Before S.J. Vazifdar, CJ. & Harinder Singh Sidhu, J.

M/S SAWAN RAMVI JAY KUMAR — *Petitioners*

versus

THE ADVISER TO THE ADMINISTRATOR , UNION TERRITORY,

CHANDIGARH — *Respondents*

CWP 17047 of 1997

August 02, 2017

The Capital of Punjab (Development & Regulation) Act, 1952 as amended by the Chandigarh Amendment Act, 1973 — S.8A — The Punjab Capital (Development & Regulation) Building Rules, 1952.

"Resumption" "Commercial"

Petitioners challenged order of resumption passed by Estate officer, order of Chief Administrator dismissing appeal and order of Adviser dismissing the revision petition — Petitioners were tenants and private respondents owners of the premises — Petitioners hold license as Fair Price Shop under Civil Supplies Department — Resumption ordered on the ground that petitioners were using courtyard by carrying on commercial activity, although it was to be used only as courtyard — Letter of allotment issued in favor of landlord classified the building as a commercial building — Stipulated that same must be used for commercial and general trade purposes unless otherwise so specified in the plans — Show cause notice for resumption issued by official respondents on 12.2.1987 — It stated that site could be used for trade specified in LOA — Not alleged that plans required it to be used for residential purpose—In reply, petitioners stated that they were running "Karyana" depot in the premises — Reply referred to plan sanctioned by administration—Official respondents took no action after receipt of reply — Two years later first respondent served notice u/s 8-A of the 1952 Act — Even in this show cause notice, it was not alleged that sanctioned plans did not permit the use of the premises as Karyana shop — Plans not produced either by official or private respondents — On 07.05.1990 Estate Officer ordered resumption of property — Appeal and revision were dismissed — CWP filed — Revisional authority ordered to pass fresh orders — Revisional authority allowed

petitioners to remove misuse — Ordered that first and second floors be used for residential purpose—CWP allowed holding that there was no misuse.

Held that even presuming that the sanctioned plans were not available, would make no difference. As we noted earlier, the building was classified as a commercial building and the permissible use was for commercial and general trade purposes. This was so unless it was otherwise specified in the plan. The onus was on them to establish this contention which they failed to discharge.

(Para 10)

Further held that equally, if not more important, is the fact that the official respondent after receipt of the petitioner' reply took no further action in respect of the show cause notice. It is not the official respondent' case that they lost sight of the matter. We are not obliged to presume that they did. As Mr. Behl rightly submitted, it is reasonable to presume that the official respondents accepted the petitioners' case.

(Para 14)

Further held that one important aspect is clear, however. It is the petitioner expressly referred to the plan sanctioned by the Administration permitting their carrying on the said business. If indeed there was no such plan, in the normal course, the official respondents would have controverter the same stating that they did not accept the petitioner' case that the sanctioned plans permitted them to carry on the business. The last that must be said in favors of the petitioner is that the plans sanctioned by the administration permitted the carrying on of such business. In any event, there is not an iota of evidence on the record to suggest that the plan made it mandatory to use the premises for residential purpose and for commercial purpose or for carrying on general trade.

(Para 15)

Further held that Mr. Sehgal's reliance upon rule 2(iv) and 3(3) of the building Rules of 1952 is not well founded. It is not necessary for us to construe these rules as we find that the plan itself is irrelevant for more than one reason. Firstly and most important, the plan is of the year 1970, whereas, the premises were let out in the year 1958. There is no evidence whatsoever to establish that the existing user was to be discontinued. Even if we had found any substance any substance in this contention, it would have been necessary to quash the order and to remand the matter for a fresh decision after giving the petitioner an

opportunity of being heard. The petitioner could not be taken by Surprise and that too after 20 year. In any event, the plan submitted is entirely irrelevant. The show cause notice did not refer to this plan.

(Para 22)

Further held that question of resumption, therefore, does not arise. The only question is whether the petitioner the petitioners should be compelled to discontinue their business. For the reasons already stated, we are of the opinion that there is no misuse.

(Para 23)

Vikas Behl, Senior Advocate with
Harbani Singh, Advocate
for the petitioners

Suvir Sehgal, Standing Counsel for U.T., Chandigarh with
Jaiveer Chandail , Advocate
for respondent Nos.1 to 3

B.S. Guliani, Advocate
for respondent Nos.4 to 6

S.J. VAZIFDAR, CHIEF JUSTICE

(1) The petitioners are tenants of the rear courtyard of a Shop-cum-Flat (SCF) No.13 in Sector 22, Chandigarh, of which respondent Nos.4 and 5 – the private respondents - are the owners. Respondent No.1 is Advisor to the Administrator, Union Territory, Chandigarh. Respondent Nos.2 and 3 are the Chief Administrator and the Estate Officer of the Chandigarh Administration.

(2) The petitioners have challenged the order of resumption passed by respondent No.3, the Estate Officer, the order of the Chief Administrator dismissing their appeal and the order of the Adviser to the Administrator dismissing the revision petition. The orders affect the rights of the private respondents as well as of the petitioners. If the order of resumption stands the private respondents lose the ownership of the premises and the petitioners their tenancy rights therein.

(3) The petitioners carry on business of grocery/food -grain from the said premises. They hold a licence as a Fair Price Shop under the Civil Supplies Department of the Union Territory, Chandigarh. There were disputes between the petitioners and the private respondents – landlords regarding the tenancy. For the purpose of this petition, it is not necessary to refer to the same. Suffice it to note that the eviction

proceedings instituted by the private respondents were dismissed by an order dated 02.12.1989. The petitioners alleged that the proceedings for resumption which are the subject matter of this petition were initiated at the instance of the landlords with a view to evict them on the ground that the petitioners were using the courtyard by carrying on commercial activities therein, although it was to be used only as a courtyard.

(4) A consideration of the dispute must begin with the letter of allotment (LOA) dated 15.03.1958 issued by the official respondents in favour of the landlords. The LOA issued in favour of one Kalyan Singh as the partner of Singh Bros., so far as it is relevant, reads as under:-

"Subject: Allotment of Commercial sites at Chandigarh.

Reference:- Your bid at the Auction held on 23.2.58 .

The following commercial site is hereby allotted to you on the conditions mentioned hereunder: -

Sector	Serial No. of site	Approximate Dimension	Price	Remarks
22 D	13 Shop-c-Flat	33x70 256.667sq.yd	27,200/-	Trade=General
				Design=Standard

6. Fragmentation of the site shall not be permitted nor shall it be permissible to use or sublet the site after dividing it into parts nor shall it be permissible to use the site for any purpose other than that for which it has been sold. The building shall have to be constructed in accordance with the design which will be supplied by Government and the building plans have been sanctioned by the chief Administrator.

…. ….. ……. ……..… ……..…… ..…….. ……..… ……..…. ..…….. ……. ….. …….

9. The booth/shop-cum-flat constructed on the site shall be used for carrying on trade indicated in the margin.

…. ….. ……. ……..… ……..…… ..…….. ……..… ……..…. ..……..

18.The site is classed as 'Commercial' asnd (*sic*) the building to be erected on it shall not be used for residential purpose unless otherwise specified in the plans supplied by the Government .

…. ….. ……. ……..… ……..…… ..…….. ……..…… ……..…. ..…..

20. The shop-cum-flat constructed on a site sold for general trade will be a shop where trades except those in which use of fire, cooking or manufacture or repair of furniture, car or cycle repair or any other trades which are likely to be objectionable to the neighbourhood or which may cause an (*sic*) restriction in the public passage, can be carried out." (*emphasis supplied*)

(5) The petitioners also relied upon the "Conditions of Sale of Commercial Sites" issued by the Estate Officer, Capital Project, Chandigarh Capital which presumably preceded the LOA. The landlord signed his acceptance of the letter at the foot thereof. Condition 12 thereof is the same as clause 18 of the LOA.

Other than the words "Shop-c-Flat" in the table below the reference and clause 20, there is not a whisper of an indication of the premises being for residential purposes. The entire LOA repeatedly refers to the premises having been allotted for commercial and trade purposes. The terms and conditions mandate its use only for carrying on trade or commerce. This is evident from the "Subject" and the "Reference" in the LOA and clause 9 thereof. Clause 18 goes further and prohibits the use of the premises for residential purposes "unless otherwise specified in the plans supplied by the Government". As we will demonstrate, the plans have not been produced and the balance of probabilities indicates that the plans did not specify residential user.

(6) The official respondents and the landlords executed a conveyance deed dated 25.11.1960. The relevant portion thereof reads as under:-

"DEED OF CONVEYANCE OF BUILDING SITE SOLD BY AUCTION

Deed of Conveyance of a site at Chandigarh sold by allotment Auction to be used as a site for Commercial purpose in the new Capital of Punjab at Chandigarh.

…. ….. ……. ……..… ……..…… ..…….. ……..…… ……..…. ..…..

AND WHEREAS the Punjab Government has sanctioned the sale of the site to the transferees in consideration of the sum of Rs.27,200.00 (Rupees twenty seven thousand and two hundred only) and using the same

> exclusively for 'General Trade' for the purpose of building ." (emphasis supplied)

(7) Clause 18 of the allotment letter is similar to Condition-12 of the Conditions of Sale of Commercial Sites. One of the important issues that arises in this matter is whether it was "otherwise so specified in the plans supplied by the government", to wit, whether the plans mandated the use of the premises for residential purposes. The plans have, admittedly, not been produced by any of the parties. Clause 18 of the LOA and Condition-12 classified the building as a commercial building and stipulated that the same must be used for the commercial and general trade purposes unless otherwise so specified in the plans supplied by the government. The official respondents rely upon the exception to contend that although the sites are classified as commercial sites,the premises were to be used as residential premises and, therefore, the burden was on them to establish the same. We have come to the conclusion that they have not discharged this burden.

(8) It is important at this stage to refer to paragraph-7 of the written statement filed by the official respondents on 06.03.1998. Paragraph 7 reads as follows: -

> "PARA-7 That as already submitted the coverage of the back court yard in Sector 22-D, Chandigarh was permitted by the Chief Commissioner vide the order dated 15.3.1971 subject to sanction of the plan from the Competent Authority in case of coverage of the back court yard. In Respect of shop-cum-Flat No.5, Sector 22-D, Chandigarh it is submitted that the back court yard is covered, but the sanctioned plan is not available on the record of the answering respondents in order to ascertain as to whether the plan had been got sanctioned or not. In respect of shop-cum-flat No.6, Sector 22-D, Chandigarh it is submitted that the back court yard has been covered and the plan has been got sanctioned for this purpose. So far as shop-cum-flat No.10 in Sector 22-D, Chandigarh is concerned it is submitted that the coverage of the back court yard has been got sanctioned, but at the spot the coverage is with changed planning. The building stand resumed for misuse.
>
> The coverage of the back court yard was permitted subject to getting the plan sanctioned from the Competent Authority. Moreover, the coverage of the back court yard is

permitted for storage purpose only. In the present case, the store has been divided into two parts which is not sanctionable. The coverage of the back court yard although optional, but it has to be in conformity with the building bye-laws."

(9) It is important to note that in paragraph 7 of the written statement, the official respondents admitted that the coverage of the premises was permitted by the Chief Commissioner's order dated 15.03.1971. The same was subject to the sanction of the plan from the competent authority. It is pertinent to note that so far as SCF No.5 is concerned, the plan is stated to be not available. So far as SCF Nos.6 and 10 are concerned, it is admitted that the back courtyards had been covered and that the plan had been sanctioned for that purpose. Presumably, therefore, the plans of SCF Nos.6 and 10 were available.

(10) The premises in the present case are SCF No.13 which is dealt with in the second sub-paragraph of paragraph 7 of the written statement. The respondents do not state that the plan is not available. They merely state that the back courtyard is permitted for storage purposes only but that the store has been divided into two parts. The pleadings would indicate that the plans were available and that they were sanctioned. Had the plans not been available, it would not have been stated that the coverage of the backyard is permitted. As we noted earlier, so far as SCF No.5 is concerned, it is expressly stated that the sanctioned plan is not available on the record. That statement has not been made i n the case of SCF No.13. For some reason, the plan has not been produced either by the official respondents or by the private respondents in this case which concerns SCF No.13.

Even presuming that the sanctioned plans were not available, it would make no difference. As we noted earlier, the building was classified as a commercial building and the permissible use was for commercial and general trade purposes. This was so unless it was otherwise specified in the plan. The official respondents contend that it was otherwise specified in the plan. The onus was on them to establish this contention which they failed to discharge.

(11) Having come to this conclusion, it is not necessary for us to consider the submission advanced by Mr. Behl, the learned senior counsel appearing on behalf of petitioners that even if the plans indicated that the premises were to be used as residential premises it would make no difference for that would only be a permissible user in

addition to or instead of commercial user or use for the purpose of general trade .

(12) There is yet another important circumstance that militates against the contention on behalf of the official respondents. The petitioners were inducted as tenants by the owners in the said premises. The eviction petition filed against the petitioners was dismissed on 09.12.1989. Prior thereto on 12.02.1987, the official respondents served a notice upon the owners calling upon them to show cause as to why the premises be not resumed under section 8 -A of the Capital of Punjab (Development & Regulation) Act, 1952, as amended by the Chandigarh Amendment Act No.17 of 1973 and an amount not exceeding 10% of the total amount of consideration money, interest and other dues payable in respect of the sale of the site be not forfeited. The show cause notice expressly stated that by virtue of the LOA and the conveyance, the site can be used only for the trade specified therein. It further stated that the premises were used for other purposes, namely, backyard had been covered and the s hop was being run from the rear portion, whereas, the same was meant to be used only as a courtyard. It is important to note that it was not alleged that the plans required the premises to be used for residential purposes only. A copy of this show cause notice was forwarded to the petitioners affording them also an opportunity of being heard.

It was at no stage contended that the plans were not available at that time, namely, when the show cause notice dated 12.02.1987 was issued. Had the plans limited the use of the premises or a part thereof for residential purposes, the show cause notice would, undoubtedly, have stated the same and raised an issue on that basis.

(13) There is another factor that militates against the submission on behalf of the official respondents that plans had provided that the premises would be used for residential purposes. In their reply dated 22.05.1987 to the show cause notice, the petitioners stated that they were running a "Karyana" depot in the premises with the permission and consent of the Food and Supplies Department of the Chandigarh Administration; that they had not covered the courtyard as alleged and were continuing their business from the premises under the plans sanctioned by the Administration . The petitioners further stated that there was no rule or bye-law prohibiting them from doing so and that they had not violated any rule or bye-law by continuing their "Karyana" business from the rear as the entire shop was meant for business purposes and a door at the back was also provided "under the original

plan" which opened on to the road at the back. The petitioners also stated that in Sector 17 and in various other sector SCFs and SCOs did business from both the sides. The Government offices located in such premises were also using the front and back entrances for their business

The reply, therefore, expressly referred to the "plan sanctioned by the Administration" and the "original plan". What is important is that there was no response to this reply either by the official respondents or by the landlords.

(14) Equally, if not more important, is the fact that the official respondents after receipt of the petitioners' reply took no further action in respect of the show cause notice. It is not the official respondents' case that they lost sight of the matter. We are not obliged to presume that they did. As Mr. Behl rightly submitted, it is reasonable to presume that the official respondents accepted the petitioners' case.

(15) One important aspect is clear, however. It is that the petitioners expressly referred to the plans sanctioned by the Administration permitting their carrying on the said business. If indeed there was no such plan, in the normal course, the official respondents would have controverted the same stating that they did not accept the petitioners' case that the sanctioned plans permitted them to carry on the business. The least that must be said in favour of the petitioners is that the plans sanctioned by the Administration permitted the carrying on of such business. In any event, there is not an iota of evidence on the record to suggest that the plans made it mandatory to use the premises for residential purposes and not for commercial purposes or for carrying on general trade.

(16) Two years later, the first respondent served another notice dated 26.05.1989 under section 8-A of the 1952 Act. It is pertinent to note that this show cause notice was issued shortly after the eviction petition against the petitioners was dismissed by the order and judgment of the Rent Controller, Chandigarh, dated 22.12.1989. It is not necessary, however, for us to go any further into the petitioners' allegation that the entire proceedings have been adopted at the instance of the landlords. This second show cause notice again stated that the site in question could be used for the trade specified therein i.e. general trade, whereas, the said premises were used/being permitted to be used by the landlords for purposes other than that, namely, running a Karyana shop. It was alleged that although the premises were meant only to be used as a courtyard, they were used as a Karyana shop . The

ground in the show cause notice is, therefore, the same as the one in the earlier show cause notice dated 12.02.1987. This show cause notice was also against certain other tenants. Even in this show cause notice, it is not alleged that the sanctioned plans did not permit the user of the premises as a Karyana shop. The evidence in support of the respondents' case was sought to be produced at the hearing before us after almost 20 years. We will refer to the same after dealing with the impugned orders.

(17) Similar proceedings have been adopted against them and their writ petitions are also on board today. It was agreed that the result in those petitions would follow the result in this petition.

(18) The Estate Officer by an order dated 07.05.1990 ordered the resumption of the property and the forfeiture of 10% of the price paid. It is pertinent to note that the order does not state that the plans were not available. The petitioners' appeal was dismissed by the Chief Administrator's order dated 25.05.1992. This order also records that the premises were to be used for general trade. The order does not state that the plans were not available. The Adviser, by his order dated 11.12.1996, rejected the revision petition filed by the petitioners. The petitioners filed CWP No. 511 of 1997 challenging these orders. The Division Bench, by an order and judgment dated 24.04.1997 quashed the orders and directed the revisional authority to pass fresh orders after hearing the parties.

(19) It is in these circumstances that the impugned order dated 17.07.1997 was passed by the revisional authority *viz.* the Adviser to the Administrator. This is a common order which dealt with the cases of various tenants. Paragraph -8 of that order deals with the petitioners' case. The order for the first time records that the Estate Officer had, admittedly, misplaced the original sanctioned plans in respect of the premises. The revisional authority wrongly placed reliance upon the landlords' denial of the petitioners' contention that it was only after obtaining proper sanction that the landlords had covered the premises in accordance with the sanctioned plan. In the facts and circumstances of this case, the landlords' contention or admission could never have been used against the petitioners without corroboration. The landlords would naturally not support their tenants' case. They had been litigating against each other for some time. The facts and circumstances referred to above were not even considered by the revisional authority. The revisional authority also wrongly placed the burden on the petitioners. In any event, for the reasons we have already stated, even assuming that

the burden was on the petitioners, they had satisfactorily discharged the same. The evidence overwhelmingly indicates that the sanctioned plan permitted the premises being used for Karyana business. The revisional authority, however, did not consider it appropriate to resume the property but allowed the petitioners an opportunity to remove the misuse.

(20) This brings us to the findings of the revisional authority that the first and the second floors of the premises are to be used for residential purposes. The impugned order records as under:-

> "….. …. It has been clarified by the Architecture Department that according to the architectural controls, the first and second floors in these premises are to be used for residential purposes. This is, of course, well known and anyway implicit in the term "Shop-cum-Flat" or SCF, as this type of premises is called. There is also a back courtyard which, unless otherwise specified or permitted, was to be used as a courtyard. The Estate Officer proceeded on this basis when it was reported to him that the establishments described below were running in the premises:
>
> (i) A Karyana Shop in the back courtyard. This is being run by petitioner No.4 (i.e. the petitioner in petition No.82 of 1992)."

(21) In support of this finding, Mr. Sehgal, the learned counsel appearing on behalf of the official respondents sought to introduce a drawing with an affidavit dated 21.07.2017 contending that it was an architectural control sheet within the meaning of those words in rule 2(iv) of the Punjab Capital (Development and Regulation) Building Rules, 1952. He also relied upon rule 3(b).

Rules 2(iv) and 3(b) read as under: -

> **"2. Definitions**.- Unless there is anything repungant in the subject or context, -
>
> ..…. ….. ……. ……..… …..…… ..….. ……..… …..…. .
>
> (iv)'Architectural Control Sheets' shall mean sheets of drawing with directions signed by the Chief Administrator and kept in his office showing the measure of architectural control which shall be observed in the special areas.
>
> …. ….. ……. ……..… …..…… ..….. ……..… …..…. ..…..

3. Application.-

…. ….. ……. ……..…. ……..…… ..…….. ……..…. ……..…. ..……..

(b) A person who erects or re-erects a building in a special area listed in the Schedule I shall in addition to these rules also comply with the restriction given in the "Architectural Control Sheets" and any other directions that may be issued by the Chief Administrator."

(22) Mr. Sehgal's reliance upon rule 2(iv) and 3(b) of the Building Rules of 1952 is not well founded. It is not necessary for us to construe these rules as we find that the plan itself is irrelevant for more than one reason. Firstly and most important, the plan is of the year 1970, whereas, the premises were let out in the year 1958. There is no evidence whatsoever to establish that the existing user was to be discontinued. Even if we had found any substance in this contention, it would have been necessary to quash the order and to remand the matter for a fresh decision after giving the petitioners an opportunity of being heard. The petitioners could not be taken by surprise and that too after 20 years. In any event, the plan submitted is entirely irrelevant. The show cause notice did not refer to this plan.

(23) The question of resumption, therefore, does not arise. The only question is whether the petitioners should be compelled to discontinue their business. For the reasons already stated, we are of the opinion that there is no misuse.

(24) In the circumstances, the impugned order is quashed and set aside. The writ petition is accordingly disposed of. There shall be no order as to costs.

J.S. Mehndiratta