

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

RUPESH KUMAR GILHOTRA—Petitioners

versus

CHANDIGARH ADMINISTRATION AND OTHERS—

Respondents

CWP No.19626 of 2014

August 1, 2017

Capital of Punjab (Development and Regulation) Act, 1952—S.8A—Chandigarh—Sale of Site and Building Rules, 1960—Rl. 8 and 11—Chandigarh Lease Hold of Sites and Building Rules, 1973, Rule 12(3) and 13(iii)—Resumption of allotted booth—Notice was not issued to the petitioner for resumption but on account of petitioners' not having executed the conveyance—Held, the orders pursuant to and in respect to such notices could not have directed resumption of property but could have directed only for the payment of arrears along with interest and penalty—Further the order wrongly states that the notice was issued under Section 12 and 13 of the Chandigarh Leasehold of Sites and Building Rules, 1973, which does not apply to the present case—Such a drastic order of resumption, set aside.

Held that, it wrongly states that the notice dated 10.07.2007 was under rule 12(3) and 13(iii) of the Chandigarh Lease Hold of Sites and Building Rules, 1973. Firstly, the notice dated 10.07.2007 did not refer to these Rules. It referred to Rule-11 and as we mentioned earlier the reference is obviously to Rule 11 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. Secondly, the Chandigarh Lease Hold of Sites and Building Rules, 1973 do not apply to the present case. Thirdly, the letter of allotment dated 16.01.2004 has no reference to them. It refers to the Chandigarh (Sale of Sites and Buildings) Rules, 1960. Lastly, the Chandigarh Lease Hold of Sites and Building Rules, 1973 cannot apply in the present case for, as Ms. Sarin rightly stated, this is a case of a sale and not of a lease of the property.

(Para 18)

Further held that, the notices called upon the petitioner to show cause why the arrears together with penalty and interest ought not to be recovered. The petitioner was never called upon to show cause against an order of resumption. The impugned orders were clearly based on

and in pursuance of the notice dated 10.07.2007. The notice dated 10.07.2007 clearly did not refer to any proposal or intention to resume the property for any reason. The orders pursuant to and in respect of such notices, therefore, could not have directed the resumption of the property. They could only have directed the payment of the arrears together with all other dues such as penalty and interest as per law.

(Para 25)

Further held that, the notice dated 02.07.2007 was on account of the petitioner's not having executed the conveyance. This as we have already held would not have justified a drastic order of resumption of the property.

(Para 26)

Alka Sarin, Advocate,
Alok Jain, Advocate and
Vias Jain, Advocate
for the petitioner.

P.S.Dhaliwal, Advocate,
Tarunpreet Kaur, Advocate,
Navjot Singh, Advocate,
for the respondents.

S.J. VAZIFDAR, CHIEF JUSTICE:

(1) Respondent No.1 is the Chandigarh Administration through its Advisor; respondent No.2 is the Chief Administrator, Union Territory, Chandigarh; respondent No.3 is the Estate Officer, Union Territory, Chandigarh and respondent No.4 is the Land Acquisition Officer, Union Territory, Chandigarh who acts as the Estate Officer.

(2) The petitioners have sought a writ of certiorari to quash an order of resumption dated 18.02.2009 passed by respondent No.4, an order dated 21.07.2010 passed by respondent No.2 dismissing his appeal against that order and an order dated 19.03.2014 passed by respondent No.1 dismissing an application for revision against the same. The petitioner has also challenged the cancellation of the order of allotment and the resumption of the booth.

(3) The petitioner was successful at an auction held on 09.12.2013 in respect of a booth admeasuring 25.093 sq. yards. Accordingly on 16.01.2004 a letter of allotment was issued by respondent No.1 in the petitioner's favour. The booth was sold to the petitioner for a consideration of Rs.30.50 lacs. 25% of the premium was

paid by the petitioner within the period stipulated. The balance amount was payable in three equal installments of Rs. 9,19,827/- each which included interest. The allotment was on free hold basis. Clauses 3,8,9,11,16 and 19 of the allotment letter are as follows:-

“3. The sale shall be governed by the provision of the Capital of Punjab (Development and Regulation) Act, 1952 as amended upon date and rules framed thereunder from time to time.

8. In the event of non-payment of any installment of sale price on the date given as in para no.5 column 3 above, you will liable to pay penalty which may extend to 10% of the installment payable under rule 11 of the Chandigarh Sale of Site & Building Rules, 1960. In case of default, the site shall be liable to be resumed.

9. You shall have to execute a Deed of Conveyance after making the payment of 25% of sale price of plot as provided under Rule 8 of the Chandigarh Sale of Site & Building Rules, 1960. The stamp duty liable to comes to Rs.1,83,000/- accordingly to prevalent rates. All expenses in this respect shall be borne by you. The Deed of Conveyance on non-judicial papers is to be got typed in triplicate keeping the carbon copy on the judicial papers. The spaces left blank in the deed of conveyance are to be filled by this office.

11.The building on the site shall be constructed in accordance with the plan, which must conform to the Punjab Capital (Development & Regulation) Building Rules, 1952 and the provision of Frame Control and Architectural Control and the Zoning Plan (wherever applicable).

16.Until full price of the site has been paid, no transfer of any right or title or any interest in it shall be permitted. The purchaser, however, shall be permitted to let on a monthly basis, a part or whole of the building erected on the site after obtaining occupation certificate.

19.In the event of failure to comply with any of the above condition, the site and building created thereon shall be resumed and the whole amount paid to the Government shall stand forfeited to the Government.”

(4) The first installment was paid within time. Ms. Sarin, the learned counsel appearing on behalf of the petitioner fairly stated that the petitioner had executed a General Power of Attorney in favour of one Som Raj Khanna entitling him to deal with the property in the manner stated therein. Som Raj Khanna's wife was the owner of the adjoining booth wherein she alongwith others carried on business as jewelers. Clause 2 of the Power of Attorney entitled the constituted attorney to pay the balance dues as well. A copy of the General Power of Attorney was furnished at the request of the Court.

(5) The second installment was not paid by the stipulated date namely 10.01.2006. Ms. Sarin stated that this was due to certain adverse circumstances in Som Raj Khanna's family. On 18.09.2006 Som Raj Khanna's son suffered a huge financial loss due to a theft in the adjoining premises. The third installment which fell due on 10.01.2007 was also not paid for the same reason.

(6) This petition has been pending in this Court for about four years. The proceedings relating to the impugned order were initiated 10 years ago. Various notices were sought to be relied upon by the respondents which were not produced in this petition. They were, however, sought to be produced across the bar during the hearing. Even if we had found prima-facie that the notices advanced the respondents' case, we would have had to quash the order and remand the matter for a fresh decision after affording the petitioner an opportunity of being heard in respect of the fresh aspects. However, as Ms. Sarin rightly pointed out these notices do not carry the respondents' case further. They in fact militate against the respondents' case. At the request of the respondents we, however, considered these notices. We will now refer to them.

(7) Before dealing with the notices it would be convenient to refer to Sections 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 and Rule 11 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960:-

“8A: Resumption and forfeiture for breach of conditions of transfer.

(1) If any transferee has failed to pay the consideration money or any installment thereof on account of the sale of any site or building or both, under section 3 or has committed a breach of any other conditions of such sale the Estate Officer may, by notice in writing, call upon the

transferee to show cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building or both should not be made.

(2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable, opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1), of the whole or any part of the money paid in respect of such sale.”

11. Procedure in case of default: [Section 8(2): -

(1) In case an installment is not paid (under Rule 10) by the transferee by the 10th of month following the month in which it falls due, a notice shall be served on the transferee calling upon him to pay the installment within a month together with a penalty which may extent to ten percent of the instalment payable. If the payment is not made within the said period or such extended period as may be determined by the Estate Officer, but not exceeding three months in all from the date on which the installment was originally due, the Estate Officer may proceed to have the same recovered as an arrears of land revenue or to take action under (section 8-A) of the Act.

(2) In case any equated installment or part thereof, is not paid by the date on which it becomes payable, the transferee shall be liable to pay in respect of that installment or part thereof, as the case may be, interest calculated at the rate of 20(twenty) percent per annum from the date on which the instalments became payable till such time it is actually paid;

Provided that if the allottee surrenders the property in accordance with the rule 10(A), rate of interest on the delayed payment shall be 15% (fifteen percent) per annum.”

(8) Mr. Dhaliwal firstly produced a notice dated 02.07.2007 which stated that the petitioner had failed to execute the conveyance as required by clause-9 of the allotment letter. The notice stated that before penal action was taken, the petitioner is given another chance to get the conveyance executed as per the then prevailing rate of 6% within 60 days. The petitioner was granted an opportunity to explain his position failing which it was stated that action for resumption of the site would be taken under the provisions of the Rules.

(9) Ms. Sarin rightly pointed out that the notice is for resumption only on the ground of non-execution of the conveyance. The order of resumption passed by the Estate Officer, the Appellate Authority and the Revisional Authority do not resume the property on the ground that the conveyance was not executed. The orders of resumption are only on account of the petitioner's failure to pay the amount due. A mere reference to the notice dated 02.07.2007 in the orders does not indicate otherwise.

(10) In any event, in the facts and circumstances of this case, mere non-execution of a conveyance ought not to lead to the drastic consequence of an order of resumption. Under clause-9 of the LoA the allottee has to execute a deed of conveyance after paying 25% of the sale price of the plot. Admittedly, the payment of 25% of the sale of plot was made within time. The petitioner was, therefore, entitled to have the deed of conveyance executed. The conveyance not having been executed has not prejudiced the respondents in any manner or to any extent whatsoever. To leave no room for doubt the petitioner's undertaking to make good any loss or damage to the respondents on account of the conveyance deed not having been executed within the time stipulated is recorded and it is so ordered. If the petitioner fails to comply with this undertaking and order, the order of resumption shall stand without further orders of this Court.

(11) This brings us to the notice issued by the respondents dated 10.07.2007. The notice is not annexed to the proceedings but is referred to in the impugned order of resumption passed by the Estate Officer. Mr. Dahliwal, the learned counsel appearing on behalf of the respondents produced a copy of this notice. There are certain handwritten portions which are not legible from the photocopies furnished.

The subject states: "Notice under section 8-A of the Capital of Punjab (Development and Regulations) Act, 1952-non-payment of

installments”. It is important to note that this notice after stating that the second and third installments had not been paid by the due dates, called upon the petitioner to pay the installments together with interest calculated upto 31.07.2006 within 15 days under Rule 11. The details of the outstanding dues were furnished. An amount of Rs.26,28,477/- upto 31.07.2006 subject to verification was stated to be due. It is also important to note that the petitioner was called upon to show cause as to why penalty upto 10% of the amount due of the installments be not imposed and recovered from the petitioner under the Rules. The notice is not for resumption.

(12) Section 8A makes a defaulting transferee liable for resumption. Rule 11 provides that in the event of the transferee failing to pay the dues the Estate Officer may proceed to have the same recovered as arrears of land revenue “or” take action under section 8A and forfeit the amounts paid not exceeding 10% of the total amount of the consideration. The Estate Officer by the notice dated 10.07.2007 sought to recover the arrears together with penalty and interest, but, and this is important, did not seek to resume the property. This notice by itself, therefore, could not have culminated in an order of resumption. The mere reference to section 8-A of the Capital of Punjab (Development and Regulations) Act, 1952 in the subject of the letters would not make a difference as the body of the letter dated 10.07.2007 does not refer to resumption. The subsequent notices which we will shortly refer to were only reminders of the notices dated 02.07.2007 and 10.07.2007 and fixing fresh dates of hearing.

(13) Mr. Dhaliwal also tendered at the hearing a notice dated 05.09.2007. The subject of this notice reads as under:-

“Subject: Notice Under Rule 12 (3) and 13(iii), under section 8- A & 14(i) for Non-payment/Non execution of lease/conveyance deed in respect of Booth, Site No.116, Sector 46-C, Chandigarh”.

The petitioner’s attention was invited to the said notices dated 02.07.2007 and 10.07.2007. The notice merely stated that the case would be heard by the Estate Officer on 26.09.2011 at 11.00 A.M. It further stated that if the petitioner failed to appear the matter would be decided ex-parte.

(14) A further notice dated 27.11.2007 was issued by the respondents to the petitioner. The subject thereof reads as under:-

“Subject: Order of Penalty under Rule 11 of Chandigarh

Sale of Sites and Building Rules, 1960 & Under Section 8-A of Capital of Punjab (Development & Regulation) Act, 1952.”

It referred to the notice dated 10.07.2007. The respondents called upon the petitioner to pay a total amount of Rs.26,13,421/- (Rs.1,81,5839/- towards installments, Rs.1,81,584/- towards penalty and Rs.6,15,998/- towards interest). This notice stated that if the payment was not made within the period stipulated therein, the respondents “shall be constrained to take necessary proceedings for the resumption of the site under section 8-A of the Act *ibid* (i.e. the Capital of Punjab (Development and Regulations) Act, 1952.

(15) As Ms. Sarin rightly stated in the facts and circumstances of this case, this was not a notice for resumption but only an intimation of what the respondents may have done in the event of the payment not having been made. Her submission is fortified by what is stated in the subject of the letter, namely, “order of penalty”. In other words the letter was not for an order of resumption. What is significant is that admittedly, thereafter no proceedings for resumption were initiated. The subsequent notices which we will now refer to do not seek to resume the property but only to ensure payment of the arrears. Indeed, the subsequent notices do not even refer to the notice dated 27.11.2008.

(16) A further notice dated 27.02.2008 was addressed to the petitioner the subject of which was similar to the subject in the notice dated 05.09.2007. This notice also referred to the notices dated 02.07.2007 and 10.07.2007. It, however, did not refer to the notice dated 27.11.2007. The notice stated that the petitioner’s case would be heard on 19.03.2008.

Similar notices dated 07.04.2008, 07.05.2008, 10.06.2008, 10.07.2008, 25.08.2008, 21.11.2008 and 10.12.2008 were issued by the respondents. Each of these notices referred to notices dated 02.07.2007 and 10.07.2007.

(17) The Estate Officer passed the impugned order dated 18.02.2009. The order after referring to the petitioner’s default as regards the payment stated:

“.....therefore, they have been served upon with show cause notice under Rule 12(3) & 13(iii) of the Chandigarh Lease Hold of Sites and Building Rules, 1973 vide Memo No. 23161 CP-6217/CIA-1 Dated 10.07.2007 as to why they failed to pay the due amount of installments

within the stipulated period for which the last date has already been expired”.

(18) The order, therefore, rightly does not suggest that the notice dated 10.07.2007 was for resumption. However, it wrongly states that the notice dated 10.07.2007 was under rule 12(3) and 13(iii) of the Chandigarh Lease Hold of Sites and Building Rules, 1973. Firstly, the notice dated 10.07.2007 did not refer to these Rules. It referred to Rule-11 and as we mentioned earlier the reference is obviously to Rule 11 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. Secondly, the Chandigarh Lease Hold of Sites and Building Rules, 1973 do not apply to the present case.

Thirdly, the letter of allotment dated 16.01.2004 has no reference to them. It refers to the Chandigarh (Sale of Sites and Buildings) Rules, 1960. Lastly, the Chandigarh Lease Hold of Sites and Building Rules, 1973 cannot apply in the present case for, as Ms. Sarin rightly stated, this is a case of a sale and not of a lease of the property.

(19) The entire order deals almost exclusively with the arrears due to the petitioner and the notice dated 10.07.2007 for the recovery thereof. It refers to the petitioner’s failure to pay the installments as well as the penalty. The question of penalty arose only under the notice dated 10.07.2007. The notice dated 02.07.2007 only refers to penal action for resumption on account of non-execution of the conveyance.

(20) There is only a solitary sentence to the effect that the show cause notice dated 02.07.2007 regarding non-execution of the conveyance deed had been issued. The order, however, read as a whole clearly indicates that it was not in respect of the show cause notice dated 02.07.2007 but was only in respect of the one dated 10.07.2007.

(21) The appeal was dismissed on 21.07.2010. The petitioner offered to pay the amounts during the pendency of the appeal. Thereafter on 20.09.2010 the petitioner filed an application for revision and deposited an amount of Rs.20 lacs with the Estate Officer. The amount was deposited pursuant to an administrative order dated 31.03.2009 issued by the Revisional Authority i.e. the Advisor to the Administration directing the Estate Officer to accept the same without prejudice to the rights of the Administration. The Estate Officer, however, returned the draft. Between 19.02.2013 and 07.11.2013 the petitioner tendered drafts aggregating to Rs.30 lacs which were, however, returned. The revision petition was dismissed on 19.03.2014.

(22) The present writ petition was filed on 17.09.2014. Pursuant

to the interim order passed by this Court, demand drafts of the value of Rs.30 lacs were tendered by the petitioner and encashed by the respondents. This, however, was subject to and without prejudice to the rights of the respondents.

(23) The order of the Appellate Authority merely refers to the defaults in payments. It is important to note that the Appellate Authority also dealt only with the issue of non-payment of arrears. The Appellate Authority upheld the orders of the Estate Officer on that ground alone. In other words, the Appellate Authority upheld the order of resumption on the ground of non-payment of arrears and not on account of the petitioner's not having executed the conveyance deed. Thus, the Appellate Authority also did not address itself to the notice dated 02.07.2010 but was based only on the notice dated 10.07.2007.

(24) The Revisional Authority also refers to the defaults in payment and observed that adequate opportunity was given to the petitioners to make the payment but that he failed to do so and that the petitioner and the constituted attorney had failed to justify the delay in payment. The order further records that the prices have been rising throughout and that 9 years later the plot cannot be allotted at the original price. The order also refers to the judgment of the Supreme Court passed in Special Leave Petitions (Civil) Nos.12968 of 2006 and 13141 of 2006. The reasoning by the Revisional Authority is contained only in paragraph-6. The first five paragraphs only refer to the facts and submissions on behalf of the parties. Paragraph-6 refers only to the failure to make the payment. The order is not based on the notice dated 02.07.2007. An order of resumption, therefore, was not passed on the basis of the show cause notice dated 02.07.2007.

(25) As we observed earlier, the notices called upon the petitioner to show cause why the arrears together with penalty and interest ought not to be recovered. The petitioner was never called upon to show cause against an order of resumption. The impugned orders were clearly based on and in pursuance of the notice dated 10.07.2007. The notice dated 10.07.2007 clearly did not refer to any proposal or intention to resume the property for any reason. The orders pursuant to and in respect of such notices, therefore, could not have directed the resumption of the property. They could only have directed the payment of the arrears together with all other dues such as penalty and interest as per law.

(26) Moreover, as we noted earlier, the notice dated 02.07.2007 was on account of the petitioner's not having executed the conveyance. This as we have already held would not have justified a drastic order of resumption of the property.

(27) In the circumstances, it is not necessary to consider Ms.Sarin's other submissions.

(28) The petition is accordingly allowed. The impugned orders are quashed and set aside. The petitioner shall, however, pay all the arrears together with interest and penalty in accordance with law. The respondents shall inform the petitioner the amount payable by him in writing. The petitioner shall pay the said amount within four weeks of the receipt of the intimation. The petitioner shall, however, be entitled to challenge the same and seek recovery of any part thereof in accordance with law but only after payment. The petitioner shall execute the conveyance within two weeks of being asked to do so by the respondents. The petitioner's undertaking to make good any loss or damage to the respondents on account of the conveyance deed not having been executed within the time stipulated is recorded and it is so ordered.

In the event of the petitioner failing to comply with any part of this order, the order of resumption shall stand without further reference to the Court.

There shall be no order as to costs.

Payel Mehta