

*Before Jawahar Lal Gupta & K.S. Garewal, JJ*  
M/s NARESH DEPARTMENTAL STORE,—*Petitioner*

*versus*

THE CHANDIGARH ADMINISTRATION & OTHERS,—  
*Respondents*

C.W.P. No. 16235 of 1993

29th September, 2000

*Constitution of India, 1950—Art.226—Capital of Punjab (Development and Regulation) Act, 1952—S.8-A—Public Premises (Eviction of Unauthorised Occupants) Act, 1971—S.4—Landlord letting out the property to two tenants—Estate Officer ordering resumption of the premises on account of change of user by one tenant—Subsequently E.O. ordering eviction of the tenants without affording an opportunity of hearing to the second tenant—Landlord also making all the possible efforts to get the misuser stopped and to evict the erring tenant—Whether order of resumption can be passed without notice to the tenant/occupant—Held, no—Order of resumption passed without giving notice and opportunity of hearing to the tenant is illegal and it violates the principles of natural justice—Writ allowed, impugned orders of resumption & eviction set aside.*

*Held*, that 'Resumption' is an act of taking back the property. In the very nature of things is a harsh and extreme penalty. It should be resorted to as a last resort. As the last weapon. It results in the loss of property. It also leads to the extinction of rights of the occupant in the premises. It is not only that the allottee loses his ownership but even the right of the tenant to remain in possession is defeated. The legally authorised tenant becomes an unauthorised occupant.

(Para 13)

*Further held*, that nobody's rights can be affected without the grant of an opportunity. The order of resumption, affects the rights of the tenant. On 'resumption' he is treated as an unauthorised occupant. In the very nature of things, he should be heard before any order to his prejudice is passed. He cannot be evicted for the sins of another and that too without being given any opportunity.

(Para 17)

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*Further held*, that the order of resumption can be passed only after a notice is given to the occupant, viz. the tenant. No notice was given to the petitioner-tenant. Thus, there was an illegality. Also violation of the principles of natural justice. The order of eviction was passed against the petitioner on the basis of the order of resumption. The basic order was passed without any notice or opportunity. The order under the public premises Act was just a consequence. Resultantly, neither the order of resumption nor the order of eviction can be sustained. These are, accordingly, quashed.

(Paras 19 & 20)

*Further held*, that the order of resumption is an extreme penalty. It should be normally awarded in the rarest of rare cases. In a case where the landlord is not to blame, it would be unfair to impose the extreme penalty against him. This would be all the more so where the erring tenant persists in default despite all the possible efforts on the part of the landlord. In the present case, the landlords as well as the petitioner-tenant have been put to an avoidable harassment only on account of the misuser by another tenant. Still further, their misery, was augmented by the process of law on account of which the case took more than two decades to get finally decided. In such circumstances, we do not think that it would be in the interest of justice or even the intention of law to deprive the landlords of the property rightfully earned by them.

(Para 22)

Ajay Mittal, Advocate, (Akshay Bhan, Advocate with him)—*for the petitioners.*

Ms. Lisa Gill, Advocate,—*for Respondent Nos. 1 to 4*

M.L. Sarin, Sr. Advocate (Ms. Jaishree Thakur, Advocate with him), for,—*Respondent Nos. 5 to 8.*

### JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

- (1) (i) Can an authority order the resumption of property for misuser without notice to the tenant, who is in occupation of the premises?
- (ii) Should an order of resumption be sustained despite the fact that the alleged misuser does not subsist?

These are the two questions that arise for consideration in these two petitions. A few facts as relevant for the decision of this case may be briefly noticed.

(2) The property in dispute is Shop-cum-Office No. 1027, Sector 22-B, Chandigarh. It was initially allotted by sale to Smt. Ram Piari. That was in or about the year 1970. Bishamber Dass, petitioner in C.W.P. No. 15796 of 1993 was a tenant on a part of the ground floor. The other part had been let out to M/s Naresh Departmental Store, viz. the petitioner in C.W.P. No. 16235 of 1993. The Assistant Estate Officer alleged that Bishamber Dass was misusing the premises by running a restaurant therein. The site was meant for "general trade." Proceedings for resumption were initiated. On 27th July, 1976 the Assistant Estate Officer passed an order under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952, for resumption of the site on account of the breach of the terms of conveyance. He also ordered forfeiture of 10 per cent of the price of the plot.

(3) Smt. Ram Piari transferred the site by sale and it is now owned by Respondent Nos. 5 to 8 in C.W.P. No. 16235 of 1993 (hereinafter referred to as 'the landlords'). The order of resumption was challenged by the landlords. On 26th July, 1978 the Chief Administrator accepted the appeal. Two conditions were imposed. The misuser was ordered to be stopped by 31st, December, 1978. The amount of forfeiture had to be deposited by 31st August, 1978. The landlords filed a revision petition to complain against the amount of forfeiture. *Vide*,—order, dated 17th August, 1979, the Chief Commissioner reduced the amount to Rs. 5400. The deposit could be made by 31st October, 1979. The misuser had to be vacated by 31st August, 1980.

(4) The landlords had difficulty in getting the misuser by Bishamber Dass being stopped. Presumably, to gain time, they sought a review of the order. The Chief Commissioner,—*vide* order, dated 7th February, 1983, directed that the misuser be stopped within six months. The misuser, however, did not stop. On 21st April, 1979 the Estate Officer issued a notice under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as 'the 1971 Act'). An order of eviction was passed on 6th December, 1988. It was upheld by the District Judge,—*vide* his, order dated 2nd December, 1993.

(5) The above sequence of events shows that Bishamber Dass having failed to stop the misuser, the order of 'resumption' was passed. The misuser having continued, the Estate Officer and the district Judge

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ordered the eviction of the two tenants, viz. Bishamber Dass and M/s Naresh Departmental Store. Aggrieved by these orders, the two tenants had filed the two petitions.

(6) In the meantime, the landlords had initiated proceedings against Bishamber Dass for eviction. On 2nd September, 1978 the tenant had given an undertaking before the Rent Controller, Chandigarh, that he would discontinue the misuser by 31st December, 1978. The petition was, accordingly, disposed of. However, he failed to carry out his undertaking. Fresh proceedings for eviction on account of change of user were initiated on 22nd January, 1979. After about two years the Rent Controller,—*vide* his order dated 19th January, 1981 accepted the petition and ordered the eviction of Bishamber Dass. He appealed. It was accepted by the appellate Authority,—*vide* its order dated 14th February, 1982. The Landlords challenged the order through Civil Revision No. 644 of 1982. Mercifully, after a lapse of 17 years, it was allowed by an order dated 1st October, 1999. The tenant's Petition for Special Leave (Civil) No. 17565 of 1999 was dismissed by their Lordships of the Supreme Court on 7th February, 2000.

(7) These facts have been given by the counsel for the parties. It is also admitted that in execution of the order of eviction, Bishamber Dass has already been evicted from the premises. It is not surprising that Mr. R.C. Dogra, Senior Advocate, who had appeared on earlier dates of hearing, is present even today. But he states that he has no instructions to appear or argue. Noboday else has appeared for the petitioner Bishamber Dass in Civil Writ Petition No. 15796 of 1993. In the other case filed by M/s Naresh Departmental Store, the arguments have been addressed by the counsel for the parties.

(8) Mr. Ajay Mittal and Mr. Akshay Bhan, counsel for the petitioner, have contended that the order of resumption and the subsequent proceedings for eviction are vitiated as no notice had been given. It has been further contended that the misuser having ceased to exist, neither the landlords nor the tenant are to blame and the order of resumption should not be allowed to stand.

(9) The claim made on behalf of the petitioner has been very forcefully supported by the respondent-landlords. Mr. M.L. Sarin, appearing for the landlords, has contended that the contentions raised by the petitioner should be accepted.

(10) Ms. Lisa Gill, appearing for the respondent Administration has, however, contended that the provision of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred

to as 'the 1952 Act') does not require the issue of any notice to the tenant. The law contemplates the grant of an opportunity to the transferee only. This provision had been duly complied with. Thus, the complaint made on behalf of the petitioner that it had a right to be heard, should not be sustained. She has further contended that M/s Naresh Departmental Store were, in fact, not in occupation of the premises at the time when the proceedings had been initiated. Thus, no notice could have been served on the petitioner. Still further, it has been contended that the landlords have an effective remedy under Rule 11-D of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. The landlords can seek restoration by payment of the requisite amount. On these premises, the counsel has contended that the impugned order should be sustained.

(11) It is in the background of these contentions that the two issues, as noticed at the outset, arise for consideration.

**Regarding (i) :**

(12) The 1952 Act was enacted to regulate the development of the new capital of Punjab. The purpose was to vest the Government with an authority to regulate the sale of sites and to ensure proper construction of buildings. Section 8-A of the 1952 Act, which empowers the authorities to resume sites was introduced by the Central Act No. 17 of 1973. It arms the competent authority with power to order resumption of site on the failure of the transferee "to pay the consideration money or any instalment thereof . . ." It can also take action and order resumption whenever it is found that the transferee "has committed a breach of . . . . conditions of . . . . sale . . . ."

(13) "Resumption" is an act of taking back the property. In the very nature of things is a harsh and extreme penalty. It should be resorted to as a last resort. As the last weapon. It results in the loss of property. It also leads to the extinction of rights of the occupant in the premises. It is not only that the allottee loses his ownership but even the right of the tenant to remain in possession is defeated. The legally authorised tenant becomes an unauthorised occupant.

(14) Ms. Lisa Gill contends that the provision is clear and categorical. It requires the issue of notice only to the transferee and not to the occupant. Thus, the counsel submits, the Administration was under no obligation to give any notice to the petitioner.

(15) Is it so?

(16) If the provision is given a strictly literal construction, the action can be taken only when the transferee commits a breach. Not

otherwise. However, in the very nature of things such a literal construction would defeat the very purpose of the provision. The process of interpretation of law would defeat the basic object of law. We are not inclined to give such a restricted meaning. In our view, the 'transferee' would take within its ambit even the person who has been put into possession by him.

(17) It is a settled proposition of law that nobody's rights can be affected without the grant of an opportunity. The order of resumption, admittedly, affects the rights of the tenant. On 'resumption' he is treated as an unauthorised occupant. In the very nature of things, he should be heard before any order to his prejudice is passed. He cannot be evicted for the sins of another and that too without being given any opportunity.

(18) This view has been taken in a catena of decisions. Mr. Sarin has referred to the judgment of the Full Bench in *Brij Mohan v. Chief Administrator and others (1)*. In para 19 their Lordships were pleased to observe as under :—

“The proposed order of resumption has dual consequences : (i) the depriving of ownership right in the site or building which concerns only the owner of the site or building; and (ii) the deprivation of the lessee of his lawful possession thereof. Such being the consequences of the order of resumption, both lessee and his lessor would be affected by the order and would thus be entitled to be heard before such an order is passed.”

This statement of law has been reiterated in various decisions; the latest being the division Bench Judgment of this Court in *M/s. International Publishers v. Union Territory, Chandigarh and others (2)*. In para 14 their Lordships were pleased to hold that :

“there is little difficulty in holding that before an order of resumption can be passed by the competent authority, the allottee/transferee as well as his tenant has the right to be heard and an order made without giving notice and opportunity of hearing to either of them would be liable to be nullified . . .”

(19) In view of authoritative pronouncements in various cases, we have no doubt that the order of resumption can be passed only after a notice is given to the occupant, viz. the tenant.

(20) In the present case it is the admitted position that no notice was given to M/s Naresh Departmental Store. Thus, there was an

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(1) 1980 P.L.R. 621

(2) 2000(2) Revenue Law Reporter 114

illegality. Also violation of the principles of natural justice. The order of eviction was passed against the petitioner on the basis of the order of resumption. The basic order was passed without any notice or opportunity. The order under the Public Premises Act was just a consequence. Resultantly, neither the order of resumption nor the order of eviction can be sustained. These are, accordingly, quashed.

**Regarding (ii)**

(21) The sequence of events has been noticed above. Admittedly, the proceedings for eviction had been commenced in the year 1977. Bishamber Dass had given an undertaking. He had not lived by it. Thereafter the proceedings were started afresh. The Rent Controller had ordered eviction,—*vide his* order dated 19th January, 1981. The Appellate Authority had reversed the decision. The landlords had come to the High Court in February, 1983. Unfortunately, the proceedings took a long time and it was only on 1st October, 1999 that the revision petition was decided. This order was affirmed by their Lordships of the Supreme Court in February, 2000. Thereafter, the order of eviction was executed. During all this time the landlords were making efforts to get the misuser stopped and to evict the erring tenant. They could not be blamed in any manner whatsoever. Equally, even the petitioner was not to blame. There was not even an iota of evidence against it. Thus, it is clear that the order of resumption affects the petitioner and the respondent-landlords adversely for no fault on their part.

(22) The order of resumption is an extreme penalty. It should be normally awarded in the rarest of rare cases. In a case where the landlord is not to blame, it would be unfair to impose the extreme penalty against him. This would be all the more so where the erring tenant persists in default despite all the possible efforts on the part of the landlord. In the present case the landlords as well as the petitioner-tenant have been put to an avoidable harassment only on account of the misuser by Bishamber Dass. Still further, their misery, was augmented by the process of law on account of which the case took more than two decades to get finally decided. In such circumstances, we do not think that it would be in the interest of justice or even the intention of law to deprive the landlords of the property rightfully earned by them.

(23) Ms. Gill contends that the landlords can seek restoration under Rule 11-D of the aforesaid Rules. This provision reads as under:—

“(1) Where a site has been resumed under Section 8A of Act No. XXVII of 1952 for any reasons, the Estate Officer may on an

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application, retransfer the site to the outgoing transferee, on payment of an amount equal to 12 per cent of the premium originally payable for such property or one-third of the difference between the price originally paid and its value at the time when the application for transfer is made, whichever is more.

xx                      xx                      xx                      xx                      xx  
 xx                      xx                      xx                      xx                      xx”

(24) A perusal of the above provision would show that it is only when a property has been resumed that the landlord has to seek retransfer in accordance with this provision. In the present case we have already found that the order of resumption was not valid. Thus, there is no occasion for the landlords to seek retransfer. The provisions of Rule 11-D would not be attracted to the present case.

(25) No other point has been raised.

(26) In view of the above, we allow the writ petition and set aside the impugned orders of resumption and eviction passed against the respondent-landlords as well as the tenant M/s Naresh Departmental Store. So far as the petition filed by Bishambar Dass is concerned, we are constrained to dismiss it in default as no one has put in appearance to argue the case. In the circumstances of the case, we make no order as to costs.

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**R.N.R.**

*Before A.B. Saharya, C.J. & Swatanter Kumar, J*

UNION OF INDIA,—*Petitioner*

*versus*

M/S HARBANS SINGH TULI AND SONS,—*Respondent*

C.R. No. 1685 of 1994

31st January, 2000

*Arbitration Act, 1940—Ss. 2(C), 4, 5, 8, 11, 12, 14, 20, 28 and 31—Contract agreement between the UOI and a Contractor—Dispute between the parties—Arbitrators appointed by the designated authority either resigned or failed to act—Claim of the contractor could not be adjudicated—Despite notice, Government failed to appoint an Arbitrator—Trial Court appointing an arbitrator and subsequently ordering appointment of another arbitrator by removing the previous*