Teri Oat Estates (P) Ltd vs U.T. Chandigarh And Ors on 19 December, 2003

Equivalent citations: AIRONLINE 2003 SC 743

Author: S.B. Sinha

Bench: S.B. Sinha

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           CASE NO.:
Appeal (civil)  49 of 1999

PETITIONER:
TERI OAT ESTATES (P) LTD.

RESPONDENT:
U.T. CHANDIGARH AND ORS.

DATE OF JUDGMENT: 19/12/2003

BENCH:
V.N. KHARE CJ & S.B. SINHA

JUDGMENT:
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JUDGMENT 2003 Supp(6) SCR 1235 The Judgment of the Court was delivered by S.B. SINHA, J.: These appeals involving common questions of law and fact were taken upto for hearing together and are being disposed of by this common judgment. The short question which arises for consideration in these appeals centres round the power of resumption of land/ building of the first respondent in favour of the appellants under the Capital of Punjab (Development and regulation) Act, 1952 read with the Chandigarh Lease Hold of Sites and Buildings Rules, 1973 and the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

BACKGROUND FACT :

The factual matrix of the matter is being noticed from Civi1 Appeal No. 49 of 1999. The site bearing No. SCO 126-127, Sector 34-A, Chandigarh was purchased on lease-hold basis by the appellant in open .auction held on 13.3.1988. The purchase amount was to be paid in lump sum and/or in four yearly instalments. In the event of the purchaser opting for payment in instalments, 7% interest was payable. It is not in dispute that 25% of the allotment price was required to be deposited within 30 days of auction and upon compliance of the said term, the Estate Officer, Chandigarh, confirmed the lease of the said site in favour of the purchasers vide allotment letter dated 26.4.1988. 7% interest, as, referred to hereinbefore, was leviable on the balance 75% premium as contained in the letter of Allotment in three equal instalments

> together with ground rent. Clause 8-A of the said letter of allotment, however, stipulated levy of interest @ 12% per annum, penalty and power of resumption in the event of delayed payment of instalments upon grant of an opportunity of being heard in the following terms :
>
> "8-A. After considering the cause, if any,'shown by the lessee in pursuance of the aforesaid notice, the Estate Officer may either allow payment of instalment/rent with penalty which may extend to 100% of the amount due and interest @ 12% P.A., for the delayed period, order cancellation of lease and forfeit the whole/ part of the amount already paid."

The appellant herein upon entering into possession of the purchased site, constructed a six storied building including the basement floor. The appellant contended that despite the construction of the said building it could not immediately be let out to the tenants as the area was under- developed and as parking and approach road had not been provided and furthermore several 'jhuggis' existed near the site. The second instalment which was due in 1989 had not been paid by the appellant. The appellant, however, is stated to have deposited a sum of Rs. 6,00,000 out of the total sum of Rs. 8,91,960 towards the amount due as also ground rent by paying the amounts of Rs. 2,50,000 on 5.4.1990, Rs. 1,50,000 on 2.5.1990, Rs. 1,50,000 on 25.6.1990 and Rs. 50,000 on 13.1.1992. Before depositing the aforementioned amounts, however, the appellant received a notice from the Estate Officer to the effect that he did not deposit the first instalment. After a lapse of about three years i.e. on or about 24.6.1992, the Estate Officer by his letter of the said date informed the appellant that a sum of Rs. 5,31,156 was due. According to the appellant, however, while issuing the said notice, the Estate Office failed to take into consideration that in the meanwhile a sum of Rs. 6,00,000 was deposited. A proceeding for cancellation of the lease by way of resumption of the land and building thereafter, was initiated. It is not clear as to whether the appellant in the said proceeding took part or filed any reply in response to show cause notice. The Estate Officer in his order dated 13.8.1992 although noticed that the appellant had been granted an opportunity of being heard in person but failed to notice as to whether on those days any of them had appeared and/or made his submission or not. He, however, recorded :

> "Inspite of various opportunities the lessee(s) has failed to clear the outstanding dues. It appears that the lessee(s) is/are not in a position to clear that Govt. dues. I hold the default wilful.
>
> THEREFORE, in exercise of the powers vested under Rule 12(3) or the Chandigarh Lease Hold of Sites and Building Rules, 1973, lease of the said site is hereby cancelled as a last resort and further 10% of the premium of the site i.e. Rs. 2,87,000 (Rupees Two Lacs Eighty Seven Thousand only) plus ground rent and interest calculated to the date of cancellation is forfeited.
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> None present inspite of valid service of notice.
>
> Issue under my hand and seal this 24th day of June, 1992."

The appellant herein preferred an appeal thereagainst before the Chief Administrator, Union Territory of Chandigarh and by an order dated 21.2.1995, the Chief Administrator, Chandigarh held :

> "4. The representative of the Estate officer argued that an amount of Rs. 52,25,880 is due from the appellant which includes penalty interest and forfeiture etc. The Counsel for the appellant agrees to make the part payment on 7.3.95 in the Lok Adalat to be held in U.T. State Guest House and the remaining he shall be paying by 31st March, 1995. To this payment the representative of the Estate Officer has no objection.
>
> 5. In view of this commitment, of the counsel for appellant, I set aside the impugned order, restore the site to the appellant subject to the condition that part payment is made on 7.3.95 in the Lok Adalat and the remaining alongwith forfeiture of 2% shall be paid by 31st March, 1995 failing which the order of the Estate Officer shall become operative. The penalty on the last instalment is however waived of.
>
> Announced. Parties be communicated. "

According to the appellant, the said order was communicated after 7.3.1995 as a result whereof no payment, as directed, could be made. The said appellate order, therefore, came to be questioned by the appellant by filing a revision application before the Advisor to the Administrator, U.T. Chandigarh, who by his order dated 17.5.1995 directed as under :

> "5. In this case the allotment of the site was made on 26.4.1988 and although the period of more than 7 years has elapsed yet a part from making the initial payment of 25% of the premium amount, the petitioner did not take care to make the payment of premium amount and ground rent etc. with the result that the outstanding amount due from the petitioner has accumulated to the extent of more than Rs. 50,00 lacs. Anyhow taking into consideration, the fact that the petitioner has already constructed the building over this site and he has now agreed to clear all outstanding amounts. I take lenient view in the matter and restore the site to the petitioner subject to the condition that be shall pay Rs. 17.00 lacs by 31st May, 1995 and second instalment on or before 18.7.1995 and failing which the order of the Estate Officer shall become operative. However, as ordered by the Chief Admin-istrator, he is not liable to pay penalty on 1st instalment. They will however pay only 2% forfeiture. It is urged by the learned counsel for the petitioner that the Estate Officer does not cooperate with the party concerned in preparing the accounts statement and, therefore, direction to this effect may be given to the quarter concerned. In order to obviate the changes that the petitioner may not come with the plea that he could not pay the due amount in time because of non-supply of account statement, it is ordered that Estate Officer shall prepare the account statement of the petitioner indicating the balance amount to be paid by him as early as possible and deliver the same to the petitioner by 25th May, 1995.

Announced. Parties be communicated."

The appellant contended that in the Statement of Accounts forwarded to the appellant by the Estate Officer pursuant to or in furtherance of the said direction, in stead and place of 12% interest, 15% interest for certain period and 24% interest for the rest had been levied. Levy of such penal interest, it appears, was the subject matter of a writ petition before the Punjab and Haryana High Court marked as CWP No. 17188 of 1995.

In the meanwhile, a proceeding under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was initiated. By an order dated 29.3.1996, the Estate Officer directed the appellant and all other persons in occupation to vacate the said premises. An appeal preferred thereagainst was dismissed by the District Judge by an order dated 17.4.1996.

An application for amendment to the writ petition was filed question-ing the order of eviction passed under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. During the pendency of the said writ petition, the appellant deposited a sum of Rs. 25,00,000 in terms whereof allegedly the entire principal amount due towards instalments and ground rent was cleared. A further sum of Rs. 5,00,000 was deposited on 31.10.1996 in terms of an order of the High Court, whereafter the following statement of accounts was prepared by the Estate Officer :

SI. No. HEAD OUTSTANDING AMOUNT

1. Principal Amount Nil

2. Interest Amount Rs. 25,68,464

3. Forfeiture Amount Nil (Maximum 10% of the allotment price i.e.Rs. 28,70,000

The appellant herein deposited a sum of Rs. 13,47,300 on 27.3.1997 in terms whereof according to the appellant all outstanding amount with interest calculated @ 15% per annum would have been cleared. However, it appears that the pay order dated 31.10.1996 for a sum of Rs. 5,00,000 which the appellant tendered to the Estate Officer was returned. On 2.1.1998, he resubmitted the same to the Estate Officer within its validity period.

By reason of the impugned judgment dated 19.11.1996, the writ petition was dismissed with costs. Liberty, however, was given to the appellant to give option to purchase the property in terms of Section 21A of the Rules. A review application was filed by the appellant but the High Court dismissed the same.

The appellant herein filed Civil Appeal No. 49 of 1999 against the main order and Civil Appeal against the order of the High Court refusing to review its earlier order. This Court by an order dated 18.2.1998 while issuing notice on the Special Leave Petition directed :

> "There shall be an ad-interim stay of resumption of the property. The petitioners, in the meanwhile, are directed to approach the Estate Officer and have their account prepared of all the dues as due uptil 31st March, 1998 and make payment thereof before that date. The Estate Officer and the Chief Administrator would be bound to render assistance in the preparation of accounts and accept payment but subject to the result of these petitions."

Pursuant to or in furtherance of the said direction, the appellant by pay orders dated 27.3.1998, 17.2.1998 and 15.7.1998 tendered a total sum of Rs. 26,57,500 stating :

> "With amount remitted above, it is hoped that all the dues stand clear. However, as per orders of the Honourable Supreme Court of India the total due amount after deducting Rs. 26,57,500 may kindly be intimated so that compliance may be made."

The Estate Officer in response to the said letter by his order dated 18.3.1998 intimated to the appellant the account showing dues of a further sum of Rs. 3,55,027 including ground rent. It appears from the accounts that the appellant had made over payment by Rs. 3,723. Upon charging of ground rent for the period 13.3.1998 to 10.4.1998 for a sum of Rs. 71,750 and 10% F.F. amounting to Rs. 2,87,000, a further sum of Rs. 3,55,027 was demanded. The appellant deposited the said amount and forwarded the pay order therefor along with his letter dated 19.3.1998.

SUBMISSIONS :

> Mr. J.K. Sibal, learned Senior Counsel appearing on behalf of the appellant, would submit that having regard to the fact that all payments had been made, pursuant to the order of this Court, the impugned judgment of the High Court should be set aside.

> Ms. Kamini Jaiswal, learned counsel appearing on behalf of the respondent would, on the other hand, contend that the respondents herein having accepted the payments from the appellant under the orders of the Court which being subject to the result of these appeals, the matter may be heard on merits. The learned counsel would contend that from the records it would appear that the appellant except for making the initial payment of 25% failed and/or neglected to make any further payment despite several opportunities granted to it. Ms. Jaiswal would urge that the appellant also failed to comply with the order passed by the appellate and the revisional authorities in terms whereof also while setting aside the order of resumption, opportunities had been granted to it to pay the amount(s) in question, directing, however, that in the event of its failure to do so, the order of resumption will revive. The learned counsel would submit that this Court in Babu Singh Bains & Ors. v. Union of India & Ors., [1996] 6 SCC 565 has upheld the validity of the provisions of resumption of lands/ buildings under the 1952 Act and in view of the fact that the authorities of the respondent acted strictly in terms thereof, this Court should not show any sympathy. The learned counsel would argue that keeping in view the fact that an equitable order has been passed by the High Court to the effect that the

appellant can repurchase the land in terms of Rule 21 of the Rules, the same may not be interfered with.

Mr. Sibal in reply, however, would submit that the issue must be considered having regard to the fact situation obtaining in each case. The learned counsel pointed out that a Full Bench of the Punjab and Haryana High Court in Ram Puri v. Chief Commissioner, Chandigarh, AIR (1982) Punjab & Haryana 301 upheld the validity of the provisions relating to resumption of the land only on the ground that the same is to be taken recourse to as a last resort. The learned counsel would urge that in Babu Singh Bains (supra), this Curt having affirmed the judgment of the Punjab & Haryana High Court in Ram Puri (supra), must be held to have accepted the said principle.

Drawing our attention to several judgments of this Court including those in which one of us (V.N. Khare, CJI was a Member), Mr. Sibal made submissions to the effect that a humane approach is required to be taken in such matters. The learned counsel in this behalf relied upon Jasbir Kaur v. U.T. Chandigarh, [1999] 9 SCC 22; Roochira Ceramics v. HUDA & Ors., [2002] 9 SCC 599; Kashmir Chand v. State of Haryana, [1996] 9 SCC 470 Surinder Kaur v. Government of Punjab & Ors., [1998] 9 SCC 592; S.MS. Sandhu Builders v. Chandigarh Administration, [2003] 3 SCC 125 and an unreported order of this Court dated 23.1.1998 passed in Batra Finance v. Chandigarh Adminstration, (Civil Appeal No. 459 of 1998 arising out of S.L.P. (C) No. 17041 of 1997).

Ms. Kamini Jaiswal has also referred to a few unreported orders of this Court wherein the parties had been directed to take recourse to the provisions for re-allotment of the lands.

VIRES OF THE 1952 ACT :

The constitutionality of Section 8-A of the 1952 Act as inserted by the Central Act No. 17 of 73 in terms whereof the Estate Officer became empowered to resume building or site and to forfeit money paid by transferee came to be questioned before the Punjab and Haryana High Court in Ram Puri, (supra), inter alia, on the ground that same is violative of Article 14 of the Constitution of India. Sandhwalia, CJ, speaking for the majority while holding that the power of resumption is valid observed that the same being an ultimate civil sanction should be used as a weapon of last resort as well as with great caution and circumspection, Punchhi, J. (as the learned Chief Justice then was), however, in his minority opinion made a distinction between resumption and forfeiture and observed that Section 8-A could not be applied in view of the orders/letters of allotment referred to therein and in any event such resumption cannot be in relation to a building which was built on the land. The provision was held ultra vires also on the ground that there is no relief available against forfeiture in terms of Section 80A, holding :

". . . But if it is held that Section 8-A kept applying even after every paise was paid, on the breach of other conditions of sale, even then the Estate Officer causing covenantal resumption cannot, in observance of the practice afore-referred to effect sale of the

property merely to recover the adjudged penalty. Under the ordinary law, as observed by the Supreme Court in Jagdish Chand Radhey Shayam's case AIR (1972) SC 2587, (supra), there is relief available against forfeiture, but there is none under Section 80-A (old Section 9). The vice of discrimination under Article 14 of the Constitution would immediately set in. The principle of Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay, AIR (1974) SC 2009 cannot save the vice for these are not merely procedural matters where two paths are open to reach the same destination. The end results of both courses are different. Under ordinary law, the transferee can pay the forfeited money and avoid other consequences. But the stance of the Government under Section 8-A is that : it must sell the property and recover the forfeited money from the proceeds, refusing to have it directly from or on behalf of the transferee. Thus, to preserve its constitutionality, it must be held that the Estate Officer has to keep the property intact and release it on the payment of the adjudged penalty in the case of covenantal resumption. That is what was held in Amrit Sagar Kashyap's case (1980-82 Pun LR 441) (supra) which has to be approved to this aspect of the case. For the aforesaid reasoning, the Estate Officer has no choice in the matter. On the other limb, the argument on behalf of the Chandigarh Administration that the title to the site is divested in its favour sans the building constructed thereon appears to me wholly chimerical and unworkable, besides being iniquitous. Three Latin maxims will convey the point:

(i) "Aedification solo, solo credit" (That which is built on land becomes part of the land)

(ii) "Quickquid plantatur solo, solo cedit whatever is affixed to the soil belongs to the soil).

(iii) "Omne quod solo inaedificator solo credit"

(Everything which is built upon the soil passes with soil).

These maxims have the advantage of embodying the wis-dom of many under each of the one who coined them. And it is said, these maxims are 'prying emanations of the eternal wisdom'. It is undoubtedly true that their usefulness increases, rather than diminishes, as the law grows complex and involved, for they bring back the mind to the just principles. Now to say that the site vests in the Government and not the structure thereon, which becomes part and parcel of the site, is begging the question. Such a construction put by the Chandigarh Administration to the effect of resumption causes destruction of an estate; the two ownership attempting to pull apart, but vainly. Thus interpreting Section 8-A, I would refrain from an odious construction which would lead to the destruction or dissipation of an estate, and as was done in Amrit Sagar Kashyap's case (1980-82 Pun LR

441) (supra) settled the term 'resumption' to a right of pre-entry on the property resumed."

This Court in Babu Singh Bains (supra) held that as Section 8-A provides for a fair procedure, the same is not arbitrary and, thus, not violative of Article 14 of the Constitution of India, holding :

> ". . . The majority judgment has rightly focused the question in the correct perspective and had held that Section 8-A is valid in law and, therefore, not violative of Article 14. In Northern India Caterers (P) Ltd. v. State of Punjab, AIR (1967) SC 1581, this Court had held that when there are two modes of procedure, one being more drastic and harsher than the other without any guidelines, invocation of the former was violative of Article 14 which was reversed by a larger Bench in Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay, [1974] SCC 402, knocking the bottom of the plea of constitutional validity of Section 8-A on the anvil of Article 14. Though softer course under Section 15 was available, Section 8-A does not become invalid on that score. Section 9 has been deleted and procedural safeguards have been provided in Section 8-A. Therefore, Section 8-A having provided fair procedure, does not become arbitrary and violative of Article 14."

VALIDITY OF THE PROCEEDINGS :

> One of the questions which, therefore, must always be posed by the Estate Officer, while initiating a proceeding under Section 8A of the Act is as to whether the drastic power of resumption and forfeiture has been taken recourse to as a last resort. The order of the Estate Officer dated 13.8.1992, does not say so. No reason has also been assigned in the said order.

It may be that the appellant even did not comply with the appellate order but it had a legitimate grievance therefor insofar as the said order was made available to it after 7.3.1995 whereas the part payment in terms thereof was to be made on the said date. The revisional order dated 17.5.1995 provided that payment be made in terms of the accounts submitted by the Estate Officer but the question as to whether the Estate Office could levy interest over and above 12% p.a. i.e. 15% from 1992 and 24% from 1993 was the subject-matter of a writ petition which was pending before the High Court. The appellant paid the entire amount which, according to the it, was due to the respondent. It further kept in readiness a pay order of Rs. 13,00,000, a copy whereof had also been filed with the review application. It is, therefore, not a case where the court will have to take one stand or the other in the light of the statutory provisions. The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard and fast rule can be laid down therefor. In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not.

In M/s. Darkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, AIR (1989) SC 1642, while holding that the provisions of Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947 do not apply to the local bodies or public authorities which are States within the meaning

of Article 12 of the Constitution of India, this Court observed :

> "16. Our attention was also drawn by Mr. Chinai, learned counsel for the appellant, to the observations on 'Administrative Law' by Wade, 5th Edn. at pager 355. It was stated therein as follows :
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> 'Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely - that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended.
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> 17. It, therefore, followed that the public authorities which enjoy this benefit without being hidebound by the requirements of the Rent Act must act for public benefit. Hence, to that extent, this is liable to be gone into and can be the subject-matter of adjudication."

The contention advanced on behalf of the respondents therein that when an order is passed terminating the tenancy, the lack of public interest or existence of collateral purpose or mala fide, would be a matter which the tenant must prove was rejected, stating:

> "21. We are unable to accept the submissions. Being a public body even in respect of its dealing with its tenant, it must act in public interest, and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction."

Unfortunate although it may seem to be that the parties hereto had not highlighted these issues before the High Court and, thus, the High Court could not deal with the matters in their proper perspective.

The High Court, however, not only differed with its earlier opinion in M/s. Sandhu Builders (P) Ltd. v. Union Teritory, Chandigarh, (CWP No. 3030 of 1994) decided on 19.1.1996 but went on to observe :

> ". . . We, therefore, do not find any justification to nullify the impugned orders on the basis of the orders passed in P.K. Ahuja 's case or M/s. Sandhu Builders' case. The observation made by Sandhawalia, J. in Ram Puri v. State of Punjab, AIR (1982) Punjab & Haryana 214 (F.B.) suggesting that the action for resumption of allotted site should be taken only as a last resort deserve full respect. However, we cannot ignore the growing tendency amongst allottees of commercial and other lands to enjoy the public property without paying the premium, ground rent etc. A very large number of cases have come to our notice in which the allottees have not paid a single penny after occupying the allotted property. Therefore, we are of the opinion that in those cases where the allottee consistently defaults in payment of the premium etc. it will be open to the competent authority to take action under Section 8A or Rule 12(3)."

That was not the correct approach to be adopted by the High Court. CASE LAWS :

> In Jasbir Kaur (supra), a Bench of this Court of which one of us V.N. Khare, J. (as the CJI then was, was a Member) without expressing any opinion on the question of law as raised therein directed regularization of allotment of the site in favour of the appellant taking note of the fact that the entire amount which was due had been paid. In Jasbir Kaur v. Union Territory of Chandigarh & Ors., [1991] 1 P.L.J. 417, a Division Bench of the Punjab & Harayana High Court following its earlier decision in Ram Puri (supra) in the facts and circumstances of the case held that in case of default, the interest chargeable would be 10% and not 18%.

In Kashmir Chand (supra), again in a case where the payments had been made, relief had been given to the parties. In an unreported decision of this Court dated 23.1.1998 in Batra Finance (supra), this Court in the fact situation obtaining therein observed that the direction for forfeiture should not have been passed by the High Court with liberty to file application for re-allotment, considering the fact that the interest on unpaid amount had been calculated on the basis of graduated interest from 12% to 24% and penalty on the first instalment had also been calculated at Rs. 31,400 and for the second instalment at Rs. 83,912 and further in view of the fact that the appellant had already deposited a sum of Rs. 24,90,000.

In Surinder Kumar (supra), this Court directed payment of interest @ 18% on the delayed payments consisting of 11% penalty plus 7% regular interest on defaulted instalments and directed :

> ". .. In short, as a condition for cancellation of resumption order the appellant will be required to pay in all, apart from the defaulted amounts, 18% interest on the delayed payments of instalments. This will be worked out by the appropriate authority and whatever balance is payable by the appellant shall be paid over by her within a period of four weeks from the intimation to him of such calculation and determination of payable amount by the appropri-ate authority, namely, the Estate Officer, Punjab Uraban Planning & Development Authority, SAS Nagar (Mohali), District Ropal, Respondent 4, before whom the appellant will produce relevant evidence about the payment of appropriate amounts pursuant to the present order. The shortfall, if any will be made good by her within a period of four weeks after estimation and intimation by the 4th respondent as the allotment of the plot shall stand regularized and resumption order shall stand confirmed."

Yet recently in Sandhu Builders (supra), while dismissing the appeal, this Court granted six weeks' time to deposit the balance amount of difference in interest stating :

> "8. Considering all the facts and circumstances of the case as indicated above, we do not think that it is a case in which any interference is called for in the matter. But we feel that since total amount of premium as well as the amount of interest @ 12% stands deposited as stated on behalf of the appellant, it would not be just and appropriate that the appellant be disallowed the opportunity of depositing the difference in amount on account of enhanced rate of interest i.e. @ 24%.

> 9. In the result, we dismiss the appeal with costs but allow the appellant six weeks' time to deposit the balance amount of difference in interest @ 24% as per demand of the respondents."

A three-Judge Bench of this Court in Patiala Inds. Investment Co. Pvt. Ltd. v. Union of India & Anr., [2003] 3 SCC 127, on a concession made by the learned Solicitor General that the enhanced rate of interest @ 24% would be chargeable from 22.7.1993, directed :

> "Revised calculation of the amounts due and payable by the petitioners will be on this basis, will be served on the petitioners within one week from today. Within four weeks from the service of the revised demand 25 per cent of the amount due from each of the petitioner will be paid to the respondents. The balance amount will be paid within four months of the service of notice of demand. It is clarified that the interest will continue to run at the enhanced rate on the deceasing balance till the date of payment.
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> If the payment is made as directed by this order, the Solicitor General states that the respondent will not exercise their right of re- entry/forfeiture and Clause 17 or any other appropriate clause on the ground of delay in payment of the amounts due to the respondents."

In Devinder Singh Pannu & Ors. v. The Chandigarh Admn. & Ors., (Civil Appeal No. 1092 of 1998), this Court having regard to the fact that the appellants therein had already made an application for re-allotment directed the respondent to consider the same. In Devinder Lal Gupra v. U.T. of Chandigarh & Anr., (S.L.P. (Civil) No. 12512 of 1999) by an order dated 15.2.2000, the special leave petition was dismissed with a direction to the respondents that if the petitioners therein made an application for re- allotment of the land to them in accordance with the rules within one week from the said date the respondents would consider the same on merits and try to accommodate the petitioners, if it is possible to retain the land.

SYMPATHY :

> We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra- ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.
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> As early as in 1911, Farewell L.J. in Latham v. Richard Johson & Nephew Ltd., (1911-13 AER reprint p. 117) observed :
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> "We must be very careful not to allow our sympathy to affect our judgment with the infant plaintiff. Sentiment is a dangerous will O' the wisp to take as a guide in the search for legal principles."

(See also Ashoke Saha v. State of West Bengal & Ors., CLT (1999) 2 H.C. 1).

In Sairindhri Ddolui v. State of West Bengal, (2000) 1 SLR 803, a Division Bench of the Calcutta High Court wherein (one of us Sinha, J. was a Member), followed the aforementioned dicta.

This Court also in C.B.S.E. and Another v. P. Sunil Kumar and Others, [1998] 5 SCC 377 rejecting a contention that great injustice would perpetrate as the students having been permitted to appear at the examination and having been successful and certificates had been issued in their favour, held :

> ". . . We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students. . ."

PROPORTIONALITY :

> The issue in the light of the decision of the full Bench of the Punjab & Haryana High Court in Ram Puri v. Chief Commissioner, Chandigarh, AIR (1982) P & H 301 (supra) as affirmed by this Court in Babu Singh Bains & Ors. v. Union of India A Ors., [1996] 6 SCC 565 (supra) may have to be considered from another angle.

By reason of the auction held, the land in question has been sold in favour of the appellant. A letter of allotment has been issued in terms thereof. The appellant has been put in possession of the purchased property. In law he was entitled to raise constructions and in fact he has raised a six storied building. He has paid a part of the first instalment and during pendency of the proceeding before the High Court has paid a substantial amount together with interest @ 12% p.a. as enhanced from time to time.

The respondents were entitled to pay interest on the unpaid amount @ 7% p.a. which in the event of non-payment was to be paid at a penal rate of 12% and subsequently enhanced to 15 per cent and then to 24 per cent as well the amount of penalty to be levied thereupon. The entire amount was recoverable through the process of law. In a situation of this nature, having regard to the rival claims made by the parties, if the default is not absolute wilful or a dishonest one but occasioned due to situation which may be beyond one's control, the statutory right of the respondent in resuming the land may not be appropriate, if the entire dues stand discharged.

In terms of the provisions of the Act, the respondents are entitled to, (1) resumption of the land, (2) resumption of the building and (3) forfeiture of the entire amount paid or deposited. Having regard to the extreme hardship which may be faced by the parties, the same shall not ordinarily be resorted to. The situation, thus, in our opinion, warrants application of the doctrine of proportionality.

The said doctrine originated as far back as in 19th century in Russia and later adopted by Germany, France and other European countries as has been noticed by this Court in Om Kumar v. Union of India, [2001] 2 SCC 386.

By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority "maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve."

This Court as far back as in 1952 in the State of Madras v. KG. Row, AIR (1952) SC 196, observed :

> "The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and limit to their interferences with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflecting that the Constitution is meant not only for the people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

The principle started gaining momentum in other countries and it was applied and developed in England as noticed by Lord Diplock in R. v. Secretary of State for the Home Department, ex Brind, (1991) 1 Appeal case

696. This Court in Tata Cellular v. Union of India, [1994] 6 SCC 651 while opining in concurrence with the judgment of the House of Lords in Council of Civil Services Union v. Minister of Civil Service, [1985] 1 Appeal Cases 374 that the extent of judicial review should ordinarily be limited to illegality, irrationality and procedural impropriety observed that they are only the broad grounds but did not rule out addition of further grounds in the course of time and also noticed 'Brind' (supra).

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 cases 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 is the proportionality principle. [See Om Kumar (supra)].

In Om Kumar (supra), however, this Court evolved the principle of Primary and Secondary Review. The doctrine of primary view was held to be applicable in relation to the statutes or statutory rules or any order which has the force of statute. The secondary review was held to be applicable inter alia in relation to the action in a case where the executive is guilty of acting patently arbitrarily. This Court noticed E.P. Royappa v. State of Tamil Nadu, [1974] 4 SCC 3 and observed that in such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions as for example punishment in a departmental proceeding, the doctrine of proportionality was equated with Wednesbury Unreasonableness.

We may, however, notice that the said doctrine in principle or the spirit thereof has recently been applied by the Court of Appeals.

In Edore v. Secretary of State for the Home Department, [2003] 3 All ER 1265, the appellant was a citizen of Nigeria who had entered into the United Kingdom and remained back after her visa had expired. She had two children, born to a British citizen. The children were emotionally dependent on him and he was a stabling influence on their lives. If the appellant and her children were returned to Nigeria, their relationship with their father would end. The Court trying to resolve the conflict at hand opined :

> "Where the essential facts were not in doubt or dispute, the adjudicator's task was to determine whether the decisions under appeal was properly one with the decision-makers discretion, namely that it was a decision which could reasonably be regarded as striking a fair balance between the competing interests in law. If it were, then the adjudicator could not characterize it as a decision 'not in accordance with the law' and so, even if he personally would have preferred the balance to have been struck differently, he could not substitute his preference for the decision in fact taken. However, there would be occasions where it could be properly be said that the decision reached was outside the range of permissible responses open to him, in that the balance struck was simply wrong."

In a later case although the doctrines of the proportionality was not expressly referred to but the spirit thereof was applied, in R. v. Levisham London Borough Council, [2003] 3 All ER 1277, wherein it was held :

> "When the decision maker comes to balance the factors he is entitled to a place in the scales. Thus, even though the length of delay and reasons for it are often balanced against the prospect of success, it is possible to envisage circumstances in which an authority can rationally and properly conclude that even short delay for which there is a good explanation is not enough to justify a an extension of time for review."

CONCLUSION :

> Keeping in view the aforementioned principles in mind would it be proper for us to take a view as has been suggested by Ms. Jaiswal? The answer to the said question must be rendered in the negative, if the competing interests can be balanced.
>
> The appellants had sought to show their bona fide in making their payments before the High Court. They had also shown their willingness to make the payments on the difference of amount of interest. They pursuant to the order of this Court not only paid the entire amount due but also paid ground rent upto 1988-1999 and further paid 10% penalty on the forfeited amount of entire consideration money amounting to Rs. 2,87,000.
>
> The land in question for all intent and purport had been transferred in favour of the appellants. They were merely to pay the balance amount of 75% of the consideration amount in instalments. The rate of interest, as noticed hereinbefore, had been increased from 7% to 24%. Penalty was levied by the appellant authority at 1% and the revisional authority at 2%. Contrary thereto the Estate Officer, however, in terms of his original order directed payment of penalty at 10% F.F. We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8(1) can be taken recourse to. We, however, cannot but deprecate the conduct of the appellants in not making an endeavour to pay the instalments within a reasonable period. They, thus, did not pay the entire amount of the first instalment within the stipulated period; only a part payment was made in the year 1990 and 1992 by that time even the second instalment became due. They did not make any payment before the revisional authority despite the order passed by the appellate authority. We, therefore, are of the opinion that the appellant in C.A. No. 49 of 1999 should deposit a further sum of Rs. 15,00,000 (Rupees fifteen lacs) with the Estate Officer, Chandigarh within a period of ten weeks from date of receipt of a copy of this order, which, in our opinion

would meet the ends of justice. However, so far as the other matters are concerned, having regard to the facts and circumstances obtaining in their cases, we do not intend to direct levy of any penalty on them.

These appeals are disposed of in the above terms. No costs.