mandatory, it is only directory. This is a model form and cannot be termed to be statutory in the strict sense. However, this gives an indication as to what steps should be taken while passing a preliminary decree. The learned Additional District Judge has acted in conformity with the intentions of the Legislature expressed in Form 21 of Appendix D to the Code of Civil Procedure. Even if this form is to be taken to be directory and if the Court acts in accordance with this form, the decision cannot be questioned. It cannot be said that the decision in such a case will be against law. The powers of a Commissioner given in Order 26 of the Code of Civil Procedure, are not exhaustive. The Court can direct the Commissioner to discharge the functions prescribed by section 48 of the Act.

(6) The fact that the applications for appointment of a Receiver were dismissed by the trial Court and by the lower Appellate Court is of no consequence. Those applications were for appointment of a Receiver during the pendency of the suit and the appeal respectively. However, the directions to the Local Commissioner to take control of the assets of the partnership, have been given after the passing of the preliminary decree. The order had been passed to meet the entirely different situation.

(7) The ratio of decision in *Padam Sen's case* (supra) does not help the appellants. Their Lordships were dealing with the inherent powers of the Courts under section 151 of the Code of Civil Procedure to appoint Commissioners. However, in the present case, the impugned direction is given in conformity with Form 21 of Appendix D, prescribed by the Code of Civil Procedure itself.

(8) For the foregoing reasons, I do not find any merit in this appeal and dismiss the same with no order as to costs.

*H. S. B.*

*Before D. S. Tewatia and M. M. Punchhi, JJ.*

AMRIT SAGAR KASHYAP,—*Petitioner.*

*versus*

CHIEF COMMISSIONER, UNION TERRITORY, CHANDIGARH AND ANOTHER,—*Respondents.*

*Civil Writ Petition No. 2587 of 1977*

April 3, 1980.

*Capital of Punjab (Development and Regulation) Act (XXVII of 1952) as amended by Chandigarh Amendment Act of 1973 (Central Act 17 of 1973)—Section 8-A—The word 'resumption' occurring in*

*the said section—Meaning of—Discussed—Act of 'resumption'—Whether confiscatory in nature—Premises rented out by the owner to tenant—Misuser of such premises by tenant—Rights of ownership vesting in owner—Whether liable to be cancelled—Respective liabilities of owner and tenant—Stated.*

*Held,* that a reading of section 8-A of the Capital of Punjab (Development and Regulation Act), 1952 as amended by Chandigarh Amendment Act of 1973 (Central Act 17 of 1973) shows that the order of resumption carries with it a dual consequence—(1) deprival of user of the site or building, or both and (2) the added adjudged penalty in the form of forfeiture out of the already paid consideration money etc. The word 'resume' has been given the meaning 'to take again' or 'to take back' and the word 'forfeiture' has been taken as a comprehensive term which means the divestiture of specific property without compensation in consequence of some default or act forbidden by law. It is patent that section 8-A employs both the words 'resumption' and 'forfeit'. 'Resumption' is tagged to the site/building or both and 'forfeit' is tagged to a percentage of the consideration money etc. It is plain and suggestive that the converse is not true. The site cannot be forfeited and the requisite percentage of consideration money etc. cannot be resumed. Obviously there is no power with the Estate Officer to forfeit the site under the garb of resumption and treat accomplished thenceforth to have diverted the transferee of the title to the site or building or both. On reimbursement of the forfeited amount of consideration money etc. the site or the building or both have to be restored to the owner for the enjoyment of its possession and user whether directly or indirectly but if the act of misuser complained of is attributed to the tenant, then the tenant would be required to reimburse the forfeited consideration money etc. before he can be restored possession of the resumed tenanted premises. The Estate Officer is required under the law to fix responsibility of the misuser of the site or building, or both on the actual occupier misusing primarily and if he happens to be the tenant, whether the act of misuser was with the tacit or implied consent of the owner and in that case on the owner as well by apportioning the blame on both. It is thus logical to conclude that where the landlord is not at fault of misuser of the site/building committed by his tenant, then he is not the guilty party and his right to possession cannot be resumed. But if the Estate Officer after hearing both the tenant and landlord finds the tenant alone to be guilty of misuser he can resume the site and fix the forfeiture so as to deprive the tenant the user of such site or building till such time that the forfeit money is not paid by way of penalty by him. But by this order, he can by no means suspend the ownership rights of the landlord or his other rights over the tenant to claim rent of the property despite the tenant being deprived of the user of the same under the order of resumption by the Estate Officer. As a necessary corollary, the landlord cannot be asked by the Estate Officer to pay penalty for the fault of the

tenant. At the same when the misuser by the tenant is with the specific or implied permission of the landlord and the Estate Officer is required under the law to apportion responsibility, then either the tenant or the landlord or both can pay penalty subject to the restoring of the site to its permissive user. The stoppage of user contemplated by resumption will have the effect of the Estate Officer entering upon possession of the property and to hold it for and on behalf of the owner till such time that the alleged misuser was stopped and the consideration money reimbursed to the extent of the forfeiture caused thereform. The power of resumption conferred on the Estate Officer is therefore not confiscatory but is somewhat akin to that of a caretaker or trustee to hold and use, the property on behalf of the owner till such time that the penalty is paid and the site or building is restored to its permitted use.

(Paras 8, 10 and 11)

*Petition under Articles* 226/227 *of the Constitution of India praying that*:—

(*i*) *a writ in the nature of Certiorari quashing the impuged order Annexure P.* 4, *be issued.*

(*ii*) *any other writ, order or direction, which this Hon'ble Court may deem fit in the circumstances of the case be issued.*

(*iii*) *filing of certified copies of Annexures be dispensed with.*

(*iv*) *serving of advance notices on the respondents be dispensed with as the respondent No.* 1 *is bent upon to recover the amount.*

(*v*) *Costs of the Writ Petition be awarded to the petitioner.*

*It is further prayed that during the pendency of the Writ Petition, the operation of the impugned order Annexure, P-4 be stayed.*

C. M. Sharma, Advocate, *for the Petitioner.*

R. K. Chhibber, Advocate, *for Respondent No.* 1.

H. S. Awasthy, Advocate, *for Respondent No.* 2.

JUDGMENT

*Madan Mohan Punchhi, J.*

(1) This petition was heard by us at great length and we reserved judgment way back on 19th February, 1979. Shortly thereafter, my learned brother D. S. Tewatia, J. became seisin of two Letters Patent Appeals Nos. 101 and 102 of 1977 referred to a Full

Bench in which he was a member thereof. The decision in those cases was reserved on 9th January, 1980 and hence decision in this case was deferred. The judgment in those cases was authored by my learned brother D. S. Tewatia, J., with whom the other members of the Bench S. C. Mital, J. and S. S. Kang, J., concurred and the same was pronounced on 19th February, 1980. Since I have been made wiser having gone through the judgment of the Full Bench, some points common to it have now to be shelved by us and kept abided in accord with the dicta of the Full Bench. Others raised are presently being dealt with. But before that, I must hasten to give facts of the petition.

(2) The petitioner Amrit Sagar Kashyap approached this Court under Articles 226 and 227 of the Constitution of India seeking to challenge the revisional order of the Chief Commissioner, Union Territory, Chandigarh, dated 24th August, 1977 (Annexure P. 4). In the order of the Estate Officer passed on the original side and that of the Chief Administrator passed on appeal, the site belonging to the petitioner under Booth No. 41, Sector 11-D, Chandigarh, which was initially resumed, was later restored by the revisional order burdened with the condition that a sum of Rs. 2,500 be forfeited out of the price paid and the same be deposited by 26th September, 1977. The alleged misuser of the site was attributed to the tenant, respondent No. 2, which led to the impugned action of the Chief Commissioner. The Motion Bench finding that there was no decided case on the subject in which the landlord was made to suffer for the breach committed by the tenant, this petition was admitted to be heard by a Division Bench. This is how the matter was placed before us.

(3) Other facts are within a short compass. The father of the petitioner, late Shri H. N. Kashyap, had purchased the site under Booth No. 41, Sector 11-D, Chandigarh, on 4th November, 1968 from the Estate Officer, Chandigarh, against full payment in foreign exchange. It appears that after building the booth on the said site, it was given on monthly rent to respondent No. 2 under terms and conditions embodied in a lease deed, dated 18th November, 1974, copy Annexure P. 1. It appears that the tenant was attributed misuser of the booth from that of general trade to furniture manufacturing and a notice to that effect was served on the petitioner on 22nd January, 1975. He in turn asked the tenant to stop the misuse,—*vide* notice, Annexure P. 2, and also gave reply to the Estate Officer on 10th March, 1975,—*vide* Annexure P. 3. The Estate Officer ultimately

resumed the said site,—*vide* his order, dated 13th January, 1976 and forfeited a sum of Rs. 3,130 representing 10 per cent of the consideration money. The petitioner filed an appeal before the Chief Administrator which was dismissed on 12th July, 1976. The petitioner's revision petition was partially accepted by the Chief Commissioner —,*vide* Annexure P. 4 whereby the site was restored subject to the payment of Rs. 2,500 by 26th September, 1977 as said before.

(4) The Estate Officer, Chandigarh, also initiated proceedings for ejectment of the tenant, respondent No. 2, under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 to which the petitioner was made a party, but later on discharged as being unnecessary. Simultaneously, the petitioner too filed an ejectment petition against respondent No. 2 before the Rent Controller, Chandigarh, for the misuse of the said site on receipt of notice for resumption and the said matter was stated to be pending. However, as per return filed by the tenant-respondent No. 2, the Estate Officer under the Public Premises (Eviction of Unauthorised Occupapants) Act, 1971 rejected his application for evidence and ordered ejectment of the tenant from the premises. The view then prevalent, based upon a decision of a Single Bench of this Court in *Mulkh Raj* v. *The Estate Officer, etc.*, (1) and of a Division Bench judgment reported as *Messrs Mohan Lal Ghansham Dass* v. *The Chandigarh Administration and others* (2), was that the lessees/tenant could not make a grouse of the resumption of site and the real person, who could make such grievance was the landlord and his battle could not be fought by the tenant. The Full Bench in *Brij Mohan* v. *The Chief Administrator and others* (3), has overruled the aforesaid view and has held that the tenant is a party aggrieved against the resumption order and thus is entitled to file an appeal under section 10 of the Act. A *fortiori*, the tenant also is entitled to challenge proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act. This aspect of the case can no longer engage us in view of *Brij Mohan's case* (supra) more so, when the tenant-respondent No. 2 remains ready and willing to pay the penalty imposed. The stance of the Chief Commissioner, Chandigarh, on the other hand, is that such penalty is primarily the liability of the landlord

(1) C.W. 3825/68 decided on 26th November, 1971.

(2) 1979 P.L.R. 94.

(3) L.P.A. 101/77, decided on 19th February, 1980.

and he may have his remedy against his tenant, but the authorities would not accept payment of penalty from the tenant on the plea that there is no privy between the authorities and the tenant and hence would not restore the site in his favour. This stance is thoroughly shaken by the dictum of the Full Bench which has held as follows:—

> "The proposed order of resumption has dual consequences: (i) the depriving of ownership right in the site or building which concerns only the owner of the site or building; and (ii) the deprivation of the lessee of his lawful possession thereof. Such being the consequences of the order of resumption, both lessee and his lessor would be affected by the order and would thus be entitled to be heard before such an order is passed.
>
> That the Estate Officer was alive to the right of a lessee to be heard is apparent from the fact that in Letters Patent Appeal No. 101 arising from Civil Writ Petition No. 1452 of 1974 (*Brij Mohan* v. *The Chief Administrator, Union Territory, Chandigarh and others*), a copy of the show cause notice sent to the landowner was also served upon the petitioner-lessee inviting his objections, if any, to the proposed action under section 8-A of the Act.
>
> If the objections raised by the lessee are overruled and an order of resumption is passed, which would have the consequence of putting an end to the lawful possession of the lessee of the site or building then surely he would be the person who would be equally aggrieved by the order of resumption and would thus be entitled to challenge that order in appeal under section 10 of the Act".

(5) The fundamental question of law which remains posed in this petition is what precisely is "resumption" which the site/building owner can be penalised of for a misuser, committed by himself, or his tenant, or others, and what is the extending limit of its rigour ? This necessarily involves discovering its true meaning and import in section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter briefly referred to as the Act)

as substituted by the Chandigarh Amendment Act, 1973 (Central Act No. 17 of 1973). It is in the following terms:—

> "8-A. (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 of the conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show-cause why an order of resumption of the site or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the site or building, or both) should not be made.
>
> (2) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (1) and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order resuming the site or building or both, as the case may be, so sold and directing the forfeiture as provided in sub-section (1) of the whole or any part of the money paid in respect of such sale".

(6) The Full Bench in *Brij Mohan's case* (supra) spelled that the proposed order of resumption had dual consequences; *vis-a-vis* ownership rights concerning the owner and *vis-a-vis* possessory rights concerning the lessee. The learned counsel for the Chandigarh Administration brought to our notice that this section had been brought on the statute book since the Supreme Court in *Messrs Jagdish Chander Radhe Sham* v. *The State of Pu[illegible] others* (4) declared section 9 of the Act *ultra vires* of the Constitution. The present section 8-A was incorporated in the statute with effect from 1st November, 1966 as the Supreme Court decision aforesaid had an adverse effect on the regulation and development of the entire city of Chandigarh, which had been planned and developed with great care and at considerable expense. It was further pointed out by him that the power of resumption has been kept in the section for

(4) 1972 Current Law Journal 973.

the overall object of proper regulation, development and maintenance of the city as a planned one. On specific questioning by us, he maintained that the power of resumption vested in the Estate Officer had the effect of writing off the proposed transfer of the site or building, or both, under section 3, if any transferee failed to pay the consideration money or any instalment thereof; and had the effect of cancelling the instrument of conveyance already executed in case of committal of a breach of any other conditions of such sale inclusive of those mentioned in the conveyance deed. It stood undisputed that the conveyance deed in the instant case in favour of the petitioner was in accordance with the statutory form 'D' framed under rule 8 of the Chandigarh (Sale of Sites and Building) Rules, 1960. Such like forms have been given a statutory character by the Full Bench in *Brij Mohan's case* (supra). The site was admittedly conveyed to the petitioner and now the question enters into a narrow field whether the act of resumption would have the effect of cancellation of the conveyance deed and reconveyance of the site or building, or both, to the Estate Officer on repayment of at least 90 per cent of the total amount of the consideration money ? In other words, is the act of resumption confiscatory in nature so as to deprive the owner of the transferred site and his building constructed thereon, or has it merely the incidence of deprivation of the user thereof, whether directly of himself or indirectly of his tenant. It is well known in legal norms that *jus possedendi* is one of the essential attributes of ownership. It appears that the Full Bench in *Brij Mohan's case* (supra), while referring to the consequence of resumption visiting the owner where referring to the possessory aspect of ownership alone and not to the full incidents of ownership. Confiscation of property in a Welfare State, conscious of citizen's legal right (erstwhile constitutional right) of property, for such like breaches affecting regulation, development and maintenance of Chandigarh city is unthinkable. The learned counsel for the Chandigarh Administration could not cite a single instance judicially recognised wherein resumption of site was equated with reconveyance or confiscation of the site and the building erected thereon.

(7) Continuing a still closer scrutiny of section 8-A, it appears to us that the act of resumption is wedded with forfeiture up to 10 per cent of the whole or any part of the consideration money. Any part of the consideration money etc., obviously would apply to the stage of the proposed transfer on instalments, as the site keeps belonging to the Central Government under section 3 till the entire

consideration money is paid. 'The whole money of consideration etc.', would apply to a case of completed conveyance. Form 'D' of the rules aforementioned provides requisite columns for acknowledging receipt of the purchase money and thereafter goes to grant and convey to the transferee the site by carrying the following recital:—

> "To have and to hold the same unto and *to the use of the transferee, subject* to the exceptions, reservations, conditions and covenants, hereinafter contained, and each of them that is to say ....." (Emphasis supplied).

(8) It would seem that it is the user of the transferee (which expression includes his tenants) which stands subjected to conditions of using the site for the purpose of which it was transferred to the transferee. If such permitted user is deviated from, obviously the conditions of user have been broken and thus the user attribute of ownership of the owner, or his tenant, can be suspended or withdrawn. It also appears to us that the Legislature conscious of the domain of resumption, tagged with it, a simultaneous order of forfeiture of consideration money, etc., up to 10 per cent. Instead of providing a uniform penalty in terms of money, the principle of quantification of penalty has been kept propertywise instead of itemwise. The larger the property, the larger the consideration money, etc., and necessarily larger the penalty, outer limit of which is 10 per cent of the total consideration money, etc. Thus the order of resumption will carry with it a dual consequence—(1) deprival of user of the site or building, or both, and (2) the added adjudged penalty in the form of forfeiture out of the already paid consideration money, etc. The stoppage of user contemplated by resumption will have the effect of the Estate Officer entering upon possession of the property, and to hold it, for and on behalf of the owner, till such time that the alleged misuser was stopped and the consideration money reimbursed to the extent of the forefeiture caused therefrom. It appears to us that the power of resumption conferred on the Estate Officer is somewhat akin to that of a caretaker or trustee, to hold and use the property on behalf of the owner, till such time that, the penalty is paid and the site or building is restored to its permitted use. It is only on this reasoning that section 8-A can be called as a measure in furtherance of the development, regulation and maintenance of the planned city of Chandigarh.

(9) The learned counsel for the Chandigarh Administration drew our attention to a decision rendered in *S. P. Gandhi* v. *Union of India and others* (5), by a Division Bench consisting of my learned brothers D. S. Tewatia, J., and Pritam Singh Pattar, J., wherein conditions Nos. 9 and 9-A of the allotment order prohibited transfer of the land to anybody and required the transferee to surrender it to the Government if unrequired and then the price paid was to be refunded without interest. The other condition was that the transferee could not sell the building constructed thereon for a period of five years. while repelling the contention raised on the question that clauses 9 and 9-A of the allotment order were unreasonable, the Division Bench observed that the main reason for imposing the conditions and restrictions was to have proper planning and development of Chandigarh. The Division Bench considered these conditions to be reasonable and just. There the plot was sold, to the transferee at a fixed concessional price subject to a clog being put on its retransfer for a period of five years. The second is *Vinod Kumar* v. *U.T. Chandigarh and others* (6), which a Division Bench of this Court dismissed *in limine*. That was a case by a tenant challenging the order of resumption passed against the landlords. Neither of the two cases are of any help to resolve the present controversy. In the first case, the matter did not directly arise and the conditions imposed in the allotment were held to be proper and reasonable and thus the order of resumption was sustained. In the second case, relief was denied to the tenant. In neither of the two cases, has the rigour of resumption and forfeiture been examined.

(10) In Corpus Juris Secundum, Volume LXXVII, the word "resume" has been given the meaning to take again 'or to take back'. The word "forfeiture" in Corpus Juris Secundum, Volume XXXVII, has been taken as a comprehensive term which means the divestiture of specific property without compensation in consequence of some default or act forbidden by law. In Websters Third New International Dictionary, the word "resume" carries with it a meaning: to take possession again and the word "forfeiture" as something lost as a forfeit.

(11) Now it is patent that section 8-A employs both the words "resumption" and "forfeit". Resumption is tagged to the site/building, or both, and forfeit is tagged to a percentage of the consideration

(5) CW 2649-74 decided on 13th June, 1975.

(6) CW 2437-77 decided on 13th September, 1977.

money etc. It is plain and suggestive that the converse is not true. The site cannot be forfeited and the requisite percentage of consideration money, etc., cannot be resumed. Obviously, there is no power with the Estate Officer to forfeit the site under the garb of resumption and treat accomplished thenceforth to have divested the transferee and his successors-in-interest of the title to the site or building, or both. On reimbursement of the forfeited amount of consideration money etc., the site or the building or both have to be restored to the owner for the enjoyment of its possession and user, whether directly or indirectly; but if the act of misuser complained of is attributed to the tenant, then the tenant would be required to reimburse the forfeited consideration money etc. before he can be restored possession of the resumed tenanted premises. The Estate Officer is required under the law to fix responsibility of the misuser of the site or building, or both, on the actual occupier misusing primarily, and if he happens to be the tenant, whether the act of misuser was with the tacit or implied consent of the owner, and in that case on the owner as well, by apportioning the blame on both. It is thus logical to conclude that where the landlord is not at fault of misuser of the site/building committed by his tenant, then he is not the guilty party and his right to possession cannot be resumed. But if the Estate Officer after hearing both the tenant and the landlord finds the tenant alone to be guilty of misuser, he can resume the site and fix the forfeiture so as to deprive the tenant the user of such site or building till such time that the forfeit money is not paid by way of penalty by him. But by this order, he can by no means suspend the ownership rights of the landlord or his other rights over the tenant to claim rent of the property despite the tenant being deprived of the user of the same under the order of resumption by the Estate Officer. As a necessary corollary, the landlord cannot be asked by the Estate Officer to pay penalty for the fault of his tenant. At the same time when the misuser by the tenant is with the specific or implied permission of the landlord, and the Estate Officer is required under the law to apportion responsibility, then either the tenant or the landlord, or both, can pay penalty subject to the restoring of the site to its permissive user. There arises no difficulty in those cases where the owner is a self occupant of the property accused or misuser.

(12) In the case in hand, the Chief Commissioner has ordered restoration of the site and imposed penalty on the landlord-petitioner. In the first place, this order is not legally sustainable inasmuch as the

site can only be restored on reimbursement of the forfeited sum as penalty. These two cannot be kept apart on the bare reading of section 8-A. In the second place, the misuser was attributed to the tenant and the proceedings of resumption had to be directed against him to deprive him of the user of the site without disturbing the obligations of the landlord and the tenant as to the payment of rent etc. *inter se*. The proceedings of resumption and forfeiturue are required to be undertaken with regard to a tenanted premises by giving an opportunity of being heard to both the tenant and the landlord and it is to be determined as to whose possession is to be resumed, the actual from the tenant, or the actual and legal both from the tenant and landlord respectively, on fixation of fault, and on whom, and in what proportion is reimbursement to be made of the forfeited money.

(13) As a sequel to the aforesaid observations, this petition deserves acceptance and the same is hereby allowed by quashing the impugned order of the Chief Commissioner, Annexure P. 4, and the precedent orders of the Chief Administrator and the Estate Officer. Since legal questions involved were not free from difficulty there would be no order as to costs.

D. S. Tewatia, J.—I agree.

*H.S.B.*

*Before R. N. Mittal, J.*

OM PARKASH SAINI (MASTER WARRANT OFFICER No. 48460)—*Petitioner*

*versus*

DALJIT SINGH,—*Respondent.*

*Civil Revision No. 669 of 1980.*

April 3, 1980.

*Air Force Act* (45 *of* 1950)—*Section* 32—*East Punjab Urban Rent Restriction Act* (*III of* 1949)—*Sections* 4, 13, 15 *and* 16—*Benefit of section* 32—*Whether available to Air Force Personnel in matters pending before the Rent Controller—Rent Controller and the Appellate Authority under the Rent Act—Whether 'Courts' within the meaning of section* 32.