

(17) Mr. Bains is not a lay man. He is an Engineering Graduate. He has worked as an Electrical Engineer in the Navy. He has taught in the Engineering College for a few years before taking to the profession of law. He has taken meticulous care to give details. He has produced 17 photographs with his report. These support the observations as given by him in the report. A perusal of the report shows that the sixth respondent is not causing any objectionable pollution. Even the Haryana State Pollution Control Board has filed no objections.

(18) In this situation, we find no ground to order that the Oil Mill should be closed. In any case, the Municipal Committee as well as the Board have already initiated certain proceedings under the relevant statutes. No interference under Article 226 of the Constitution is called for. Accordingly, we dismiss this writ petition.

(19) Respondent No. 6 has paid the fee and expenses of the Local Commissioner amounting to about Rs. 10,000. Normally, we would have been inclined to order the petitioner to pay the costs to respondent No. 6. However, since the petition was filed in public interest, we make no order as to costs.

R.N.R.

Before Hon'ble Jawahar Lal Gupta & M.L. Koul, JJ.

DR. A.P. SANWARIA.--*Petitioner.*

Versus

UNION OF INDIA AND OTHERS.--*Respondents.*

C.W.P. 6633 of 1996

16th May, 1996

*Constitution of India, 1950--Arts. 226/227--
Capital of Punjab (Development and Regulation) Act,*

1952--S. 8--A--Resumption of site or building--Can be used when there is flagrant violation of condition of sale--Is a drastic measure to be used sparingly.

Held that it is true that resumption of the site or building is a drastic measure. It has to be used 'sparingly'. The power can be invoked generally in case of a flagrant violation of the conditions of sale. Just one days's delay in paying the instalment cannot entitle the authority to resume the property. It has to be used only when the offender has erred repeatedly and has failed to rectify the mistake in spite of the grant of opportunity.

(Para 8)

Constitution of India, 1950--Arts. 14, 226/227--Chandigarh (Sale of Sites & Buildings) Rules, 1960--Rl. 9--Running of X-Ray clinic in residential house--Amounts to misuser and presents a health hazard--Cannot be equated with a lawyer's study or chamber in his residential premises--No violation of Article 14 of Constitution.

Held that it is true that X-Ray provides a good diagnostic facility. Medical X-Rays are necessary for the diagnosis and treatment of diseases. However, experience has shown that X-Rays "give significant dose of radiation". This presents a health hazard. Even moderate "doses of radiation can interfere seriously" with the human system. When an X-Ray clinic is set up in residential premises, the radiation emitted in the diagnostic process not only exposes the patient or the physician but also others living inside the premises to a continuous process of radiation. Just as a small leak can sink a big ship, the continued exposure to X-Rays howsoever small can do serious physical damage in the long run to all the persons living in the house. In such a situation, it cannot be said that an 'X-Ray clinic' is the same thing as a lawyer's

study or that merely because a lawyer is permitted to run his 'Chamber' in the residential premises, a doctor has a right to run an X-Ray clinic. There is no parity between the two. Consequently, the question of violation of Article 14 of the Constitution does not arise.

(Para 15)

Constitution of India, 1950--Arts. 226/227--Capital of Punjab (Development and Regulation) Act, 1952--S. 8--A--Provides adequate safeguards to protect the rights of transferee in case of proposed action of resumption.

Held that a perusal of the provision shows that this power can be invoked when the transferee fails to pay the consideration money including an instalment thereof or commits a breach of any of the conditions of sale. However, adequate safeguards have been provided. It is incumbent on the Estate Officer to give a notice in writing pointing out the default on the part of the transferee and to give him an opportunity to show cause as to why the proposed action be not taken against him. The transferee is entitled to adduce evidence in support of his claim and be heard against the proposed action. The Estate Officer has to pass a speaking order. It is, thus, clear that the grounds on which the action for resumption or for forfeiture of a part of the consideration money can be taken are clearly well defined. The transferee's right to adduce evidence and to be heard so as to effectively show cause against the proposed action has been guaranteed. The authority is under a duty to consider the explanation furnished by the transferee. Still further, not only the transferee but even the person who is in occupation of the premises like a tenant is also entitled to be heard. The word transferee should in all fairness include even a lessee. The provision, in our view, provides adequate safeguards.

(Para 7)

Constitution of India, 1950--Arts. 226/227--
Capital of Punjab (Development and Regulation) Act,
1952--S. 8--A--Chandigarh (Sale of Sites and
Buildings) Rules, 1960--Rls. 9 and 11--D--Do not
confer any arbitrary or unguided power--Not
violative of Arts. 14, 19 or 21 of the Constitution
of India.

Held that the provisions do not place any
unreasonable restriction on the petitioner's
freedom of trade. These do not confer any
arbitrary or unguided power in the authority.
The provisions do not violate Articles 14, 19 or
21 of the Constitution of India.

(Para 11)

Rajiv Kataria, Advocate, for the Petitioner.

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner, a Doctor, who has set
up an X-Ray clinic in a residential house which
was on lease with him, is aggrieved by the
order of resumption passed by the Estate Officer,
Chandigarh. His appeal and revision petition
having been dismissed, he has approached this
Court through the present writ petition. He prays
that the orders be quashed and the provisions of
Section 8-A of the Capital of Punjab
(Development and Regulation) Act, 1952 and Rule
9 of the Chandigarh (Sale of Sites and
Buildings) Rules, 1960 be declared *ultra vires* of
the Constitution. A few facts may be noticed.

(2) The petitioner was a member of the
Army Medical Corps. He took voluntary retirement
in the year 1979-80. He took a part of the
ground floor of House No. 3352, Sector 21,
Chandigarh, on rent and set up private
practice. In the year 1983, the petitioner
installed an X-Ray machine in the premises. The
petitioner alleges that he had set up the X-Ray

machine with the permission of Shri S.N. Bhandari, who was then the owner of the building. In the year 1991, Shri Bhandari sold the house to Mr. K.L. Chopra. He filed a petition for ejection against the petitioner on the grounds of personal necessity and change of user of the premises from residential to commercial. During the pendency of the petition for ejection, Mr. Chopra unfortunately passed away. His widow and the other legal representatives were impeded as parties. The petition for ejection was allowed by the Rent Controller. An appeal filed by the petitioner is pending before the appellate Court.

(3) The petitioner states that he has been the President of the Medical Association. He had pleaded with the Administrator for the allotment of plots to the members of the Medical profession at the reserved price, so that they could build their own clinics or nursing homes. The Administration instead of allotting plots at the reserved price, initiated proceedings for resumption of the premises. On 6th July, 1993, the Estate Officer respondent No. 4 passed an order of resumption. Aggrieved by the order of the Estate Officer, the petitioner filed an appeal which was dismissed by the Chief Administrator *vide* order dated 23rd May, 1995. The petitioner then filed a revision petition. *Vide* order dated 10th April, 1996, the Advisor to the administrator rejected it. Aggrieved by these orders, the petitioner has filed the present writ petition.

(4) The petitioner alleges that the provisions of Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1992 give an unregulated handle to the landlord of a premises to evict his tenant. The petitioner further alleges that the provisions of Rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 which debar the transferee of a site or building from using the property "for a purpose other than that for which it has been sold to him. . ." place an unreasonable restriction

on the carrying of occupation, trade or business, and are, thus, violative of Articles 14, 19 and 21 of the Constitution of India. The petitioner prays that the orders dated 6th July, 1992, 23rd May, 1995 and 10th April, 1996 regarding the resumption of premises and the provisions of Section 8-A as well as Rules 9 be quashed.

(5) Mr. Rajiv Kataria, learned counsel for the petitioner submitted that the orders passed by the respondents are arbitrary and that the provisions confer an unfair advantage on the land lord.

(6) Firstly, a word about the validity of the provisions. Section 8-A, *inter-alia* provides for resumption in case of violation of conditions of transfer. It reads as under :--

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

- (1) If any transferee has failed to pay the consideration money or any instalment 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 or 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.
- (a) After considering the cause, if any, shown by the transferee in pursuance of a notice under-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."

(7) A perusal of the above provision shows that this power can be invoked when the transferee fails to pay the consideration money including an instalment thereof or commits a breach of any of the conditions of sale. However, adequate safeguards have been provided. It is incumbent on the Estate Officer to give a notice in writing pointing out the default on the part of the transferee and to give him an opportunity to show cause as to why the proposed action be not taken against him. The transferee is entitled to adduce evidence in support of his claim and be heard against the proposed action. The Estate Officer has to pass a speaking order. It is, thus, clear that the grounds on which the action for resumption or for forfeiture of a part of the consideration money can be taken are clearly well defined. The transferee's right to adduce evidence and to be heard so as to effectively show cause against the proposed action has been guaranteed. The authority is under a duty to consider the explanation furnished by the transferee. Still further, not only the transferee but even the person who is in occupation of the premises like a tenant is also entitled to be heard. The word transferee should in all fairness include even a lessee. The provision, in our view, provides adequate safeguards.

(8) It is true that resumption of the site or building is a drastic measure. It has to be used 'sparingly'. The power can be invoked

generally in case of a flagrant violation of the conditions of sale. Just one day's delay in paying the instalment cannot entitle the authority to resume the property. It has to be only when the offender has erred repeatedly and has failed to rectify the mistake in spite of the grant of opportunity still further, the order passed by the authority is not final. The aggrieved party has the remedy of an appeal and or a revision. If the Estate Officer invokes this power and orders the resumption of site or building on account of a minor default, like a day's delay in making of payment or in inconsequential violation of the conditions of sale, the appellate authority can remedy the wrong. Similarly, Rule 9 debars the transferee from using "the site or building for a purpose other than that for which it has been sold to him." The provision only ensures that the purpose of Section 8-A is carried out.

(9) Taking the totality of these facts into consideration, it cannot be said that the provisions of Section 8-A or Rule 9 confer an unquidated or arbitrary power on the authority.

(10) Mr. Kataria made a half-hearted submission that the provision can be misused by a landlord. He also referred to the provisions of Rule 11-D to contend that it was possible for a landlord to have the site resumed on account of a breach of condition of sale and then to have the property retransferred to himself by payment of "10 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." According to the learned counsel, this provision enables a landlord to get the premises vacated on account of misuser and then to have the property retransferred by payment of a paltry sum of money.

(11) We are unable to accept this submission. The provisions of Section 8-A and Rule 11-D are primarily meant to ensure that the property is used only for the purpose for which it has been given to the person. A residential property should be used for the purpose of residence only. If a person misuses it, he commits a violation of the conditions of sale. He can suffer a loss of property on account of this misuser. The threat of resumption acts as a check on the misuse of the property. When it is found that the misuser was not by the owner but by a lessee, or that it was not intentional but for the reasons beyond the control of the person concerned and that adequate effort had been made by the transferee to have the misuse stopped, the resumed site or building can be restored to the owner. Still further, the restoration of the property is not without imposition of a penalty on the person concerned. It is incumbent on him to pay one-third of the difference in price. To illustrate, if a person has purchased a plot measuring 500 square yards for a price of Rs. 5000 in the year 1965 and it is retransferred in the year 1996, when the price of the plot may be in the region of Rs. 25 lacs, the person concerned has to pay an amount of nearly Rs. 8 lacs before the property can be retransferred to him. This amount may well be much above the total rent recovered by the owner of the premises. In this situation, it cannot be said that the right given to the transferee to seek retransfer is unfair or that it is unconstitutional. In the present case, the rate of rent is admittedly Rs. 400 per mensem. Assuming that the petitioner has been regularly paying rent at this rate since the very beginning, he would be paying a total of Rs. 4800 per year. During the last about 16 years, he would have paid about Rs. 77,000. The landlord has had to go through proceedings for his eviction before the Rent Controller and now before the appellate authority. He has also faced proceedings for resumption of the property before the Estate Officer since November, 1991. The cost of

litigation alone may be near the total rent paid by the petitioner. Still further, the owner is almost confronted with the loss of property and may be able to regain it only on payment of a few lacs of rupees and yet the petitioner complains that the provisions contained in section 8-A, rule 9 and rule 11-D confer an undeserved advantage on the landlord. The contention is wholly misconceived and cannot be accepted. The provisions do not place any unreasonable restriction on the petitioner's freedom of trade. These do not confer any arbitrary or unguided power in the authority. The provisions do not violate Articles 14, 19 or 21 of the Constitution of India.

(12) This brings us to the consideration of the orders passed by the respondents. Admittedly, the owner of the property and the petitioner were given a show cause notice vide memo dated 18th November, 1991 to show cause "as to why the said site be not resumed under section 8-A" for "the breach of conditions of sale and an amount not exceeding 10 percent of the total amount of premium, interest and other dues payable in respect of the sale of the said site be not forfeited." It is further clear from the record that the petitioner was given opportunity to adduce evidence on 19th December, 1991; 12th February, 1992; 2nd April, 1992, 21st May, 1992; 16th July, 1992; 10th September, 1992; 3rd December, 1992, 23rd February, 1993; 13th April, 1993; 20th May, 1993 and finally on 6th July, 1993. It is further established that the petitioner had failed to appear before the Estate Officer on 6th July, 1993 in spite of the fact that "he was bound down 20th October, 1993--." In this situation and on examination of the file the authority found that "many opportunities" had "already been afforded to the owner/occupier to stop the misuse but the same is still running as reported by the Inspector Enforcement". The case was, accordingly, decided against the petitioner. The site was ordered to be resumed and 10 percent of the total amount of premium

was ordered to be forfeited. The petitioner as well as Mrs. Chopra (the owner) filed an appeal. After hearing counsel for the parties and going through the record, the Chief Administrator found that there was "misuse" of the premises. Consequently, the appeal was dismissed. Even on revision, the Estate Officer submitted a report to the effect that "on one side of ground floor (of) the house, Dr. A.P. Sanwaria is running his clinic, X-Rays laboratory under the name and style 'Parkash X-Ray Clinic'. The authority held that "misuse still continues at the site." It also noticed the fact that the Estate Officer had resumed the site "as far back as on 23rd September, 1993 due to misuse of the site. Thereafter appeal filed by the petitioner against the said order was also dismissed by the Chief Administrator on 23rd May, 1995. Thus it follows that misuse is there since the year 1993. Therefore, if the petitioners had intention to remove the same then they could very easily set the things right during this intervening period. Accordingly, as the misuse still exists at the site, I see no grounds to interfere with the order of the Chief Administrator in this revision petition." Accordingly, the revision petition was dismissed.

(13) It is the admitted position that the petitioner had set up an X-Ray clinic in the year 1983. He has been continuously running this clinic in the residential premises since then. The authorities have come to a firm finding that he is misusing the premises. In such a situation, the action of the authorities is based on admitted facts and does not call for any interference.

(14) Mr. Kataria, learned counsel for the petitioner, however, submitted that persons belonging to various professions like Law or Teaching etc. are being allowed to continue to work in residential premises. In such a situation, it cannot be said that running of an X-Ray clinic amounted to a 'misuse' of the premises.

(15) This contention cannot be accepted. It is true that X-Ray provided a good diagnostic facility. Medical X-Ray are necessary for the diagnosis and treatment of diseases. However, experience has shown that X-Rays, "give significant dose of radiation". This presents a health hazard. Even moderate "doses of radiation can interfere seriously" with the human system. When an X-Ray clinic is set up in residential premises, the radiation emitted in the diagnostic process not only exposes the patient or the physician but also others living inside the premises to a continuous process of radiation. Just as a small leak can sink a big ship, the continued exposure to X-Rays how-so-ever small can do serious physical damage in the long run to all the persons living in the house. In such a situation, it cannot be said that an 'X-Ray clinic' is the same thing as a lawyer's 'study' or that merely because a lawyer is permitted to run his 'chamber' in the residential premises, a doctor has a right to run an X-Ray clinic. There is no parity between the two. Consequently, the question of violation of Article 14 of the Constitution does not arise.

(16) No other point was urged.

(17) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed in limine.

J.S.T.

Before Hon'ble R.L. Anand, J

SOM PARKASH--Petitioner
versus

SANTOSH RANI & ANOTHER--Respondents

C.R. No. 2503 of 1996

24th July, 1996

Code of Civil Procedure, 1908--S. 151--Order
21 Rls. 35,97--Objections to execution of decre●