

Punjab-Haryana High Court

Avi Autos vs The Advisor To The Administrator, ... on 20 November, 1998

Equivalent citations: (1999) 123 PLR 697

Author: G Singhvi

Bench: G Singhvi, I Singh

ORDER G.S. Singhvi, J.

1. This is a petition to quash the order dated 5.9.1982, 15.10.1985 and 3.7.1991 passed respectively by the Assistant Estate Officer, the Chief Administrator and the Adviser to the Administrator, Union Territory, Chandigarh.

2. The facts, in brief, are that S.C.O. Site No. 59-60, Sector 26, Chandigarh Was leased out to one Ripudaman Singh on 8.4.1975 for carrying General Trade. The allottee rented out the premises to the petitioner, who started a workshop for the repairs of scooters, cars, tractors etc. Proceedings under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952, as amended by the Chandigarh Amendment Act No. 17 of 1973, (hereinafter referred to as the 1952 Act) were initiated by the Estate Officer against the allottee as well as the petitioner on the ground of misuse of premises. After giving notice and opportunity of hearing to them, the Assistant Estate officer ordered cancellation of lease of the site and forfeiture of Rs.18,100/-. The petitioner challenged the order of cancellation of lease by filing appeal under Rule 22 of the Chandigarh Lease Hold and Sites and Building Rules, 1973 (hereinafter referred to as the 1973 Rules). During the pendency of the appeal, the representative of the petitioner made a statement before the Chief Administrator that the mis-use has been stopped. Upon this, the appellate authority restored the site to the lessee but upheld the forfeiture of premium and after having failed to convince the revisional authority-cum-Adviser to the Administrator, Union Territory, Chandigarh that the appellate authority's decision upholding the order of forfeiture was legally unsustainable, the petitioner has invoked writ jurisdiction of this Court.

3. Shri B.R. Behl assailed the order of the appellate and the revisional authorities and argued that having come to the conclusion that the order of resumption should be set aside on the ground of stoppage of misuse, which constituted the basis of the order of cancellation of lease, the appellate authority did not have the jurisdiction to uphold the order of forfeiture. Learned counsel submitted that the revisional authority has also gravely erred in refusing to set aside the order of forfeiture. He relied on the order dated 21.7.1998 passed in C.W.P. No. 13119 of 1994 : (1998-3)120 P.L.R. 20, Bimla Rani Ahulwalia v. Union of India and Ors., . On the other hand, Shri Goyal argued that the order passed by the Assistant Estate Officer cancelling the lease of the site was legally correct because the representative of the petitioner had admitted mis-use of the site allotted to Ripudaman Singh for General Trade. He submitted that the appellate authority restored the site to the allottee on the ground of stoppage of mis-user and not on the ground and that the allottee and his tenant had mis-used the premises and, therefore, its refusal to set aside the order of forfeiture of a part of the premium does not suffer from any error of law. Shri Goyal also stated that the mis-use was stopped on 14.10.1985 i.e., just before the passing of the appellate order.

4. We have considered the respective submissions and have carefully perused the record of the case.

5. Admittedly, the Assistant Estate Officer, exercising the powers of the Estate Officer, Union Territory, Chandigarh, initiated proceedings for cancellation of the site and forfeiture of premium on the ground that the premises allotted for General Trade were being used as a Workshop and this amounted to mis-use of the premises was continuing. Therefore, the Assistant Estate Officer ordered the cancellation of the lease and forfeiture of a part of the premium. All this is evident from the order Annexure P-1, the relevant portion of which is extracted below:

"Capt. Shamsher Singh is present on behalf of Avi Autos. He has no authority/power of attorney to appear before me. He has stated that he is an employee of the firm and has full authority to represent. He has stated that the workshop exists and it is pre-requisite for the trading activities of Avi Autos. The use of the site as workshop is not denied by him. Shri R.C. Bhatia, S.I.E. is present for the Estate Office. He has stated that mis-use exists and has been admitted by the tenant. The owner Shri Ripudhman Singh is not present and the representative has requested for expedite decision to stop the mis-use of show room site sold for general trade is being misused as workshop. Further the services and repairs of scooters, cars and tractors is undertaken for a pre-delivery exercise. The owner did not present. In view of the show room site No. 59, Sector 26 sold for general trade and being misused as workshop for services of cars, scooters and tractors etc. stand established. The lease of site cancelled with forfeiture of 10% of the total amount. Therefore, in exercise of the powers vested under Rules 20 of the Capital of Punjab (Development and Regulation) Act, 1952 as amended by the Chandigarh Administration Act No. 17 of 1973, I do hereby cancel the site in question and further forfeit 10% of the premium of the site i.e., Rs.18,100/- (Rupees eighteen thousand and one hundred only).

6. During the pendency of the appeal before the Chief Administrator, the counsel for the petitioner stated that the mis-use has been stopped, a fact which was not contested by the representative of the Estate Office. After taking this into consideration, the appellate authority restored the site to the allottee by making the following observations:

"I have considered the arguments of both the parties and have also gone through the relevant record of this case produced by the representative of the Estate Officer. Therefrom, I find that the site in question was leased out to Shri Ripudman Singh and others in the auction held in the year 1976. The site was sold for General Trade. The lessees let out the premises to the appellants and the appellants started misusing the same. The misuse was detected in the year 1982 and the impugned order was passed on 5.9.1983. The misuse is reported to have been stopped by the appellants and the factum of the stoppage of the misuse is admitted by the representative of the Estate Officer. In this view of the matter, I do not find any justification to deprive the lessees of their right to hold back this property. In this background the present appeal is accepted and the lease of the site is restored to the lessees. The amount of forfeiture of premium shall stand and should be paid within thirty days from the date of despatch of this order. There shall, however, be no forfeiture of the amount of ground rent and interest etc. Non-compliance with this order will bring into operation the order of the Estate Officer."

The. revisional authority expressed the view that there was no ground to waive the amount of forfeiture.

7. In our opinion, the orders passed by the appellate and the revisional authorities do not suffer from any error of jurisdiction or error of law warranting interference by this Court in exercise of its certiorari jurisdiction.

8. The question whether the appellate authority can sustain the order of forfeiture while setting aside the order of cancellation of site has been considered by this Court in *M/s Goyal and Company v. Union Territory, Chandigarh* through its Chief Administrator and Ors., (1992-2)103 P.L.R. 303; *Ashok Kumar v. Union of India*, (1993-3)105 P.L.R. 726, *Navdeep Kaur Sandhu and Ors. v. The Advisor to the Administrator, Union Territory, Chandigarh and Ors.*, (1995-1)110 P.L.R. 423 and *C.W.P. No. 9072 of 1996 : 1997(4) R.C.R. (Civil). 404 (P&H) Bhajan Singh and sons (HUF) and Ors. v. Chandigarh Administration through its Adviser and Ors.*, (1997-3)117 P.L.R. 521, decided on 22.7.1997.

9. In *M/s Goyal and Company's* case (supra), the learned Single Judge held that the appellate authority cannot, while setting aside the order of cancellation of lease uphold the order of forfeiture of premium. That judgment has been overruled in *Ashok Kumar v. Union of India* (supra) and the latter decision was followed in *Navdeep Kaur Sandhu's* case (supra) by the same learned Single Judge who decided *M/s Goyal and Company's* case (supra). In *Bhajan Singh's* case (supra), a Division Bench, of which one of us was a member, interpreted the provisions of the 1952 Act and the 1973 Rules, and then held as under:-

"In our opinion, Shri Goyal is right in his submission that the appellate authority has the jurisdiction to maintain the order of forfeiture even if the order of cancellation of lease or resumption of site passed by the Estate Officer/Assistant Estate Officer is not sustained. Section 10(1) of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as the Act of 1952) lays down that any person aggrieved by an order of the Estate Officer made under Section 8 or 8A can file an appeal before the Chief Administrator within 30 days of the date of communication of the order. Proviso to Section 10(1) empowers the Chief Administrator to condone the delay in the filing of the appeal. Section 10(2) confers powers upon the Chief Administrator to confirm, vary or reverse the order appealed against and pass such order as it deems fit. Likewise, under Rule 22 of 1973 Rules power is conferred upon the Chief Administrator to entertain the appeal against an order passed under Rules 12, 13, 20 or 21 of the Rules. After hearing the parties, the Chief Administrator, can confirm, vary or reverse the order appealed against and pass such order as it deems fit. On a plain reading of Section 10(2) along with Rule 22(2) it becomes clear that the power conferred upon the appellate authority is very wide. It is vested with the discretion to pass appropriate order which may appear to be just and proper in the circumstances of the case. In a given case the appellate authority may uphold the order passed by the lower authority. In another case, it may reverse the order of the lower authority in its entirety. In a third case, the appellate authority may not reverse the order in its entirety but modify it. However, the requirement which is implicit in the exercise of appellate power by the concerned authority is that it must apply its mind judiciously to the facts of the case and give cogent reasons in support of its conclusion. To us, there does not appear any reasons why the Court should curtail or abridge the wide magnitude of the powers vesting in the appellate authority. The judgment of the learned Single Judge in *M/s Goyal and Company v. Union Territory, Chandigarh* (supra), prima facie, seems to support the proposition but forward by Shri

Shyam Kumar Sharma but the Division Bench Judgment in *Ashok Kumar v. Union of India* (supra) lays down the correct proposition of law. After making reference to the decision of the learned Single Judge in *M/s Goyal and Company's case* (supra), the Division Bench observed as under:

"There can be no manner of doubt that Rule 12(3) of the Rules permits forfeiture only when there is an order of resumption and it cannot, therefore, stand without there being such an order of resumption. The question that, however, arises to be considered in the present case is whether or not the order of resumption was a valid order, if invalid, not only must the order be set aside, but the forfeiture too must go with it. If, however, such an order of resumption is valid, it could only have been set aside as a measure of concession granted by the appellate or revisional authority and as a concession, it is obvious that it could be conditional too. Payment of an amount equal to a certain proportion of the premium would in such a case be as valid a condition of restoration of the site as payment of the entire amount outstanding in respect of it within a specified period. To hold otherwise could lead to consequences, which may not be in public interest, as on the one hand, it may deter the appellate or revisional authority, from affording a defaulter another opportunity of clearing his outstanding and thus save his site from resumption and on the other hand, if all that the defaulter has to do is to clear his outstanding without any further order and have the resumption set aside, it would be positive disincentive to allottees to pay their dues as per the terms of the allotment. Seen in this light *M/s Goyal and Company v. Union Territory, Chandigarh*, (1992-2)103 P.L.R. 303 must be read to be an instance of the order of resumption being invalid and not the rule that where an order of resumption is set aside as a concession, the condition, regarding forfeiture of the premium along with the entire outstanding amount due, must be taken to be invalid."

"Moreover, the learned Single Judge who decided *M/s Goyal and Company's case* (supra) himself followed the reasoning given in *Ashok Kumar's case* (supra) and upheld the forfeiture in *Navdeep Kaur Sandhu's case* (supra).

A perusal of the order passed by the Chief Administrator together with the memo of appeal shows that the petitioners Bhajan Singh and sons and others have admitted the misuser of the premises but pleaded for compassionate approach by Stating that the misuse has been stopped. The Chief Administrator accepted their plea and set aside the order of cancellation of the lease of the site. At the same time he observed that if the cancellation of the lease is to be done on some other ground then opportunity of bearing has to be given to the affected party. It is, therefore, dear that the Chief Administrator did not reverse the order of the Assistant Estate Officer on the ground that the said order was illegal or arbitrary but only on the ground that the said the misuse of the premises had been stopped.' In the background of these facts and in view of the law laid down in *Ashok Kumar's case* (supra), we do not find any merit in the submission of Shri Shyam Kumar Sharma that the order passed by the appellate authority upholding the forfeiture is erroneous in law."

11. If the ratio of the decision in *Ashok Kumar's case* (supra) and *Bhajan Singh's case* (supra) is applied to the facts of this case, we find no difficulty in holding that the orders passed by the appellate and revisional authorities do not suffer from any legal error. The facts which have been found proved show that the site in question was allotted to Ripudaman Singh for General Trade but the petitioner who was inducted as tenant in a part of the S.C.O. used it as a workshop for repairs of

cars etc. and this amounted to mis-use and the representative of the Estate Office did not contest this. Therefore, we are unable to agree with the learned Counsel for the petitioner that forfeiture of a part of the premium should be declared illegal and quashed.

12. The judgment of Bimla Rani Ahluwalia's case on which reliance has been placed by Shri Behl, does not have any bearing on the facts of this petition because in that case, the revisional authority had upheld the forfeiture even though it found that the allottee was not guilty of mis-use of the premises and in the writ petition filed by the allottee, this Court held that in view of the finding recorded by the revisional authority that the allottee has not mis-used the premises, there was no legal basis for upholding the forfeiture of premium.

13. On the basis of above discussion, we hold that the impugned orders do not suffer from any error of law warranting interference under Article 226 of the Constitution of India. Hence the writ petition is dismissed. The interim order passed on 22.2.1992 stands automatically vacated.