for a ready reference, which reads thus :—

“4. I have heard counsel for both the parties and gone through the record of the lower courts. There is no dispute that the plot No. 106-A in Guru Nanak Colony, Rajpura auctioned on 26th February, 2004 is meant for residential purpose only. The counsel for the petitioner has placed on record photographs showing that the respondents have constructed ten shops adjoining each other in a row, whereas it is clearly provided under clause (iii) of Acceptance Letter that the respondent will not use the site for the purpose other than for which it has been sold to them only for residential purpose. I fail to understand why the Commissioner has ignored this sold proof of photographs. I do not agree with the counsel for the respondents that the Administrator passed resumption order dated 2nd August, 2004 without considering reply of the respondents to the show cause notice. A cursory

glance over the Administrator's order shows that the reply of the respondents was very well considered before passing final orders by Administrator. I, therefore, accept the revision petition and set aside the impugned order dated 31st May, 2005 of the Commissioner and uphold the order dated 2nd August, 2004 of Administrator whereby of plot No. 106-A in Guru Nanak Colony, Rajpura including structure built on it was resumed and the initial amount deposited by the respondents was forfeited."

(3) In the written statement filed by respondent Nos. 3 and 4 the stand taken is that there was flagrant violation of the letter of allotment and the Rules. It has been pointed out that construction of shops at the site was in clear violation of clause (iii) of the Acceptance Letter (P-1). It has also been asserted that before passing the order of resumption, the principles of natural justice have been complied with by affording opportunity to the petitioners to show cause. Respondent Nos. 3 and 4 have also placed reliance on the photographs of the structure to substantiate their view that on the site in question no residential accommodation has been constructed but 10 shops have been constructed there.

(4) Mr. Arun Jain, learned senior counsel for the petitioners at the outset has made an offer that the petitioners undertake to demolish the whole construction and to further construct the building strictly in accordance with the sanctioned building plans. On merit, learned counsel has argued that the order of resumption cannot be passed so easily and if there was any violation of sanctioned building plans then notice for demolition of illegal structure should have been issued. He has also submitted that the respondents were under obligation to adopt the fair procedure before resuming the property of the petitioners and passing order of forfeiture of the amount. In support of his submission, learned counsel has placed reliance on a Full Bench judgment of this Court in the case of **Ram Puri versus Chief Commissioner, Chandigarh (1)**. He has maintained that the power of resumption is only a remedial

power and, therefore, this power should not be used arbitrarily and whimsically. Mr. Jain has also submitted that for a small violation the extreme step of resumption would be wholly unwarranted and violate the principles of proportionality. He has then placed reliance on Rule 22 of the Rules which does not provide for resumption of the site on the ground of violation of site plans.

(5) Mr. P.S. Dhaliwal, learned counsel for the Board has supported the impugned orders and argued that in the allotment letter a number of conditions have been laid down. According to the learned counsel clause (iii) of the allotment letter clearly stipulates that the petitioners were not to use the site in question for a purpose other than for which it has been sold to them. He has then placed reliance on clause (ix) dealing with resumption of property and argued that resumption can be resorted to not only for non-payment of dues to the Board in accordance with the Rules but also in cause of violation of any provision of the Pepsu Townships Development Board Act, 1954 (for brevity, 'the Act'). In such a case the Board could refund the amount by forfeiting initial deposit and recover a penalty @ 15% per annum.

(6) After hearing learned counsel for the parties and perusal of the paper book with their able assistance we are of the considered view that this petition deserves to succeed. The petitioners had succeeded in the Open Auction for purchase of site No. 106-A, Guru Nanak Colony, Rajpura, District Patiala, for a sum of Rs. 25,25,000 on 19th April, 2004. They have already paid substantial amount. They commence raising of construction which is found to be in violation of the site plans sanctioned by the Municipal Council. The site plan was sanctioned on 10th June, 2004 and the petitioners started raising construction thereafter. It was on 6th July, 2004 that a show cause notice was issued to the petitioners (P-3) for resumption of the site by citing violation of Rule 22 of the Rules. It was also alleged that the petitioners have violation condition No.(iii) of the letter of acceptance by changing the use of the site. Accordingly, order of resumption was passed on 2nd August, 2004 (P-5) by exercising power under Rule 22 of the Rules and also the initial amount deposited by the petitioners was forfeited. It would be

appropriate to read Rule 22 of the Rules and condition No. (iii) of the letter of acceptance, which are as under :—

“Rule 22 of the Rules :

22. Resumption of property.—In case, the transferee fails to make payments due to the Board in the manner as specified in these rules or violates any provision of the Act or these rules, such property may be resumed by the Board. The Board shall refund the amount, which may have been made by the transferee after forfeiting initial deposit and recovering a penalty at the rate of fifteen per cent per annum on defaulted amount. If for any reason the amount deposited by the transferee falls short, the same shall be recovered from the transferee as arrears of land revenue.”

xxx xxx xxx

Condition No. (iii) of letter of acceptance :

“(iii) Use of site : You will not use the site for a purpose other than for which it has been sold to him and shall keep the property in good condition.”

(7) A perusal of Rule 22 of the Rules would show that in case an allottee fails to make payment due to the Board then the property allotted to him can be resumed by the Board. Likewise, if there is a violation of any of the conditions of allotment then resumption can be made. The provision regarding resumption can be invoked as per clause (ix) of the letter of acceptance, which reads thus :—

“(ix) Resumption of Property :—In case you fail to make payment due to the board in the manner as specified in the Pepsu Townships Development Board Disposal of Property Rules 2003 or violate any provision of the Act or these rules such property may be resumed by the Board. The Board will refund the amount which may have been made by you after forfeiting initial deposit and recovering a penalty at the rate of fifteen percent per annum on defaulted amount. If for any

reasons the amount deposited by you falls short, the same shall be recovered from you as arrears of land revenue.”

(8) The case of the respondents is that since there was violation of clause (iii) as the use of the site for a purpose other than for which it was sold, has been changed it was liable to be resumed.

(9) In somewhat similar circumstances a Full Bench of this Court considered the provisions of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (for brevity, ‘the 1952 Act’), which clothed the Estate Officer with the power to resume building or site and to forfeit the money paid by the allottee. Section 8-A of the 1952 Act in sum and substance postulate a similar situation as has been provided by Rule 22 of the Rules. The Full Bench came to the conclusion that although it does not violate fundamental rights of a citizen guaranteed under Article 19(1)(f) of the Constitution, however, the same has to be used as a measure of last resort (See paras 86 and 87 of the judgment). A similar issued has arisen before Hon’ble the Supreme Court in the case of **Teri Oat Estates (P) Ltd. versus U.T. Chandigarh (2)**. In that case also the view taken by the Full Bench of this Court in Ram Puri’s case (*supra*) has been approved. In para 57 it has been observed that the drastic step of resumption should be taken as a last resort. Hon’ble the Supreme Court also placed reliance on the principle of proportionality which have been applied to legislative and administrative action in India and went on to observe in para 49 as under :—

48. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. In case where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative authorities to exercise

power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. in such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is being done by the courts. Administrative action in India affecting the Fundamental Freedoms has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied in the proportionality principle. [See **Om Kumar versus Union of India** (2001)2 SCC 386].”

(10) As a sequel to the above discussion, this petition is allowed. The impugned orders dated 2nd August, 2004 (P-5) and 13th August, 2007 (P-8) are set aside. Consequently the Site No. 106-A, Guru Nanak Colony, Rajpura, District Patiala, is restored back to the petitioners. The petitioners as per their undertaking given through their counsel, shall demolish the illegal construction and raise construction of the building strictly in accordance with building plans sanctioned by the Municipal Council, Rajpura within a period of six months. The instalments payable by the petitioners are over due as they were to pay the balance amount in six half yearly instalments commencing from 2004. The petitioners shall make the payment of balance amount in four half yearly installments with simple interest at the rate of 8% per annum from the date amount was payable in 2004 till the date of payment.

(11) The writ petition stands disposed of in the above terms.

R.N.R.