

PETITIONER:
BABU SINGH BAINS ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS. ETC.

DATE OF JUDGMENT: 11/09/1996

BENCH:
K. RAMASWAMY, FAIZAN UDDIN, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH

Civil Appeal Nos. 12932-35, 12955, 12936-49, 12951,
12953/1996 (Arising out of SLP (C) Nos. 15376-77, 15393-94,
7960, 8118-19, 9174-79, 12491, 11578-79, 12389-90/90, 885,
1650 and 14-15)

AND

WRIT PETITION (C) NOS. 520/94, & 412/96

O R D E R

C.A. No. 12931/96 @ SLP No. 4559/93 &

W.P. No. 520/96

Application for impleadment is dismissed.

Leave granted in the special leave petition.

The city of beauty, Chandigarh, carefully architected and meticulously executed as a model city in India by famous architect, Shri Le. Corbursier; when it was getting desideration compounded by disfiguration of beauty and elegance, statutory regulations stepped in to stamp out erosion and to restore its natural environment. These cases are instances of blatant misuse of the buildings or plots in the planned structures.

This appeal by special leave arises from the order of the Division Bench of the Punjab & Haryana High Court made on January 27, 1993 in C.W.P. No. 14183/92 upholding the order of the Estate Officer who refused to condone the delay in making application under Rule 11-D of the Chandigarh (Sale of Sites and Buildings) (Amendment) Rules, 1979 (for short, the "Rules").

The writ petition under Article 32 of the Constitution was filed by the petitioner challenging the validity of Section 8A of the Capital of Punjab (Development & Regulation) Act, 1952 (Punjab Act of 1952) (for short, the "Act").

The facts are long and tendentious. Suffice it to state, in nutshell, that the appellant/petitioner having had the allotment of free hold plot in residential Sector 21-A, viz, bearing House No. 341 in Street 'D' had constructed a double-storeyed house. He had used it as Blue Star Guest House, contrary to the regulations. Consequently, a notice of resumption under Section 8 of the Act was given to the appellant/petitioner. After following the procedure

prescribed thereunder, the resumption order came to be passed on October 17, 1977. The revision against that order came to be dismissed on August 28, 1978. Thus the resumption order had become final. Subsequently, notice under Section 5 of the Public Premises Act was issued to the appellant/petitioner for taking possession of the land. Those proceedings also ultimately culminated in the judgment of this Court made in C.A. No. 3102/81 on March 13, 1992. Therein, this court had given an opportunity to appellant/petitioner to argue afresh on merits of resumption but he could not point out any invalidity in the resumption order. Accordingly, the resumption was upheld. Even on the ground of eviction also this Court had upheld the order on merits thus :

"Learned counsel for the appellant was unable to point any infirmity whatsoever of order passed by the Estate Officer under the Eviction Act. In view of the circumstances, we find no force in this appeal and it is accordingly dismissed."

However, one year's time was given to the appellant/petitioner to vacate the premises subject to his giving an undertaking. Since he had not filed the undertaking within the prescribed time, it is not in dispute, possession was taken. Thus the resumption order as well as order of eviction became final and conclusive against the appellant/petitioner. His right, title and interest in the said property stood divested and the Chandigarh Administration became owner thereof. The appellant/petitioner then filed an application on April 6, 1992 and April 9, 1992 under Rule 11-D of the Rules. The Estate Officer dismissed the petition giving elaborate reasons in support thereof. The High Court in the impugned order thereunder has pointed out that the appellant/petitioner has not given any satisfactory explanation for the delay of 13 years in filing the application and no fault could be found with the order passed by the Estate Officer. Thus this appeal by special leave and the writ petition.

When the matter came up for hearing before a Bench of two learned Judges, by order dated February 14, 1995 reference was made to a three-Judge Bench to consider the validity of Section 8A of the Act and the question of resumption since it has got a vital bearing on the right to property held by a defaulter. Thus these cases have come up before this Bench.

It has been very strenuously argued by Shri Swaroop Singh, learned counsel for the appellant with painstaking efforts, realising the tight spot in which the appellant was placed that the appellant though had used the house partly for non-residential purpose, (which we need not enter upon for adjudication) Section 8A of the Act would be invoked only when the installments of purchase price of the site, or other dues were not paid by the purchaser. On their due discharge, power under Section 8A gets exhausted. For violation of the rule for misuser of the property, there is no power under Section 8A of the Act to resume the property. Such power would be available and be invoked only when available under any State law. The only remedy provided under Section 15 of the Act is to stop misusage without invoking the power of resumption, laying prosecution under Section 15 and to collect the penalty. The power under Section 8A cannot be resorted to in case misuse; such invocation of power would be an arbitrary exercise of power

violating Article 14 of the Constitution. It is also contended that the appellant has been using all legal recourse open to redress his legal injury and was diligently prosecuting the remedies available under the law. There was no need for him to challenge the resumption order in any court of law for the reason, that the resumption at one point of time was only divestiture of the little but not of dispossession from the property. When his possession was sought to be interdicted by having him ejected from the premises, he had challenged the eviction order which was ultimately upheld by this Court. Thereafter, the appellant had availed of the right and remedy provided in Rule 11-D of the Rules and that, therefore, this was the proper explanation in filing the application at a belated point of time. The Estate Officer and the High Court have committed error of law in not considering the delay from this proper perspective. He further contended that the appellant/petitioner having invested huge money in construction of double-storeyed building, he cannot be visited with the penalty of divestiture of title to and ejectment of him from the said property. When penalty could be collected under Section 15, the recourse for eviction was bad in law. So, he availed of the right as provided in Rule-D of the Rules. The exercise of the power of the Estates Officer in refusing to condone the delay and not re-transferring the property is vitiated by manifest error of law warranting interference.

Mrs. Kamini Jaiswal, learned counsel for the respondent, has argued that the resumption and eviction order having become final, it is no longer open to the appellant/petitioner to challenge the validity of Section 8A. In fact, the validity of Section 8A was dealt with and upheld by majority of the Full Bench of the High Court in Ram Puri Vs. Chief Commissioner, Chandigarh [AIR 1982 P&H 301]. When this Court had given an opportunity to the appellant/petitioner to point out illegality, if any, in the action taken under Section 8A of the Act, he could not satisfy this Court as to any invalidity thereof. Under these circumstances, he cannot be permitted to raise these contentions in the writ petition. He is not entitled to challenge the validity of Section 8A in the writ petition since his remedy has already been closed by the orders of this Court. She also contended that the action for resumption was taken to maintain the ecology sanitation and beauty of the city constructed as per the design and planning, as a model city. Contravention of the scheme renders the beauty of the city irreversible. The appropriate course open to the authorities is to resume the land and prevent such misuser. The appellant/petitioner having allowed all the options closed to him, it is no longer open to him, now to challenge the validity of Section 8A of the Act at this belated stage. Even otherwise, section 8A is ultra vires the Act as it seeks to sustain the purpose and policy of the Act which otherwise would be rendered ineffective and toothless. She further contends that he having slept over for 13 years, the appellant cannot be permitted to file an application under Rule 11-D of the Rules. He has no right as such. He has only benefit of making an application. It is a discretionary relief available to him under the Rules to be considered by the Estate Officer. In view of the background of the case, the Estate Officer had considered the totality of the facts and given elaborate reasons for refusing to condone the delay and to re-transfer of the property. In support thereof, she relies upon the judgment of this Court in Chandigarh

Administration Vs. Johnson Paints [(1196)] 3 SCALE 680]. The High Court also has given cogent reasons for refusing to grant the relief sought for. Accordingly, no case has been made out warranting interference.

In view of the diverse contentions raised, the only question is ; whether the appellant/petitioner is entitled to avail of the remedy under Article 32 of the Constitution ? But for the reference made by the Bench of two learned Judges, we would have straightaway held that the doors to a litigant citizen under Article 32 of the Constitution are closed fast and writ petition is not maintainable since it amounts to reviewing the order passed by this Court in C.A. No 3102/81 March 13, 1992. It is settled law that once an order passed on merits by this Court exercising the power under Article 136 has become final, no writ petition under Article 32 on the self-same issue is maintainable. Though the resumption order was not challenged, this Court had permitted the appellant to convince this Court had permitted the appellant to convince this Court as to the invalidity of the resumption order passed under Section 8A but he could not point out any invalidity nor did he raise any contention as regards the validity of Section 8A. Therefore, the principle of constructive res judicata stands fast in his way to raise the same contention once over. However, since the two-Judge Bench has made the reference in this behalf, it is necessary to briefly deal with the contentions raised by Sri Swaroop Singh learned counsel for the appellant.

After unsuccessful challenge to Section 9 of the Act under Article 226 before the Full Bench of the Punjab & Haryana High Court, on appeal, this Court in Jagdish Chand Vs. State of Punjab (AIR 1972 SC 2587) had declared that Section 9 was invalid since the purchaser had already paid the entire consideration amount and thereafter the power under Section 9 was not available for resuming the property. Consequently, the Parliament amended the Act and introduced Section 8A deleting Sections 9 and 11 of the Act. The statement of Objects in that behalf read as under :

"The Supreme Court in Jagdish Chand Radhey Shyam V. State of Punjab, (Civil Appeal No. 1099 of 1967) declared Section 9 of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act XXVII of 1952), as is in force in the Union Territory of Chandigarh, as being violative of Articles 14 and 19 (1) (f) of the Constitution and held that the Central Government is not entitled to resume the site or building transferred under Section 3 of that Act, or to forfeit the money paid in respect of such transfer under the said Section 9. The main ground on which the Supreme Court had based its conclusions was that there is nothing in the Act to guide the exercise of power by the Government as to when and how any of the methods for recovering the amount of consideration in arrears specified in Sections 3, 8 and 9 of the Act, will be chosen. (Emphasis supplied.)

2. The decision of the Supreme

Court has created several practical difficulties in administering the provisions of the Act. Further, the situation created by the decision of the Supreme Court is already having an adverse effect on the regulation and development of the entire city of Chandigarh, which has been planned and developed with great care and at considerable expense over the past several years. It is, therefore, essential to remove the objections pointed out by the Supreme Court by amending the Act retrospectively from the 1st of November, 1966 being the date on which the Union Territory of Chandigarh was formed, and to validate the actions taken under the impugned provisions of the Act (Emphasis supplied.)

3. The Bill seeks to achieve the aforesaid objections."

(emphasis supplied)

A reading thereof would clearly indicate the animation of the Legislature that the aforesaid decision of this Court was causing inconvenience for preventing misuser of the property defeating the scheme of the Act. Therefore, it necessitated to amend the Act and bring on statute Section 8A for of the property used in violation of the conditions of the sale, provisions of the Act and the Rules made in that behalf. Majority of the Full Bench in Ram Puri's case [supra] had considered the effect of Section 8A and held in paragraph 66 thus ;

"66. Adverting specifically to Sec. 8A the restrictions for the exercise of the powers vested thereby exist not only in the express provision thereof, but are equally discernible from the larger purpose of the Act, its preamble as also the other sections thereof when read with the statutory rules framed thereunder. The larger purpose of the planed development and regulation of the new capital city, as spelled out in the preamble of the Act, is the fixed Pole the power of resumption under Section 8A is hitched. What deserves highlighting herein is that this power of resumption under Section 8-A is merely a discretionary and an enabling power. The statute does not lay down any mandate that it must necessarily be exercised in a particular situation. In sub-section (1) thereof it is first in the discretion of the Estate Officer that he may issue a notice to show cause why an order of resumption of site or building may not be made. Equally under sub-section (2) after considering the

cause shown against such a notice it is optional for the Estate Officer to order such resumption or not. The word used in both the sub-sections is 'may' and not 'shall'. Mr. Anand Swaroop rightly pointed out that this power of resumption is indeed the last arrow in the quiver of a number of sanctions to enforce the planned development and the regulation of the capital and to be only resorted to in a situation commensurate with its necessary exercise. To put it in plain language it is not mandatory for the authority to order resumption, but only in extreme cases it enables it to do so when the other powers and sanctions to enforce the purpose of the Act have failed, or in the circumstances it is the only remedial power which can be applied. Therefore, it is farcical and imaginary to assume that the authority would necessarily use this power arbitrarily and whimsically and that they will use this hammer to swat a fly. As Section 8-A now stands (in sharp distinction to the deleted Section 9) it mandatorily required a notice to show cause to the person concerned whenever the exercise of this power is contemplated. Not only is such a person entitled to have a reasonable opportunity of contesting such a notice, but the law in terms confers on him the power to lead evidence in support of his stand. The mandate as laid on the Estate Officer is to record his reasons in case he orders resumption. Apart from these inbuilt safeguards under Section 8-A, it is statutory rules which provide for an appeal against the order of resumption by the Estate Officer, to the Chief Administrator. It is thereafter that the rules zealously provide for a revision to the Chief Commissioner, who is the executive head of the Union Territories. Obviously in a proper case, the right to approach the Court under Article 226 of the Constitution of India is equally open.

68. In conclude, in the larger conspectus of the purposes of the Act itself, its preamble; the setting in which it is placed along with the supplementary sections of the Act and the rules framed thereunder it has to be held that

the enabling power of resumption conferred thereby is only a reasonable restriction on the fundamental right to hold, acquire and dispose of property and is, therefore, in no way violative of Article 19 (1) (f)."

Accordingly, the Full Bench had held that Sections 8-A was brought on statute with a view to bring it in conformity with the purpose the Act seeks to subserve. Learned counsel for the appellant relied upon the minority judgment of learned Judge. It would, however, appear that the learned Judge, with due respect, sought to set the clock back to the Amendment by constructing the meaning of the words 'forfeiture' and 'resumption' and the consequential effect on general principles of law without giving needed effect to the object of the Amendment. Once the statute occupied the field and gave power to resume the land or building subject to the conditions mentioned therein, the general principles of resumption and other principles considered therein absolutely remained no more relevant. The majority judgment has rightly focussed 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 (Pvt.) Ltd. vs. State of Punjab & Anr. [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 Chhagganlal [P] Ltd. vs. Municipal Corporation of Greater Bombay & Ors. [AIR 1974 SC 2009] knocking the bottom of the plea of constitutional invalidity of Section 8-A on the anvil of Article 14. Though softer course under Section 15 was available, Section 8A does not become invalid on that score. Section 9 has been deleted and procedural safeguards have been provided in Section 8-A. Therefore, Section 8A, having provided fair procedure, does not become arbitrary and violative of Article 14.

For these reasons and also for the reasons given in the majority judgment, we are of the view that Section 8-A is not violative of Article 14 since it has prescribed an in-built procedure of giving an opportunity and right to adduce evidence and consideration thereof by the Estate Officer before resumption and to pass a reasoned order in support thereof. The order is also subject to an appeal before the Chief Administrator. If permissible, within circumscribed parameters, appellate order may be subject to judicial review under Article 226. Since this procedure was not available under Section 9 of the Act, this Court had declared it as ultra vires of Article 14. The vice pointed out by this Court in Jagdish Chander's case (supra) has been cured by introducing Section 8-A. It would, therefore, be clear that the resumption under Section 8-A is not only in case of non-payment of dues under the sale but for violation of the conditions of the sale, the rules, regulations and other relevant conditions applicable in that behalf. Therefore, we do not find any invalidity in Section 8-A.

It is then to be seen; whether the appellant's application under Rule 11-D of the Rules has not been considered in proper perspective by the Estate Officer and whether any illegality has been committed by the High Court by not interfering therewith. Having considered the reasoning given by the Estate Officer in his order and the conclusion reached by the High Court, we do not think that

they have committed any illegality in refusing to condone the delay. This Court has pointed out in Johnson Paints's case [supra] in paragraph 6 that once the original allotment stands cancelled and resumption by the Estate Officer becomes final, the allottee has no right to the allotment of the site or building. Rule 11-D deals with only discretionary power given to the Estate Officer. It does not clothe the former allottee with any right to reallotment. The power under Rule 11-D is only discretionary; he may give the benefit to the former transferee subject to fulfillment of the conditions mentioned therein which includes power to refuse to order reallotment. In fact, this Court has doubted the wisdom behind Rule 11-D of reopening the issue once over through back door entry under Rule 11-D, after the entire process of resumption has become final and received quiteous. It would be a constant sprout of corruption and abuse of Rule 11-D for diverse reasons which in the interest of smooth administration need to remove the irritant. However, we need not dwell upon it any further as it is not necessary for the purpose of deciding the question in this case. Suffice it to state that Rule 11-D is only an enabling provision to make an application. The Estate Officer has discretion to re-grant the land or building which stood already resumed and vested in the State. Of course, he cannot arbitrarily reject the petition; he has to give reasons in support thereof as contemplated in Rule 11-D itself.

Thus considered, the High Court has rightly pointed out that the appellant has not given any proper explanation for inordinate delay of 13 years in not making the application. It is true that the appellant was carrying on the litigation but was not properly advised at the appropriate stages to avail the remedies; he landed himself in trouble on account of his own conduct. Considered from this perspective, having regard to the facts in this case, we do not think that it is a case warranting interference.

The appeal and the writ petition accordingly stand dismissed. No costs.

I.W.P. (C) No. 412/96

The writ petition is dismissed as withdrawn.

C.A. Nos. 12936-37/96

(@ SLP(C) Nos 8118-19/90)

Leave granted.

These appeals by special leave arise from the judgment and order of the High Court of Punjab and Haryana at Chandigarh made on January 25, 1990 and March 16, 1990 in Review Petition No. 45 of 1990 and CWP No. 8266 of 1988.

Admittedly the appellants though doctors, are using the premises for nursing home/clinic. Admittedly, the premises are located in residential zone. Therefore, it would clearly be a contravention of the rule of by misuser of the house for non-residential purpose. Accordingly, we do not find any illegality in the action taken by the respondents. However, six months time is granted to the appellants to stop the misuser. The appellants should give an undertaking before the Estate Officer within four weeks from today that they would stop misuser on expiry of six months from to-day. In case they do not misuser on expiry of six months, the Estate Officer is entitled to resume the property without any further order or action. For misuser, in lieu of resumption, the Estate Officer may impose any reasonable penalty which the appellants shall pay.

The appeals are accordingly disposed of. No costs.

C.A. NOS. 12932-33/96

(@ SLP (C) Nos. 15376-77/90)

Application for intervention is dismissed.

Leave granted.

These appeals by special leave arise from the judgment and order of the High Court of Punjab & Haryana made on January 25, 1990 and March 16, 1990 in Review Petition No. 49/90 and CWP No. 8317/88.

The appellant is using part of the property for non-residential purpose, viz., a shop and, therefore, it is clear case of conversion of user of the property from residential to non-residential. The action taken by the authorities is perfectly legal. However, we give six months time to the appellant to stop the misuser. He should give an undertaking to the Estate Officer within one month from today that he would stop misuser within six months from today. If he continues the misuser even after the expiry of six months from today or any time thereafter, the Estate Officer is at liberty to resume the property without any further order or proceedings. Similarly the Estate Officer is at liberty to impose any reasonable penalty for misuser which the appellant shall pay over.

The appeals are accordingly ordered. No costs.

C.A. NO. /96

(@ SLP (C) No. 12491/90).

Leave granted.

This appeal by special leave arises out of the judgment and order of the High Court of Punjab & Haryana made on March 16, 1990 in Review Petition No.47/90 and W.P. No. 5576/88. The appeal filed against the main writ petition has already been disposed of by this Court in R.C. Chawla vs. State of Haryana & Ors. [J] 1996 (1) SC 633].

The appeal is disposed of in terms of decision in R.C. Chawla's case. No costs.

C.A. NOS. 12947-48/1996 of 1990

(@ SLP (C) Nos. 12389-90/ 1650/ and C.A. Nos. 12952-53/96

@ S.L.P (C) Nos. 14-15/91

Leave granted.

These appeals by special leave arise out of the judgment and order of the High Court of Punjab and Haryana made on March 16, 1990 and January 25, 1990 in Review Petition No.46/90 in W.P.5288/88 and other matters.

Admittedly, the appellants were using the premises for non-residential purpose in a residential area. Therefore, the authorities were well within their power to issue notice for resumption of the properties. However, pending disposal of these matters, the appellants have stated that they had already stopped misuser an year ago. The appellants should file an affidavit before the Estate Officer stating that they have already stopped misuser of the premises. On such an affidavit being filed, it would be open to the Estate Officer to have it verified whether they have already stopped the misuser. If they have already stopped misuser, the order of resumption may be revoked. If they have not, the order passed by this Court would not be of any help to the appellants. The order of resumption would stand upheld. The Estate Officer may fix any reasonable penalty for misuse and the appellants shall pay over the same. If they were to repeat the misuser, the Estate Officer would be free to resume the property without taking any recourse to fresh proceedings.

The appeals are accordingly disposed of. No costs.

C.A. NOS. 1249,12934-35,12955,12938-43,12945-46/96 @

S.L.). (C) Nos. 885/91, 15393-94, 7960, 9174-79 & 11578-79/90

Leave granted.

These appeals by special leave arises from the judgment

and order of the High Court of Punjab and Haryana made on January 25, 1990 in CWP No. 1162/89 and other matters.

The appellants, admittedly, have been using the residential premises for non-residential purpose converting it into a shop contrary to the conditions of the sale and also the Rules. Thereby, it is a clear case of misuser of the premises. However, an opportunity is given to the appellants to stop the misuser within six months from today and pay reasonable penalty levied by Estate Officer on misuser. They should file an undertaking before the Estate Officer within one month from today that they would stop the misuser with six months from today. On expiry of six months, it would be open to the Estate Officer to verify whether the appellants have stopped the misuser. If they would have not, the resumption order would get revived and thereafter it would be open to the Estate Officer to deal with the property in accordance with law without further reference to the appellants or taking any further action in this behalf. If the misuser is repeated, he would free to resume the property without further proceedings. Reasonable penalty may be fixed and the appellants shall pay over the same.

The appeals are accordingly disposed of. No costs.

W.P. 250/96

This writ petition filed by the petitioners challenging the resumption orders passed by the Estate Officer for contravention of the conditions of the sale. Therefore, it would be open to the petitioners, to avail of remedy, if any, available under the law.

The writ petition is accordingly dismissed. One month's time is given to the petitioner to approach the High Court. In the meanwhile, status quo on today shall be maintained.