

CASE NO.:
Special Leave Petition (civil) 9672 of 2002

PETITIONER:
Jasbir Singh Bakshi

RESPONDENT:
Union Territory, Chandigarh & Ors.

DATE OF JUDGMENT: 08/04/2004

BENCH:
S. Rajendra Babu & G.P. Mathur.

JUDGMENT:
JUDGMENT

G.P. MATHUR, J.

This special leave petition has been preferred against the judgment and order dated 1.4.2002 of High Court of Punjab and Haryana by which the writ petition preferred by the petitioner challenging the order of Advisor to the Administrator, Union Territory, Chandigarh, was dismissed.

2. The petitioner was allotted a semi-industrial plot bearing No.389 in Sector 44-D, Chandigarh in an auction held on 25.2.1990 on a total premium of Rs.12,75,000/- out of which he paid 25% of the amount after the fall of the hammer. In terms of the allotment letter dated 26.4.1990, he was required to deposit the balance amount in three yearly instalments of Rs.3,64,379/- each by 25th February of the years 1991, 1992 and 1993. By the same letter, he was authorised to take possession of the plot which was ultimately given to him on 23.5.1990. The petitioner did not deposit the yearly instalments which were due and accordingly notices were issued to him directing him to deposit the amount along with ground rent. The Assistant Estate Officer accordingly passed an order on 12.8.1993 holding the petitioner to be a defaulter and further imposed 25% penalty on due amount of ground rent. Since the petitioner did not deposit the amount, a second order was passed on 28.12.1994 imposing 100% penalty on due amount of ground rent. Finally, the Assistant Estate Officer, exercising powers under Rule 12(3) of the Chandigarh Leasehold (Sites and Building) Rules, 1973, passed an order on 6.11.1996 cancelling the lease of the plot, as the petitioner did not deposit any one of the yearly instalments which had fallen due on 25th February of the years 1991, 1992 and 1993. The petitioner thereafter preferred an appeal against the aforesaid order of the Assistant Estate Officer before the Chief Administrator, Union Territory, Chandigarh. The Chief Administrator after hearing the parties held that though the petitioner had taken the possession of the plot on 23.5.1990 but had not deposited anything towards the balance amount of instalment and as such an amount of Rs.31.43 lakhs was outstanding against him. In such circumstances, the Assistant Estate Officer was justified in cancelling the lease of the plot allotted in favour of the petitioner. The appeal was accordingly dismissed on 10.11.1998.

3. The petitioner then preferred a revision before the Advisor to the Administrator, Union Territory of Chandigarh under Rule 22 (3) of Chandigarh Leasehold (Sites and Building) Rules, 1973. At the time of the hearing, an offer was made by the petitioner that he would deposit Rs.12 lakhs on the same day. Taking into consideration the aforesaid fact, the revisional authority, vide order dated 15.9.1999, set aside the order of cancellation of lease subject to the condition that the petitioner deposited Rs.12 lakhs before the Estate Officer on the same day and the balance amount within six months. The penalty imposed by the Estate Officer was also reduced to half. The petitioner then deposited Rs.12 lakhs and a further

sum of Rs.1,60,000/- before the Estate Officer on 15.12.1999. He also deposited Rs.20,000/- towards ground rent on 24.2.2000.

4. It appears that the petitioner did not deposit any other amount thereafter and as a result, the authorities again initiated proceedings for cancellation of the lease and for realization of the amount.

5. At this stage, the petitioner preferred a writ petition in the High Court on 16.7.2001 alleging that the respondents were charging interest at the rate of 15% and 24% which was contrary to the contractual rate of interest as mentioned in the allotment letter and consequently the order of cancellation of lease and imposition of penalty was illegal. The High Court passed an interim order on 15.10.2001 which reads as under :

"Learned counsel for the petitioner states that only one opportunity may be given to the petitioner to clear the entire dues.

In view of the above, notice of motion for 25.3.2002. The petitioner is directed to approach the respondents to ascertain the entire amount due and thereafter make the payment in accordance with the directions issued by the respondents.

Stay further proceedings."

However, the petitioner did not deposit any further amount and consequently the writ petition was dismissed on 1.4.2002.

6. We have heard Shri M.N. Krishnamani, learned senior counsel for the petitioner and Ms. Kamini Jaiswal, learned counsel for the respondents.

7. The petitioner was allotted plot no.389 in Sector 44-C & D, Chandigarh in an auction held on 25.2.1990 on a total premium of Rs.12,75,000/-. The allotment letter dated 26.4.1990 mentioned the schedule of payment and he had to pay the balance amount in three equal instalments of Rs.3,64,379/- each by 25th of February of each succeeding year and thus the entire amount had to be paid by 25.2.1993. It was also mentioned that the annual ground rent for first 33 years was Rs.31,875/-. The letter authorised the petitioner to take possession of the site which he promptly took over, but he did not deposit any amount thereafter. A number of notices were sent to him but with no avail. The order passed by the Assistant Estate Officer on 28.12.1994 whereby the lease was cancelled shows that repeated opportunities were given to him to deposit the amount. It was in these circumstances that the lease was ultimately cancelled. In fact, the order passed by the Chief Administrator shows that an amount of Rs.31.43 lakhs had become due from the petitioner towards principal and interest. The revisional authority in view of the statement made by the petitioner that he is ready and willing to pay the outstanding dues in case an opportunity was given to him, took a sympathetic view and set aside the order of cancellation of lease and reduced the penalty to half in case a sum of Rs.12 lakhs was deposited forthwith and the balance amount was deposited within six months. The petitioner, no doubt, deposited Rs.12 lakhs on the next day but again defaulted and did not deposit the balance amount except for an amount of Rs.1,60,000/- on 15.12.1999 and Rs.20,000/- as ground rent on 24.2.2000. The petitioner made a similar request before the High Court that only one opportunity may be given to him to clear the entire dues and taking a sympathetic view of the matter, further proceedings against the petitioner were stayed on 15.10.2001. But again the petitioner defaulted and did not deposit the amount.

8. These facts clearly show that the petitioner has only been gaining time, on one pretext or the other, and is not interested in depositing the amount. He got possession of the plot in April 1990 after deposit of only one-fourth amount. Though the conduct of the petitioner is such that he does not deserve any sympathy, we are of the opinion that some more time

may be given to enable him to clear the entire outstanding dues. The petition is accordingly disposed of with a direction that if the petitioner deposits the entire outstanding dues within three months, the order cancelling the lease shall stand set aside, failing which it will be open to the authorities to take appropriate steps in accordance with law.

JUDIS