

CASE NO.:
Appeal (civil) 2577 of 2004

PETITIONER:
Jyotsna Kohli

RESPONDENT:
Union Territory of Chandigarh & Ors.

DATE OF JUDGMENT: 20/04/2004

BENCH:
S. Rajendra Babu & P. Venkatarama Reddi.

JUDGMENT:
J U D G M E N T

[Arising out of SLP (C) No. 19095 of 2001]

P. Venkatarama Reddi, J.

Leave granted.

The appellant's father was allotted a plot measuring 763 sq. yards in Sector 7-C, Chandigarh by the Chandigarh Administration by means of an auction sale and a deed of conveyance was executed on 13.10.1970. Subsequently, the site was transferred in favour of the appellant. A showroom was constructed on the site and in the year 1974, the building was let out to Allahabad Bank. Though it is claimed that the Estate Officer, U.T., Chandigarh gave consent for such letting, no material has been placed before the Court in support of this version.

In view of the infringement of the conditions of sale read with the Rules, namely, Chandigarh (Sale of Sites and Buildings) Rules, 1960, the Estate Officer by an order dated 25.11.1980 resumed the site on the ground of misuser and also forfeited 10% of the cost of site. This was done after issuing show-cause notice and opportunity of hearing to the appellant. The power of resumption is conferred by Section 8-A of Capital of Punjab (Development and Regulation) Act, 1952.

It appears that the appellant filed an injunction suit in the year 1982 against the Bank to restrain it from using the premises, but the same was dismissed on the ground that the appellant had no locus standi. The Estate Officer initiated eviction proceedings against the Bank and passed an order of eviction on 7.11.1984. The appeal and revision filed by the Bank failed. However, the revisional authority by an order dated 14.6.1989 granted two years time to the Bank to stop the misuser. It is the case of the appellant that even thereafter the Bank did not vacate, and therefore, he filed a writ petition in the High Court to direct vacation of the premises by the Bank. The writ petition was disposed of on the basis of the undertaking given by the Bank to vacate the premises on 31st December 1991. The Estate Officer took possession on 18.12.1991 and sealed the building. The appellant then filed CWP No. 11596 of 1993 in the High Court of Punjab & Haryana praying for quashing the order of resumption and for restoration of showroom. While dismissing the writ petition, the High Court observed that if the appellant makes an application under Rule 11-D of the Rules of 1960, such an application would be decided by the appropriate authority within a month. Against this order of the High Court, the appellant filed SLP (C) No. 23499 of 1994 which was dismissed as withdrawn by an order dated

8.11.1995 subject to the observations made therein. The following is the text of the order of this Court :-
"Mr. G.L. Sanghi, learned counsel appearing for the petitioner, states that the petitioner will file an application in accordance with Rule 11(d) of the Chandigarh (Sale of Sites and Buildings) Rules, 1960 within a period of eight weeks from today and therein raises all the points agitated in the present special leave petition. With the above statement, Mr. Sanghi seeks permission to withdraw this Petition. The prayer is allowed.

In case any such application is filed within the period stipulated above, the concerned authority will dispose of the same in accordance with law within two months from the date of its receipt. Needless to say, if any order adverse to the petitioner is passed on that application, the petitioner will be at liberty to assail the same in the appropriate forum."

At this stage, a reference to Rule 11-D may be made :-
Rule 11-D :

(1) Where a site has been resumed under Section 8-A of Act No. XXVII of 1952 for any reasons, the Estate Officer may, on an application, re-transfer the site to the outgoing transferee, on payment of an amount equal to 10 percent of the premium originally payable for such property or one third of the difference between the price originally paid and its value at the time when the application for transfer is made, whichever is more.

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Provided that such transfer shall be
permissible only if \026\026

(i) where the site has been resumed on ground of misuser, the misuser has stopped;

(ii) where the site has been resumed for non-payment of price, all outstanding dues including forfeiture have been paid;

(iii) where the site has been resumed for breach of any conditions of sale, the breach has been remedied and conditions fulfilled.

Notwithstanding anything contained in the proviso above, when the site has been resumed on ground of misuser or non-completion of the building on it within the stipulated period; the Estate Officer may allow the retransfer on the applicant agreeing to vacate or have the misuser vacated or the building completed, as the case may be, within such reasonable period as the Estate Officer may stipulate.

Explanation : x x x x x

(2) The retransfer under sub-rule (1) shall be in continuation of and subject to all subsisting conditions but without prejudice to all the proceedings or liabilities or subsisting penalties levied in respect of such property before the date of the transfer.

(3) The prevailing price shall be assessed by the Estate Officer or such other authority as may be prescribed by the Chief Administrator and in doing so the Estate Officer or such other authority shall give the applicant reasonable opportunity of being heard. The assessment made by the Estate Officer shall be final."

It is clear from the perusal of Rule 11-D that on fulfillment of the clauses in the proviso, the Estate Officer is empowered to re-transfer the site on payment of the amount specified therein. Rule 11-D does not contemplate any dispute being raised as to the legality or propriety of the resumption order. The points raised in this special leave petition, turning on the merits of the case, could not have been raised in an application under Rule 11-D. However, a representation was made that all the points agitated in the special leave petition will be raised before the Estate Officer in Rule 11-D application. This Court did not grant any liberty to do so, but merely recorded the representation made by the learned counsel on behalf of the appellant. The Court merely directed the concerned authority to dispose of the application in accordance with law.

In the 11-D application filed by the appellant before the Estate Officer, the correctness of the resumption order itself was questioned. Apart from contending that there was no misuse in the real sense of the term, the appellant quoted certain instances in which the resumption orders were set aside and the sites restored to the allottees by the appellate or revisional authorities. The Estate Officer rightly observed that it is not open to him to go behind the resumption order which had become final. The cases cited by the appellant were distinguished on facts. The Estate Officer, however, allowed the application under Rule 11-D subject to the payment of the amount as per the Rule. The Estate Officer passed this order on 27.2.1996. The appeal to the Chief Administrator was rejected on 8.9.1998. The appellate authority reaffirmed the view of the Estate Officer. The revision petition filed before the Chief Administrator was dismissed as not maintainable. In fact, no appeal or revision is provided under the Rules against the order passed under Rule 11-D. The appellant then filed Writ Petition No. 10342 of 2001 which was dismissed by the High Court by the impugned order dated 19.7.2001. The Division Bench of the High Court observed :-

".....A reading of this rule makes it clear that the offer of retransfer can be made only after the order of resumption has become final. The petitioner is now seeking to challenge the order of resumption, which we are afraid, cannot be allowed in these proceedings. In pursuance of the observations made by the Apex Court, the Chandigarh Administration made an offer to the petitioner to have the property transferred in her name subject to the payment determined. The offer is fair and reasonable in the circumstances of

the case and we find no ground to interfere."

It is against the said order this SLP is filed. It is firstly contended by the learned counsel for the appellant that this Court, while dismissing the earlier SLP, must be deemed to have granted liberty to seek cancellation of resumption order and that in any event the appellant should not be prejudiced on account of the representation made by the counsel under the bona fide impression that the resumption order could be revoked even at that stage. This contention has no force whatsoever, viewed in the light of the order of this Court as well as the scope and ambit of Rule 11-D. In any case, this contention need not detain us further in view of the fact that the main contention urged by the appellant was negated on merits also. The Estate Officer as well as the Chief Administrator found that the instances referred to by the appellant are not comparable, but they are distinguishable on facts and, therefore, the same treatment cannot be accorded to the appellant.

The learned counsel for the appellant has sought to rely upon some more recent instances in which the resumption order was set aside, in a bid to persuade us to direct de novo consideration. It is not possible for us to embark on an enquiry into the relevance of the orders in the alleged comparable cases. Moreover, it will not be legal and proper to reopen the issue of resumption which had become final long back. The propriety or otherwise of the order passed by the Estate Officer can only be examined from the stand point of Rule 11-D. So also, the question whether the procedure under the provisions of Public Premises Act was duly followed, cannot be gone into in this appeal at this stage. Broadly speaking, we find no legal infirmity in the order passed by the Estate Officer.

It is then contended by the learned counsel for the appellant that the misuser pertained only to a part of the premises and therefore it is not fair and reasonable to call upon the appellant to deposit the value of the entire site. As rightly pointed out by the learned counsel for the respondents, this plea was not raised in the earlier proceedings. Even in the SLP, it is not raised in specific terms though there is an averment in the synopsis of dates and events (vide pages 'B' and 'E') that most of the premises has been used for authorized purpose but what was let out to the Bank in the year 1974 was only the front portion of the building. We consider it just and proper to direct the Estate Officer to examine whether this assertion is factually correct and if so, whether any proportionate relief can be granted or not on this basis. It is open to the appellant to furnish the necessary details with supporting evidence if any to substantiate her version in this behalf. The other question that remains to be considered is the date which ought to be taken into account for the purpose of computing the value in terms of Rule 11-D. Going by the strict terms of Rule 11-D, the value has to be assessed with reference to the date on which the application was made. In this case, the application was made soon after the SLP was dismissed on 8.11.1995. Hence, according to the strict interpretation of the rule, the value prevailing in 1996 should in the normal course be taken into account. However, we are of the view that in the peculiar circumstances, the rigour of the Rule has to be relaxed and some relief has to be granted to the appellant. The fact remains that the misuser of premises came to an end with the Bank vacating it towards the end of 1991. The appellant herself took some active steps to evict the Bank with a view

to put an end to the misuser. But, the various proceedings consumed lot of time. The revisional authority granted two years time to the Bank to vacate while dismissing the revision. After the Bank had vacated and the appellant made sure that the misuser ended, it questioned the resumption order in High Court by filing a writ petition in 1993. The High Court dismissed the writ petition with an observation that the petitioner may make an application under Rule 11-D. Thereafter, the SLP was filed in this Court which was dismissed subject to the direction that the application if filed will be disposed of according to law. We have no doubt that the appellant was bona fide pursuing litigation. She did not file the application earlier for the various reasons mentioned above.

In the circumstances, the ends of justice will be met by directing the respondent \026 Estate Officer to treat the application under Rule 11-D as having been filed in the year 1992 and assess the value on that basis. This is without prejudice to any relief that may be granted to the appellant in terms of the direction supra to examine the question of granting proportionate relief while fixing the value. The appellant shall deposit the amount fixed in the light of the above directions on the receipt of the communication working out the figures. The amount shall be paid within the time and in the manner laid down in sub-rule (4) of Rule 11-D. In case of default in payment, it is open to the Estate Officer to reject the application. On payment of the full amount determined, it is open to the appellant to apply for change of user, if it is permitted under the Rules and Orders in force. The appeal is disposed of accordingly without costs.