

*Before T.P.S. Mann, J.*

**COL. (RETD.) DALJIT SINGH & OTHERS,—Petitioner**

**versus**

**M.C. CHANDIGARH & OTHERS,—Respondents**

C.W.P. No. 11956 of 1999

22nd December, 2008

*Constitution of India, 1950—Art. 226—Punjab Municipal Act, 1911—Punjab Municipal (Executive Officer) Act, 1931—Schedule I, S. 4—Allotment of SCF on free hold basis—Allottee selling to petitioners—Petitioners failing to deposit installments—Request for surrender of site declined—Executive Officer ordering resumption of site—Provisions of Act do not indicate anywhere that power of resumption of a site vests with Notified Area Committee and such power could be delegated to Executive Officer—Only President of NAC competent to pass an order of resumption—Order of Executive Officer held to be void ab initio—Orders passed by Executive Officer ordering resumption of plot & that of Commissioner dismissing appeal set aside.*

*Held*, that the executive power of the Municipality vests in the Executive Officer. These executive powers include the powers conferred and duties imposed upon the functions vested in, and the objections to be tendered and notice given to the Committee under the Sections of the Act mentioned in Schedule I. A look at the various Sections of the Act specified in Schedule I of the aforementioned Act does not indicate anywhere that the power of resumption of a site vested with the Committee and therefore, such a power could be delegated to the Executive Officer. Moreover, “Committee” has also defined in Section 2(b) of the Executive Officer Act as a Committee of a Municipality or a Notified Area, as the case may be, to which this Act had been extended. There is no material on the file to show that the power of resumption of site vested with the Committee and not with the President. In such a situation, any delegation by a Committee of its power in favour of an Executive Officer did not entitle such an Executive Officer to

proceed and pass an order of resumption. Only the President of the Committee was competent under Clause 10 of the allotment letter to pass an order of resumption and no one else. In view of the above, it has to be held that order passed by Executive Officer of the Notified Area Committee, Mani Majra, while ordering resumption of the plot, was *void ab initio*. Resultantly, the order of resumption of the site in question is treated to be non-existent in the eyes of law.

(Para 9)

Ashok Aggarwal, Senior Advocate with G.S. Dhillon, Advocate  
*for the petitioners.*

Ms. Deepali Puri, Advocate *for the respondents.*

***T.P.S. MANN, J. (ORAL)***

(1) S.C.F. No. 1006, Motor Market, Mani Majra was allotted on free hold basis vide letter, dated 23rd November, 1989 (Annexure P-1) to Ashwanjit Singh Joson. As per clause 3 of the allotment letter, a sum of Rs. 1,67,500 stood paid by the allottee towards 25% of the cost of the site, inclusive of earnest money. The balance 75% of the cost, together with interest thereupon at the rate of 10% per annum, was payable in three annual equated installments of Rs. 2,01,000 each, first one falling due on 20th August, 1990. Clause 7 of the allotment letter provided that in case the installment was not paid by the 10th of the month following the month in which it fell due, a show cause notice would be served calling upon the allottee to deposit the installment and also to show cause as to why penal interest at the rate of 15% per annum on the amount of installment should not be charged from him. In the event of the allottee failing to comply with the terms of show cause notice, the President of the Committee could proceed to take action for resumption of plot without any further notice. The President had, however, the authority to grant extension for payment of the installment with penal interest at the rate of 15% per annum for a period not exceeding six months at all. In case the allottee or the transferee wanted to surrender the site due to certain compelling circumstances, clause 10 provided that such a request was to be allowed with prior permission from the President of the Committee and the surrender was to be subject

to forfeiture of 10% of the amount of 25% of the cost paid at the fall of the hammer.

(2) The aforementioned allottee agreed to sell the site in question in favour of the petitioners after getting prior permission and No Objection Certificate from the Notified Area Committee, Mani Majra. Pursuant thereto, the Committee transferred the site in question in the names of the petitioners on 27th June, 1990. It appears that the petitioners could not pay the first installment amounting to Rs. 2,01,000 and due on 20th August, 1990 even within the grace period upto 10th September, 1990. Accordingly, they were served with a show cause notice dated 8th December, 1990 requiring them to deposit the installment along with the penal interest for the delayed period within 30 days from the date of issue of the show cause notice. Another notice dated 31st March, 1991 was served upon them to clear the outstanding dues along with penal interest for delayed period within 15 days and to appear before Executive Officer on 2nd April, 1991 at 10.00 A.M. in the office of the Committee but the petitioners failed to do so. This was followed by final notice dated 25th April, 1991 served upon the petitioners to deposit the payment of first installment along with penal interest for delayed period within 15 days and also to appear before the Executive Officer on 10th May, 1991 at 10.30 A.M. but the position remained the same even pursuant thereto. In the meantime, second yearly installment of Rs. 2,01,000 also fell due on 20th August, 1991. The Committee, accordingly, again served a notice dated 22nd November, 1991 upon the petitioners to deposit the first and the second installment along with the penal interest at the rate of 15% per annum for delayed period upto 28th November, 1991 but the said payment was not made. It appears that the petitioners became disheartened with their investment and, accordingly, submitted an application dated 24th June, 1992 for surrendering the site. Executive Officer, Notified Area Committee, Mani Majra vide order dated 3rd July, 1992 (Annexure P-2) declined the request of the petitioners for the surrender of the site on the ground that the request for surrender was not covered under the provisions of Clause 10 of the allotment letter. The Executive Officer then proceeded to resume the site in question and further forfeited the entire amount already deposited by the allottee/petitioners. Aggrieved of the same,

the petitioners filed an appeal (Annexure P-3) which was dismissed by the Commissioner, Municipal Corporation, Chandigarh vide order dated 15th June, 1999 (Annexure P-4). The aforementioned orders Annexures P-2 and P-4 have been challenged by the petitioners by filing the present writ petition under Article 226 of the Constitution of India.

(3) Learned counsel for the petitioners has submitted that as per Clause 7 of the letter of allotment dated 23rd November, 1989 (Annexure P-1), only the President of the Committee was competent to take action for resumption of the plot. Instead, it was the Executive Officer of the Committee, who passed the impugned order of resumption which has been upheld in appeal by the Commissioner. As such the action of the respondents in resuming the site in question was *void ab initio* and, therefore, impugned orders Annexures P-2 and P-4 are liable to be set aside.

(4) Learned counsel for the respondents has submitted that on 10th May, 1990, a resolution was passed by Notified Area Committee, Mani Majra, wherein the powers of The Committee under the various provisions of the Punjab Municipal Act, 1911 (hereinafter referred to as '**the Act**') as contained in Schedule-I of the Punjab Municipal (Executive Officer) Act, 1931 (for short '**Executive Officer Act**') stood delegated to the Executive Officer and, therefore, such an Executive Officer was competent to pass the impugned order of resumption.

(5) Learned counsel for the parties have been heard and the pleadings of the parties perused.

(6) Before proceeding further, it would be appropriate to refer to Clause 7 of the letter of allotment (Annexure P-1) which reads as under :—

“7. In case the installment is not paid by the 10th of month following the month in which it falls due, a show cause notice shall be served calling upon the allottee to deposit the installment and to show cause why penal interest @ 15% P.A. on the amount of installment should not be charged from him. If he fails to comply with the terms of show cause notice, the President of the Committee shall proceed to take

action for resumption of plot without any further notice. However, in exceptional circumstances, the President may grant extension for payment of the installment with penal interest @ 15% p.a. for a period not exceeding six months at all.”

(7) In view of the terms and conditions of the allotment, only the President of the Committee was competent to take action for resumption of the plot in the event of any default of payment of the installment by the allottee/transferee. The stand of the petitioners is that there is no provision under the Act allowing the resumption of the site by an order to be passed by the Executive Officer. The Executive Officer was neither the authority named in the allotment letter nor such an officer could draw power of resumption under the Act. Learned counsel for the respondents has not been able to point out any provision in the Act which allowed the Executive Officer to pass an order of resumption. On the other hand, reliance by the respondent has been placed upon the resolution dated 10th May, 1990 (Annexure P-5) whereby the powers of the Committee under the various provisions of the Act as contained in Schedule-I of the Executive Officer Act were delegated to the Executive Officer. The resolution reads as under :—

“The proposal was considered and the Committee unanimously accorded its approval to the delegation of the powers of the Committee under the various provisions of the Punjab Municipal Act, 1911 as contained in Schedule-I of the Executive Officer Act, 1931.”

(8) Section 4 of the Executive Officer Act defines the powers of the Executive Officer. It reads as under :-

“4. **Power of the Executive Officer.**—In a municipality or notified area as the case may be in which an Executive Officer has been appointed—

(a) the executive power for the purpose of carrying on the administration of the municipality shall, subject to the provisions of this Act and of any rules made under this Act or under the Municipal Act, vest in the Executive Officer,

- (b) the powers conferred and duties imposed upon, the functions vested in and the objections to be tendered and notice given to the committee under the sections of the Municipal Act mentioned in Schedule I, shall not be exercised or performed by, vested in, or be tendered or give to the committee, but may be exercised or shall be performed by, or shall vest in, or shall be tendered or given to the Executive Officer, provided that—
- (i) the power conferred by Section 39 of the Municipal Act shall not be exercised by the Executive Officer and may be exercised by the committee in respect of the appointment of any officer or servant of the committee to a post for which the monthly remunerating exceeds Rs. 25 and in respect of the power of removal or dismissal of any officer or servant whose monthly remuneration exceeds Rs. 49 provided that the Executive Officer shall dismiss an employee if required by the committee to do so;
  - (ii) the power to revise the valuation and assessment conferred by Section 65 of the Municipal Act and the power to amend the assessment list conferred by sub-clause (1) of Section 67 of the Municipal Act shall be exercised by sub-committee consisting of the Executive Officer and two members of the committee appointed by the committee for the purposes;
  - (iii) the power of the Executive Officer to withhold the grant of a license for any of the traders or purposes specified in Section 121, 122 of the Municipal Act or to withhold written permission under Section 124 of the Municipal Act may be bye-laws be made subject to revision by the committee;

- (iv) the exercise or discharge by the Executive Officer of any powers, duty or function thus conferred imposed or vested in him, shall be subject to such restrictions, limitations and conditions as may be imposed by any rules made by the State Government under the Municipal Act upon the exercise or discharge of the such power, duty or function by the committee.
- (c) the Municipal Act shall be deemed to have been amended in the manner set forth in Schedule II;
- (d) no bye-laws inconsistent with this Act shall be made by the committee in exercise of the powers conferred by Section 31 of the Municipal Act and if any such bye-laws have been made they shall be deemed to have been cancelled to the extent to which they are thus inconsistent;
- (e) if in any bye-laws made by the committee in exercise of the powers conferred by Sections 188, 189 or 197 or in any rule made in exercise of the powers conferred by Section 3 of the Hackney Carriage Act, 1879, it is provided that notice shall be given to or licenses granted by the committee, such bye-laws or rule shall be deemed to have been amended so as to provide that subject to bye-laws made under the Municipal Act or rules made under this Act such notice shall be given to or such license granted by the Executive Officer.”

(9) The executive power of the Municipality vests in the Executive Officer. These executive powers include the powers conferred and duties imposed upon the functions vested in, and the objections to be tendered and notice given to the Committee under the Sections of the Act mentioned in Schedule I. A look at the various Sections of the Act specified in Schedule I of the aforementioned Act does not indicate anywhere that the power of resumption of a site vested with the Committee and therefore, such a power could be delegated to the Executive Officer. Moreover, “Committee” has also been defined in

Section 2 (b) of the Executive Officer Act as a Committee of a Municipality or a Notified Area, as the case may be, to which this Act had been extended. There is no material on the file to show that the power of resumption of site vested with the Committee and not with the President. In such a situation, any delegation by a Committee of its power in favour of an Executive Officer did not entitle such an Executive Officer to proceed and pass an order of resumption. Only the President of the Committee was competent under Clause 10 of the allotment letter to pass an order of resumption and no one else. In view of the above, it has to be held that order Annexure P-2 passed by Executive Officer of the Notified Area Committee, Mani Majra, while ordering resumption of the plot, was *void ab initio*. Resultantly, the order or resumption of the site in question is treated to be non-existent in the eyes of law.

(10) Learned counsel for the petitioners has submitted that on 26th August, 2003, this Court had permitted the petitioners to offer the outstanding payments to the respondents without prejudice to rights and contentions of the parties and such an order was not to create any equity in favour of the petitioners. Pursuant thereto, the respondents handed over a statement of accounts to the petitioners through their counsel and the total outstanding amount, as demanded by the respondents along with interest at the rate of 24% per annum, was duly deposited. Photocopy of receipt dated 21st February, 2007 issued by Municipal Corporation, Chandigarh pertaining to deposit of two pay orders for a total amount of Rs. 7,11,000, has already been placed on record by the petitioners by filing C.M. No. 4113 of 2007 which was allowed on 13th March, 2007. This fact has been admitted by learned counsel for the respondents.

(11) Resultantly, the writ petition is accepted. Impugned orders, Annexure P-2 passed by the Executive Officer, resuming the site in question, and, order Annexure P-4 passed by the Commissioner, while dismissing the appeal of the petitioners, are set aside. As the petitioners have already paid the entire outstanding amount along with interest, as admitted by the respondents, the site in question shall stand restored in favour of the petitioners.

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**R.N.R.**