

adopting a proper mode as prescribed under the Act, it is deemed that the said letter was never dispatched. Also from perusal of original record and dispatch register, we do not find a clear answer to this question as to whether the letter of offer of possession was ever dispatched. Reference details given in the letter are also not mentioned in the dispatch register. That apart, the said letter is shown to have been dispatched to the address of the plot in question, knowing well that the physical possession of the plot was yet to be given.

(8) In view of the aforesaid, we allow this writ petition to the extent of issuing directions to authorities to sanction the building plan within a period of 30 days from the date of its submission and the limitation period as discussed herein above would be counted only with effect from 25th September, 2006.

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R.N.R.

*Before M.M. Kumar & Jora Singh, JJ.*

**BHAGWANT LAL AND OTHERS,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

C.W.P. No. 13988 of 2007

17th November, 2008

*Constitution of India, 1950—Art. 226—Punjab Housing Development Board Act, 1972—Allotment of a built up house—Allottee failing to deposit monthly installments—Cancellation of house—Death of original allottee—L.Rs depositing balance amount of installments— Issuance of eviction notice—Appeal dismissed—Petitioners already deposited entire dues and ready to deposit due amount—Petitioners also ready to remove unauthorized construction—Eviction order set aside, house restored back on undertaking to demolish any unauthorized construction as also to deposit outstanding amount.*

*Held*, that the petitioners have already deposited the entire dues with the respondents. Petitioners are ready and willing to deposit the

due amount, if any, which according to the respondents is still liable to be paid by them. The petitioners are also ready to remove the unauthorized construction, if any, within one month of pointing out the same by the respondents. The impugned orders as well as eviction order are set aside. Consequently, H.No. HE-89, Phase V, Mohali is restored back to the petitioners. The restoration of the site to the petitioners has been ordered on the specific undertaking given by them through their counsel to the Court to demolish any unauthorized construction as also to deposit the outstanding amount, if any, found due to the respondents, which shall be paid by the petitioners.

(Paras 7 & 9)

B.R. Mahajan, Advocate *for the petitioner.*

A.P.S. Mann, Advocate *for respondent Nos. 2 and 3.*

**M.M. KUMAR, J.**

(1) This petition filed under Article 226 of the Constitution prays for quashing order dated 10th April, 2007 (P-9), 7th October, 2004 (P-5/T) and 29th February, 1984 (P-2) cancelling the allotment of House No. HE-89 (Ground Floor), Phase-V, Mohali. A further prayer has been made for restoration and regularization of the allotment of the aforesaid house in favour of the petitioners being the L.Rs of the original allottee (since deceased).

(2) Brief facts of the case are that the mother of the petitioners, namely, Smt. Kanta Chaudhary, was allotted a built up House No. HE-89, Phase-V, Mohali by the Punjab Housing Development Board, Chandigarh (for short 'PHDB'), now Greater Mohali Area Development Authority (for brevity, 'GMADA'), *vide* allotment letter dated 30th September, 1975 (P-1). The tentative cost of the house was Rs. 15,000. An amount of Rs. 1,400 was deposited as earnest money and the allottee was to pay Rs. 2750 to make up 25% of the price of the house within 30 days of the issuance of allotment letter. The balance 75% of the cost of the house was payable through monthly installments of Rs. 105.50 (inclusive of interest) each in 20 years.

(3) The allottee had paid monthly installments for about 8 years but due to a financial difficulty failed to deposit the monthly installments

thereafter. Resultantly, the allotment of the house in question was cancelled by the PHDB, *vide* order dated 29th February, 1984 because the allottee had not deposited Rs. 1,393 on account of 16 monthly installments upto 30th June, 1983 and Rs. 1,660.50 on account of 18 installments up to 30th November, 1983 (P-2).

(4) It is apposite to mention here that the allotment of built up house in question was governed by the provisions of the Punjab Housing Development Board Act, 1972 (for brevity, 'the Act') and cancellation orders were also issued under the said Act. Since neither any Rules under the Act were framed nor was there any provision for filing an appeal in the Act, therefore, with a view to regulate the cases of cancellation, the PHDB in its meeting held on 31st January, 1985 took a decision *vide* Resolution No. 72.06 that cancellation can be revoked on payment of all the dues with interest etc. and litigation charges of Rs. 400.

(5) Smt. Kanta Chaudhary, original allottee, expired on 21st November, 1987 and in 1996-97 the petitioners being her L.Rs deposited a sum of Rs. 10,000 in lumpsum towards the balance amount of installments with an undertaking to deposit the remaining amount if found due with interest or penalty for delayed payment. On 22nd May, 2003, an eviction notice under Section 46(1) of the Punjab Regional and Town Planning and Development Act, 1995 (for brevity, 'the 1995 Act'), was issued by the Estate Officer respondent No. 3 in the name of original allottee Smt. Kanta Chaudhary, requiring to show cause by appearing in person on 1st July, 2003 as to why an eviction order be not passed (P-3/T). It is claimed that petitioner No. 1 appeared before the Estate Officer-respondent No. 3 and came to know that an appeal against the cancellation order was required to be filed before the Additional Chief Administrator, PUDA, Mohali, for restoration of the allotment. On 23rd July, 2003, an appeal under Section 45(5) of the 1995 Act was preferred before the Additional Chief Administrator, PUDA (P-4). The appeal was dismissed on 7th October, 2004 on the ground that the petitioners failed to deposit the amount of Rs. 73,620 which was due up to 31st October, 2003. It was also noticed in the order dated 7th October, 2004 that some unauthorized construction was also raised (P-5/T). On 27th October, 2004, the petitioners deposited

a sum of Rs, 50,000 and filed a revision under Section 45(8) of the 1995 Act before the Secretary to Government of Punjab, Department of Housing and Urban Development, Chandigarh respondent No. 1 (P-7). In the revision petition the petitioners also undertook to deposit the entire remaining amount of Rs. 26,000 within 2-3 months, which was actually deposited by them on 21st November, 2006 and cleared the entire outstanding amount (P-8). However, the Revisional Authority-respondent No. 1 dismissed the revision petition, *vide* order dated 10th April, 2007, by observing that despite giving sufficient time the petitioners failed to remove the unauthorized construction which shows that their *bona fides* are not clear (P-9). In the meanwhile, on 1st August, 2006, the Estate Officer-respondent No. 3 exercising the powers under Section 46(1) the 1995 Act passed an order of eviction and directed to vacate the house within 30 days (P-10/F).

(6) In the written statement filed on behalf of respondent Nos. 2 and 3 while admitting the factual position mentioned in the writ petition, the stand taken is that the impugned orders have rightly been passed because there was huge delay in depositing the due amount and un-authorized construction has been raised in the house in question.

(7) After hearing learned counsel at a considerable length and perusing the paper book with their able assistance, we are of the considered view that this petition deserves to succeed. It is conceded position that the petitioners have already deposited the entire dues with the respondents. Learned counsel for the petitioners has very candidly stated that the petitioners are ready and willing to deposit the due amount, if any, which according to the respondents is still liable to be paid by them. The petitioners are also ready to remove the unauthorized construction, if any, within one month of pointing out the same by the respondents. Despite our specific query made to the learned counsel for the respondents that what type of unauthorized construction has been raised by the petitioners and as to whether any notice for removing the unauthorized construction was ever issued to them, no satisfactory answer has been given. Learned counsel has merely stated that since the allotment of the house in question was already cancelled *vide* order dated 29th February, 1984, therefore, no notice for removing the unauthorized construction could have been issued. He, however, emphasised that unauthorized construction is still in existence.

(8) It is settled law that allotment of a site, plot and house etc. has to be cancelled/resumed as a last resort. For that, facts and circumstances of each case has to be considered individually by the competent authority. In that regard reliance is placed on a Full Bench judgment of this Court in the case of **Ram Puri versus Chief Commissioner, Chandigarh (1)**, wherein the Full Bench came to the conclusion that although it does not violate fundamental rights of a citizen guaranteed under Article 19(1)(f) of the Constitution, however, the same has to be used as a measure of last resort (See paras 86 and 87 of the judgment). A similar issue has arisen before Hon'ble the Supreme Court in the case of **Teri Oat Estates (P) Ltd. versus U.T., Chandigarh (2)**. In that case also the view taken by the Full Bench of this Court in Ram Puri's case (supra) has been approved. In para 57 it has been observed that the drastic step of resumption should be taken as a last resort. Hon'ble the Supreme Court also placed reliance on the principle of proportionality which have been applied to legislative and administrative action in India and went on to observe in para 49 as under :—

49. 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

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(1) AIR 1982 P&H 301

(2) (2004) 2 S.C.C. 130

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 in the proportionality principle. [See *Om Kumar versus Union of India* (2001)2 SCC 386].”

(9) As a sequel to the above discussion, this petition is allowed. The impugned orders dated 10th April, 2007 (P-9), 7th October, 2004 (P-5/T) and 29th February, 1984 (P-2) as well as eviction order dated 1st August, 2006 (P-10/T) are set aside. Consequently House No. HE-89, Phase-V, Mohali, is restored back to the petitioners. The restoration of the site to the petitioners has been ordered on the specific undertaking given by them through their counsel to the Court to demolish any unauthorised construction as also to deposit the outstanding amount, if any, found due to the respondents, which shall be paid by the petitioners. Accordingly, the writ petition is disposed of on the basis of undertaking, subject to the following directions :—

- (a) Within one month from the date of receipt of a copy of this order the respondents shall undertake an inspection of House No. HE-89, Phase-V, Mohali and if any building violations are found, then issue them a show cause notice for removal of such violations, which should also include the arrear if any payable by the petitioners; and
- (b) Within a period of one month of the receipt of the show cause notice the petitioners shall remove all the building violations and make payment of all due failing which resumption order shall stand revived.

(10) The writ petition stands disposed of in the above terms.