

The Capital of Punjab (Development and Regulation) Act, 1952

(Punjab Act No. 27 of 1952)

Received the assent of the Governor of Punjab on the 17th December, 1952 and first published in the Punjab Government Gazette (Extraordinary), on the 19th December, 1952

An act to re-enact and modify the law in relation to the development and regulation of the new Capital of Punjab.

It is hereby enacted as follows—

STATEMENT OF OBJECTS AND REASONS

The construction of the New Capital of Punjab at Chandigarh is in progress. It is considered necessary to vest the State Government with legal authority to regulate the sale of building sites and to promulgate building rules on the lines of Municipal Bye-laws so long as a properly constituted local body does not take over the administration of the city. The Capital of Punjab (Development and Regulation) Bill, 1952, seeks to carry out the above objects and to repeal the Capital of Punjab (Development and Regulation) Act, 1952, which is a President's Act and is due to expire in April, 1953. Vide Punjab Govt. Gazette Extraordinary, dated the 23rd July, 1952, pp. 677.

COMMENTS

Constitutional validity – Right of property – Eminent domain – After amendment of Article 14 now is no longer a fundamental right of a citizen though it may come under the category of human rights or constitutional right – Right to property is saved only to right to compensation – Any person can be deprived of his property and only protection is that such deprivation should be in accordance with authority of law – Legislature can deprive a person of his property by making law under Article 300-A of the Constitution - *Dheera Singh v. U.T. Chandigarh Admn.*, 2013(1) Haryana Law Reporter 57 F.B.

Prospective/retrospective effect – Any Act dealing with substantive rights of property of citizen is presumed to be prospective in nature unless it is made retrospective in express terms or by necessary implications – But where a statute is confined to a procedure only it can be presumed to be retrospective only unless legislature had provided otherwise – If the Statute is amended during pendency of litigations, then rights of parties would be determined as per legal provisions prevailing at the time when action had started – In case of a declaratory or explanatory legislature their applications would be with retrospective effect because they are meant only to remove certain doubts about the existing statute – The Rule 11D of the Rules, 1960 has not been deleted with retrospective effect and orders of

1. See Punjab Government Gazette, 1952, page 677

resumption passed before 31.1.2007 (date of deletion) remain intact - *Dheera Singh v. U.T. Chandigarh Admn.*, 2013(1) Haryana Law Reporter 57 F.B.

Repeal or abrogation of Act - It was argued by the petitioner that because most of the properties have been sold in Chandigarh now the Punjab Act, 1952 should be deemed to be repealed and building bye laws should be enforced by the Municipal Corporation - Enforcement of Punjab Act, 1952 was only a temporary arrangement - Held the argument is without any merit - Until and unless the statute is repealed or a replaced by some other law it will remain in force - There can be implied repeal if statute is abrogated by a subsequent enactment - No legalities becomes inoperative or nonexistent by mere long lapse of time - A statute can be abrogated only with express or implied repeal only by the legislature - The Punjab Act, 1952 has not become inoperative by lapse of time - Contention of petitioner repelled - *Dheera Singh v. U.T. Chandigarh Admn.*, 2013(1) Haryana Law Reporter 57 F.B.

Validity - The reference made by the Division Bench to Hon'ble Full Bench of Punjab and Haryana High Court pertains to constitution - Validity of section 8-A of the Punjab Capital Act, 1952 mainly on the ground that Rule 11A of the Chandigarh Sale of Sites and Building Rules, 1960 has been deleted w.e.f. 31.1.2007 and also in view of observations made by the Hon'ble Apex Court in *Babu Singh Bains case* 1996 HRR 511 S.C. - After detailed discussions and analyzing the verdicts made in catena of cases the Hon'ble Full Bench was of the view that provisions of section 8A of the Punjab Act, 1952 do not suffer from any constitutional invalidity or infirmity - It has not become obsolete or redundant - But due to steep hike in the value of real estate and unprecedented pressure of population in Chandigarh, the Act requires revamping and updation to meet the modern challenges such as amount of penalty which was fixed 60 years, power to determine nature and penalty which was not delegated to Executive by Legislature and steps which can be taken by Administrator for updation of Punjab Act, 1952 in view of observations made by the Court - *Dheera Singh v. U.T. Chandigarh Admn.*, 2013(1) Haryana Law Reporter 57 F.B.

1. Short title, extent and commencement. - (1) This Act may be called the Capital of Punjab (Development and Regulation) Act, 1952.

¹[(2) It extends to the City of Chandigarh which shall comprise the areas of the site of the Capital of Punjab as notified by the Government of Punjab before the 1st November, 1966 and to such areas as may be notified by the Central Government from time to time.] -

(3) It shall come into force at once.

2. Definitions. - In this Act, unless the context otherwise requires, -

- (a) "Advertisement" means any word, letter, model, sign, placard, board, notice, device or representation in any manner whatsoever, wholly or in part intended for the purpose of advertisement, announcement or direction, and includes any structure used or adapted for the display of advertisements;
- (b) "amenity" includes roads, water-supply, street, lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh.
- (c) "building" means any construction or part of a construction which is transferred by the ¹[Central Government] under section 3 and which

2. Substituted by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "State Government".

is intended to be used for residential, commercial, industrial or other purposes, whether in actual use or not, and includes any out-house, stable, cattle shed and garage and also includes any building erected on any land transferred by the ¹[Central Government] under section 3;

- ¹[(d) "Chandigarh" means the areas to which this Act extends;]
- (e) "Chief Administrator" means an officer appointed as such by the ¹[Central Government] by notification in the official Gazette, to perform the functions of the Chief Administrator under this Act;
- (f) "erect a building" has the same meaning as "erect or re-erect any building" in the Punjab Municipal Act, 1911 (Punjab Act III of 1911);
- (g) "Estate Officer" means a person appointed as such by the ¹[Central Government] by notification in the official Gazette, to perform the functions of the Estate Officer under this Act;
- (h) "occupier" means a person (including a firm or other body of individuals, whether incorporated or not) who occupies a site or building transferred under this Act and includes his successors and assigns;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "site" means any land which is transferred by the ¹[Central Government] under section 3;
- (k) "transferee" means a person (including a firm or other body of individuals, whether incorporated or not) to whom a site or building is transferred in any manner whatsoever, under this Act and includes his successors and assigns;
- (l) "workshop" means any building or place in which or within the compound of which any manual labour is employed or utilised in aid of, or incidental to, any process for the following purposes:—
- (i) the making of any article or part thereof;
 - (ii) the altering, repairing, ornamenting or finishing of any article; or
 - (iii) the adapting for sale of any article.

COMMENTS

Amenities - Allotment of plots to allottees who made payment as per terms of allotment letter - Allotment authorities were required to provide necessary amenities including roads, water supply, street lighting, drainage, sewerage etc., in due course - Some amenities were provided by authorities and arrangement was made for remaining amenities - Providing of all amenities was not a condition precedent but authorities are under an obligation to provide necessary facilities for the allottee - Allottees cannot withhold payment of lease amount including interest and penalty on the allegation that all facilities were not provided by authorities - Matter remitted to High Court for granting proportionate relief - *Municipal Corporation Chandigarh v. M/s Shantikunj Investment Pvt. Ltd.*, 2006(1) HRR 410 S.C.

3. Power of Central Government in respect of transfer of land and building in Chandigarh. - (1) ²[Subject to the provisions of this section, the Central Government may] sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and conditions as it may subject to any rules that may be made under this Act, think fit to impose.

1. Substituted by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "State Government".

2. Substituted by Capital of Punjab (Development & Regulation) Amendment Act 17 of 1973

(2) The consideration money for any transfer under sub-section (1) shall be paid to the [Central Government] in such manner and in such instalments and at such rate of interest as may be prescribed.

²[(3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-section (1) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government.]

COMMENTARY

Allotment - Petitioner as member of Society deposited 10% but was not allowed to deposit 25% amount on account of adverse report of Screening Committee - The Committee decided to exclude name of petitioner from eligible members without hearing him - Order of exclusion of name of petitioner not legally justified - Respondent directed to consider allotment of flat to petitioner - Revision allowed - *Surinder Kumar v. Union Territory, Chandigarh*, 2003 H.R.R. 617

—Payment of interest - Appellant allottee was allotted a site for which he paid 1/4th price of plot though enjoying site for a decade - He started earning rental income from constructed building complex - Interest @ 24% was levied on allottee due to delayed payment in accordance with amended rule - Levy of 24% interest is legally valid in the circumstances of the case - However, appellant is granted time to make payment of balance of interest amount - *S.M.S. Sandhu v. Chandigarh Administration*, 2003 H.R.R. 355 S.C.

Allotment of plot - An oustee is entitled to allotment of a plot at a reserve price particularly when persons of the same category have been given the plots - *Mst. Bachni v. Gurcharan Singh and others*, 1994 HRR 55.

—An applicant for allotment of plot should not be allowed to suffer due to bureaucratic inefficiency - *Phula Singh v. The State of Punjab and another*, 1994 HRR 56.

—A letter seeking mere clarification cannot be treated as a letter of refusal of allotment - *Major Pritam Singh v. State of Haryana and others*, 1994 HRR 75.

—Petitioner's allotment was cancelled as he had requested for allotment of bigger plot - Cancellation of plot is illegal - *Major Pritam Singh v. State of Haryana and others*, 1994 HRR 75.

—Petitioner paid full price of the plot - Held entitled to allotment of plot without payment of enhanced price - *Joginder Singh Khanijaon v. State of Punjab and another*, 1994 HRR 81.

—Cancellation - Delay in payment by the allottee was that the amount of draft was not got encashed by the authorities - Allottee not to be penalised - *Shri Kulwant Rai v. Union of India and others*, 1994 HRR 83 D.B.

—The condition of appointment of S.D.O. (Civil) as Chairman of Dharan shala Trust cannot be imposed - Trust held entitled to allotment of plot - *Smt. Krishna Sethi Memorial Charitable Trust, Chandigarh v. State of Haryana*, 1994 HRR 86.

—Petitioner denied opportunity of extension of time for construction in accordance with the policy decision - **Resumption set aside** - *Rajinder*

1. Substituted by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "State Government".

2. Substituted by Capital of Punjab (Development & Regulation) Amendment Act 17 of 1973

Mohan Mehta v. Haryana Urban Development Authority and Another, 1994 HRR 135 D.B.

Allotment to oustees - The plicy of allotment to oustees cannot have a retrospective effect - Any executive order can be applied only prospectively - *Smt. Suman Aneja v. State of Haryana*, 1994 HRR 150 D.B.

Alternative allotment - A Welfare State is expected to allot alternative site to the oustees - *Prayag Raj Sharma v. State of Haryana*, 1994 HRR 188 D.B.

Amenities - Encroachment - It is the duty of Administration to provide necessary amenities such as roads, water supply, street lights, drainage and sewerage with other public utility services to the allottees before demanding ground rent and interest on delayed instalments of the premium unless they are provided necessary amenities - For a proper enjoyment of right of property it is essential that the property should be free from encroachment and should be easily accessible to the allottees - Payment can be claimed from them only when allottees are able to exercise the right to enjoy the property - There should be no obstruction in the way of allottees to reach the allotted sites and administration is under an obligation to remove any encroachment on the sites - *Shanti Kunj Investment (Pvt.) Ltd. v. U.T. Administration, Chandigarh*, 2001 H.R.R. 347 D.B.

—Petitioner asserted that there was lack of amenities in the area - Necessary amenities including sewerage line, water pipe line, parking roads, street lights and parking lights had already been provided in the area - This fact remained uncontroverted - Even petitioner had leased portion of building to British Library - As regard the question of laying the metalled road it is prudent for the Administration to provide kachha road in the first instance and the metalled road after the completion of building to avoid damage by heavy vehicle bringing construction material - Petitioner's prayer for issuance of the mandamus dismissed - *Global Airways & Resorts Ltd. v. Union Territory, Chandigarh*, 2001 HRR 430 D.B.

—There is nothing in the Act or Rules from which it can be inferred that U.T. Administration is under an implied obligation that sites should be put to auction after full developments of sites - Where it was made clear to the petitioners, in terms of clause 20 of letter of allotment, that Government was not responsible for levelling the uneven sites and petitioners having entered into the possession of sites raising multistoreyed buildings now it can not be accepted that possession of sites was not transferred to them - *Sukhpal Singh Kang v. Chandigarh Administration*, 1999 H.R.R. 114 D.B.

Award of interest - High Court granted stay order against enhancement of rent by Chandigarh Administration - Writ Petition dismissed - Charging of interest on amount of arrears of rent for the period when stay order was in force was challenged - There is no illegality in charging interest of the said amount for this period - However, rate of interest is reduced from 18% P.A. to 15% P.A. - The Administration cannot be equated with private commercial establishment in this respect - Rate of interest should be fixed fairly by the Authorities - *M/s. Style (Dress Land) v. Union Territory, Chandigarh*, 1999 H.R.R. 662 S.C.

Cancellation of allotment - Delay in payment of Instalment - Cancellation of allotment of plot without any notice to the allottee is illegal - *Ved Parkash v. The Administration and others*, 1994 HRR 220.

Contract - A contract can be enforced only if it is in accordance with the mandatory provisions of law and not in any other way - No relaxation can be provided in the absence of a mandatory provision to that effect - *Union Territory, Chandigarh v. Managing Society, Goswami*, G.D.S.D.C., 1996 HRR 160 S.C. = 1996 (1) AD (SC) 311.

Discrimination - Consentee/non-consentee - Reduction in area of allotment of Industrial plots on account of excluding the area, reserved as Forest land - Smaller plots had to be carved out by authorities - Some appellants gave their consent for smaller plots - Consentee and non-consentee form different class - Consentee deserve more favour than non-consentee - Consentee cannot be forced to pay price of plot prevailing on date of allotment of smaller plot - But this favour cannot be done with non-consentee - Similarly those applicants who were neither petitioner nor respondents in proceedings before High Court but were invited for discussion during pendency of petition before the Supreme Court they cannot be granted any relief as they have slept over their rights - Necessary directions issued to Chandigarh Administration regarding charging of price, delivery of possession and condition of allotment with necessary modifications - *Hira Tikoo v. Union Territory, Chandigarh*, 2004(2) HRR 152 S.C.

Encroachment - Unauthorised market set up by Rehriwalas near the house of the petitioner - Respondent directed to remove Rehri within 15 days - *Gian Chand Mahajan v. Rehri Market Union and others*, 1994 HRR 134 D.B.

Enhanced price - Allotment - Enhanced price was demanded alleging that amount received from the allottee was not sufficient for costs of external development - Demand is unjustified - *D. S. Laungia and others v. State of Punjab and others*, 1994 HRR 175.

—Respondent State delayed the issuance of allotment letter to petitioner - Demand of enhanced price is not justified - *Balraj Kapuria and others v. State of Punjab and others*, 1994 HRR 212.

Enhancement of rent - Chandigarh Administration enhanced the rent of leased shop on the basis of assessment made by Engineering Department - Enhancement of rent not open to challenge on the ground of arbitrariness or discrimination - Court can set aside an executive order of if is against principles of natural justice or based on irreverent or extraneous reasons - Court cannot substitute its own decision - *M/s. Style (Dress Land) v. Union Territory, Chandigarh*, 1999 H.R.R. 662 S.C.

Fixation of price - An industrial plot was allotted to petitioner in 1979 - Allotment order was upheld in L.P.A. on such condition as the Union Territory may enforce including the prices prevailing on the day - Rates were revised after ten days of this decision and price was fixed under revised rate - There is no illegality in fixation of price by the Administration - *Rajinder Kumar Gupta v. Union Territory, Chandigarh*, 2002 H.R.R. 274

Excessive price - Once the appellant had accepted to pay the enhanced price of plot - They cannot say the price is unjustified - *Puran Anand and others v. The State of Haryana and others*, 1994 HRR 94 D.B.

Forfeiture - Petitioner failed to deposit the amount as stipulated, rather wanted to sell the plot for profit - Forfeiture of 10% price and cancellation of lease justified - *Sarla Sachdeva v. Estate Officer, U. T. Chandigarh and others*, 1994 HRR 79 D.B.

Instalment - Reduction in period of - Reduction of period from 10 years to 8 years in payment of instalments of allotted houses is not justified - Period cannot be reduced - *Krishan Lal and others v. Housing Board, Haryana*, 1994 HRR 207.

Laches - Delay of twenty eight years in filing Writ Petition challenging the impugned order passed under Capital of Punjab Act - No satisfactory explanation was given except that time was spent in filing wholly untenable review petitions - Even failure of competent authority to take steps for execution cannot be a ground for overlooking the delay - Petitioner rightly non-suited for delay - *Sat Pal Bhatia v. Estate Officer, Chandigarh*, 1998 H.R.R. 209 D.B.

Lease - Challenge to power of lease in the absence of any rule in this respect - Section 22 of the Act empowers Central Government to create lease with enhanced rent of its property under the Act - However, Central Government is directed to remove the apprehension of arbitrariness which may arise in the mind of citizen in respect of transfer of property - *M/s. Style (Dress Land) v. Union Territory, Chandigarh*, 1999 H.R.R. 662 S.C.

Mortgage/Attachment - Merely that a property at the time of sale was under a mortgage or under an attachment does not prove that sale of property is not valid - The purchaser of property will step into the shoes of the mortgager - Even attachment of property does not prevent its owner from selling the same - If the property under attachment is sold it will be subject to the rights of the decree holder - *Surinder Kaur v. Chandigarh Administration*, 2000 H.R.R. 485

Offence - Burden of proving lack of knowledge of commission of offence lies upon the complainant as to why prosecution was launched after 3 years under Section 369 of Criminal Procedure Code - *Telu Ram v. State of Haryana*, 1994 HRR 228.

Permission for sale - There is no provision under the Act which prohibit the sale of property allotted to a person without prior permission of the Allotment Authority - There is no such condition under Act or Rules that original allotment letter should be placed on record before the property is sold nor the permission of the authority is required for sale of property - A conveyance deed duly executed held to be valid - *Surinder Kaur v. Chandigarh Administration*, 2000 H.R.R. 485

Person interested - The term as used in Section 18 (1) of the Land Acquisition Act includes a local authority as a company for whose benefit land is acquired - *Hissar Improvement Trust, Hissar v. The President, Tribunal Improvement Trust, Hissar*, 1994 HRR 35 F.B.

Plot cancellation - An allottee should be asked to explain the position about making wrong statement before cancellation of plot or forfeiture of the amount - *Shrimati Ram Dulari v. Union Territory Chandigarh and others*, 1994 HRR 67.

Principle of Proportionately - Under this principle Court will see that Legislation and Administration maintain a proper balance between the adverse effect which the Legislation or Administrative order may have on the rights, liberties and interest of person having in mind, the purpose which they are intended to serve - The principal has been applied in India very vigorously - *Om Kumar's case*, 2001 (2) S.C.C. 386 relied in *M/s. Teri Oat Estates (Pvt.) Ltd. v. U.T. Chandigarh*, 2004(1) H.R.R. 659 S.C.

Residential purpose - Use of premises clearly mentioned for residential purpose in the lease deed - Interpretation of it as for "commercial use" is not justified - *Keshav Kumar Swarup v. Flowmore Private Limited*, 1994 HRR 239 S.C.

—Restoration of site - Chandigarh Administration before restoration of a site should be alert to take into consideration the fact of any conspiracy being adopted by landlord/lessee to evict the tenants - Adoption of dubious means of eviction should be permitted to prevail - If there is any political or bureaucratic pressure being adopted by landlord, tenant can seek restoration of their tenancy over different portion of the building - *M/s. Melody House Agencies v. Union Territory Administration through its Advisor*, 2002 H.R.R. 579 D.B.

Resumption - Power of resumption is the last resort for the development authorities - Order of resumption set aside - *Devender Kumar v. Estate Officer, Urban Estate, Panchkula*, 1994 HRR 131.

—Allotted plot already constructed before order of resumption - Order of resumption not justified - Submitting of plan is sufficient - *Kehar Singh v. Chief Commissioner, U.T. Chandigarh*, 1994 HRR 84.

—Limitation - Request for transfer of the house after 13 years of the date of resumption cannot be accepted - Condonation of delay declined - *Major Babu Singh Bains (Retd.) v. Union of India*, 1994 HRR 155 D.B.

Resumption of house - Residential house being misused as a commercial guest house - Resumption held to be justified - *Major Babu Singh Bains (Retd.) v. Union of India*, 1994 HRR 155 D.B.

Resumption of plot - Petitioner failed to complete construction within stipulated time - Order of resumption without service of notice on petitioner cannot be sustained - *Mrs. Saroj Gupta v. State of Haryana*, 1993 HRR 223.

—Before an extreme step of resumption is taken, the allottee must be afforded a reasonable opportunity to explain his position - Mere opportunity to file written statement is not sufficient - *M/s. G.M. Worsted Spinning Mills (P) Ltd. v. Haryana Urban Development Authority*, 1994 HRR 250

—Resumption should be resorted to in the rarest of the rare cases - Order resuming the site for delayed payment set aside - *Mrs. Sita Rani Gupta v. State of Haryana*, 1994 HRR 144.

Resumption of site - Resumption of site was ordered as the petitioners were selling Karyana goods in the premises allotted for Atta Chakki - Misuser not established as no conveyance deed was issued - Resumption set aside - *Ashawani Kumar v. Chandigarh Administration through its Administrator*, 1994 HRR 157.

Surrender of plot - Deduction of amount - Petitioner had deposited 25% of the price of plot - He purchased the same as the highest bidder on 20.6.1990 - He could not construct the building thereon as necessary amenities were not provided by respondent - Petitioner had to surrender the plot and prayed for refund of deposited amount after deducting 10% of 25% of total price as provided in clause of the agreement - Respondent refunded the balance money after deducting 10% of the total bid money in view of its resolution dated 23.8.1991 - *Held*, respondent is bound by clause 18 and any amendment or change therein made subsequent to date of auction cannot be applied retrospectively - Judgment delivered in *Roshan Lal Jindal's case*, 1996 (2) P.L.R. 223 does not lay down correct law and is overruled - *Amarjeet Singh Randhawa v. Notified Area Committee, Mani Majra*, 1998 H.R.R. 23 D.B.

Tentative price - It is absurd to say that full price is tentative price - *Joginder Singh Khanijaon v. State of Punjab*, 1994 HRR 81.

Title - It is clear from the language of Section 3 (as it was before the amending Act No. 17 of 1973) that after the auction sale is complete the title in land or building does not remain with the Government - *Jagdish Chand v. State of Punjab*, AIR 1992 SC 2587.

Transfer of plot - Petitioner wanted to transfer the allotted plot with the permission of the Housing Board - Delay in deposit of fee and other documents not to stand in the way of transfer - *Mrs. M. Bali v. Housing Board Haryana, Chandigarh*, 1994 HRR 88.

4. Power to issue direction in respect of erection of building. - (1) For the purpose of proper planning or development of Chandigarh, the [Central Government] or the Chief Administrator may issue such directions, as may be considered necessary, in respect of any site or building, either generally for the whole of Chandigarh or for any particular locality thereof, regarding any one or more of the following matters, namely :-

- architectural features of the elevation or frontage of any building ;
 - erection of detached or semi-detached buildings or both and the area of the land appurtenant to such building ;
 - the number of residential buildings which may be erected on any site in any locality ;
 - prohibition regarding erection of shops, workshops, ware-houses, factories or buildings of a specified architectural character or buildings designed for particular purposes in any locality ;
 - maintenance of height and position of walls, fences, hedges or any other structural or architectural construction ;
 - restrictions regarding the use of site for purposes other than erection of buildings.
- (2) Every transferee shall comply with the directions issued under sub-section (1) and shall as expeditiously as possible, erect any building or take such other steps as may be necessary, to comply with such directions.

5. Bar to erection of buildings in contravention of building rules. - (1) No person shall erect or occupy any building at Chandigarh in contravention of any building rules made under sub-section (2).

(2) The [Central Government] may, by notification in the official Gazette, make rules to regulate the erection of buildings and such rules may provide for all or any of the following matters, namely :-

- the materials to be used for external and partition walls, roofs, floors, stair-cases, lifts, fire-places, chimneys and other parts of a building and their position or location or the method of construction ;
- the height and slope of the roofs and floors of any building which is intended to be used for residential or cooking purposes ;
- the ventilation in, or the space to be left about, any building or part thereof to secure a free circulation of air or for the prevention of fire ;
- the number and height of the storeys of any buildings ;
- the means to be provided for the ingress or egress to and from any building;

1. Substituted by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "Stat Government".

- (f) the minimum dimensions of rooms, intended for use as living rooms, sleeping rooms, or rooms for the use of cattle;
- (g) the ventilation of rooms, the position and dimensions of rooms, or projections beyond the outer faces of external walls of a building and of doors or windows;
- (h) any other matter in furtherance of the proper regulation of erection, completion and occupation of buildings;
- (i) the certificates necessary and incidental to the submission of building plans, amended plans and completion reports.

COMMENTARY

Construction on upper storeys – Interim injunction – Right to construction - Tenant of single storey house cannot restrain landlord/landlady from using stair case for construction of upper storeys under Chandigarh Rules and Regulations – 2011(1) Haryana Law Reporter 74

Professional use – Permission to use residential premises for professional purpose including Doctors, Advocates and others is not restricted to owners only but other occupants and tenants are also entitled to take these benefits – 2016(1) Har. LR 71 D.B.

6. Power to require proper maintenance of site or building. - If it appears to the Chief Administrator that the condition or use of any site or building is prejudicially affecting the proper planning of, or the amenities in, any part of Chandigarh or the interests of the general public there, he may serve on the transferee or occupier of that site or building a notice requiring him to take such steps and within such period as may be specified in the notice and thereafter to maintain it in such a manner as may be specified therein.

7. Levy of fee or tax for amenities. - (1) For the purpose of providing, maintaining or continuing any amenity at Chandigarh the '[Central Government]' may levy such fees or taxes as it may consider necessary (which shall be in addition to any fee or tax for the time being leviable under any other law) in respect of any site or building on the transferee or occupier thereof.

(2) If the '[Central Government]' considers it necessary or expedient so to do having regard to the fact that the transferee or occupier is a religious or charitable institution or that he does not enjoy the amenity for which any fee or tax is levied, the '[Central Government]' may, by general or special order, exempt wholly or partly any class of such transferees or occupiers from the payment of fees or taxes levied under sub-section (1).

COMMENTARY

Valuation – Conversion charges – Conversion charges fixed in 2003 and 2004 were not in perpetuity – Charges fixed by Scheme, 2005 are dynamic and not static – These charges are not fixed for ever but they change from time to time particularly these are ratable to the time when person applies for conversion of property – In the present case, appellant was fully aware that Rs. 20,000/- per sq. yds had to be paid as conversion charges – But he remained silent for 2 and half years as no objection against the charges was raised – Now, at this stage, he cannot be allowed to raise any objection at such a belated stage – Appeal dismissed – 2014(2) Haryana Law Reporter 227 D.B.

1. Subs. by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "State Government".

[7-A. Power to apply certain provisions of Punjab Act 42 of 1976 to Chandigarh. - (1) The Chief Administrator may, from time to time by notification in the official gazette, and with the previous approval of the Administrator of the Union Territory of Chandigarh, apply to Chandigarh or any part thereof with such adaptations and modifications not affecting the substance as may be specified in the notification, all or any of the provisions of the Punjab Municipal Corporation Act, 1976 (Punjab Act 42 of 1976), in so far as such provisions are applicable to Chandigarh.

(2) While exercising the powers or performing the functions under the provisions of the Punjab Municipal Corporation Act, 1976 (Punjab Act 42 of 1976) applied to Chandigarh by a notification under Sub-section (1), the Chief Administrator shall be subject to the control of the Administrator and not to that of the Commissioner or Deputy Commissioner.

(3) Notwithstanding the substitution of Section 7-A of the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter referred to as substituted section) the substituted section shall not -

- (a) affect the previous operation of the substituted section or anything duly done or suffered thereunder; or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the substituted section; or
- (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against substituted section; affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such privilege, forfeiture or punishment may be imposed as if this substitution has not been made.]

[8. Imposition of penalty and mode of recovery of arrears. - (1) Where any transferee makes any default in the payment of any rent due in respect of any lease of any site or building or both, as the case may be, under section 3, or where any transferee or occupier makes any default in the payment of any fee or tax levied under section 7, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty;

Provided that no such direction shall be made unless the person affected thereby has been given a reasonable opportunity of being heard in the matter.

(2) Where any person makes any default in the payment of any amount, being the arrears and penalty directed to be paid under sub-section (1), such amount may be recovered from the transferee or occupier, as the case may be, in the same manner as an arrears of land revenue.

8-A. Resumption and forfeiture for breach of conditions of transfer. -

(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 other conditions of such sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause why an order of

1. Substituted by Amendment Act 45 of 1995 published in Chandigarh Administration Gaz. (Extra) dated 22.9.1994 at page 741

2. Substituted by Capital of Punjab (Development & Regulation) Amendment Act 17 of 1973

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.]

COMMENTARY

Allotment - Forfeiture - Respondents allottee had surrendered plot before installments became payable - Appellate authority ordered that forfeiture of 10% of premium was unfair - Only 2% of premium could be forfeited without charging any interest and ground rent as the Administration had not delivered possession of plot - Impugned order cannot be interfered in writ proceeding - *Assistant Estate Officer, Chandigarh Administration v. Smt. Anita Arora*, 2001 H.R.R. 241

Allotment - Promissory estoppel - Applicant/allottees paid 25% of the total price - Possession delivered and buildings were constructed after obtaining sanction of Plan - Huge amount was spent on raising construction of building - Authorities, subsequently cannot backout from their promise duly made for holding of property by allottees - Rule of promissory estoppel held applicable in the case - *Geeta Devi v. Chandigarh Administration*, 1999 H.R.R. 154

Allotment - Allottee defaulting in payment of instalments - Administration is empowered to resume the site - 2000 HRR 515 D.B. = 2000(2) PLJ 417

Allotment - School authorities has no statutory right to compel the Administration for allotment of site for school - *Sant Singh v. Union Territory, Chandigarh*, 1999 HRR 55 D.B.

Allotment of plot by auction - Conditional offer - Petitioner offered to purchase a plot by auction - 25% of the amount was deposited - Allotment Authority allotted the plot subject to decision of writ petition regarding the said plot which fact was not disclosed at the time of auction - Offer made by authority as a counter offer was rejected by petitioner - Authorities are bound to refund the deposited amount as conditional offer was rejected by the petitioner - Petitioner held entitled to 12% p.a. interest on the deposited amount - *Ram Phal v. State of Haryana*, 2001 HRR 251 D.B.

Allotment of plots - Revised policy of industrial sites for the establishment of printing presses called into question in writ petition - View of High Court that nothing illegal in revised policy adopted by Chandigarh Administration as appellants did not acquire right to get bigger sites in industrial area - Revised policy does not suffer from any act of arbitrariness wherein classifying appellants as a separate group or in considering them for allotment of smaller sites - *Paradise Printers and others v. Union Territory of Chandigarh*, 1988 HRR 409.

—Discretion - The revised policy for allotment of industrial site for establishment of Printing Presses was challenged - Appellant formed a separate class - Revised policy for allotment of smaller sites does not suffer from any act of arbitrariness - No discrimination was found to be established in the case - *Paradise Printer v. Union Territory Chandigarh*, 1988 HRR 409.

—Construction - No objection Certificate - The petitioner sought Permission from the U.T. Administration for constructing a room on the garage - No objection Certificate from the adjoining neighbourhood could not be produced as the neighbour refused to give his consent - Held, it would be highly inequitable to require the petitioner to submit a No Objection Certificate which is being denied to him by a recalcitrant neighbour - The Administration directed to consider the applications for construction without the said certificate - *Shri Subhash Chander Kapoor v. Union Territory, Chandigarh*, 1993 HRR 201.

—The object of the no objection certificate is not to condone the violations of the Act - It is issued for the purposes of facilitating the transfer - *Sohan Singh v. Estate Officer*, 1978 P.L.R. 235.

Allotment of public place - Allotment of roadside land for liquor vendees by Chandigarh Administration is illegal and against public interest - 2012(2) Haryana Law Reporter 70 D.B.

Allotment of second booth - Allotment of one booth to the widow of deceased allottee made as per provisions of scheme of allotment - Prayer for allotment for son of deceased rightly rejected by the Estate Officer - 2013(1) Haryana Law Reporter 331 D.B.

Amenities - Plea of non provision of necessary amenities not acceptable when four storeyed building has been raised on the site - 1999 HRR 211 D.B.

Arbitrariness - The plea that rent of other similarly situated properties was not revised, cannot be said to be an act of arbitrariness - 1998 HRR 193 D.B.

Arbitrary order - Re-allotment - Natural justice - Rejection of an application for re-allotment of booth under Rule 21-A of Chandigarh Rules, 1973 arbitrarily is unjustified - 2000 HRR 837 D.B.

Booth and Shop - A shop is a building or a room for retail sale of some commodity - The word "booth" also means a small shop of simple construction - The user of a booth for Halwai shop or a tea-stall is for a commercial purpose only - 1968 Current Law Journal 877.

Building violations - Removal of building violation only after tenant had agreed during pendency of proceedings - Resumption quashed - 2009(1) Haryana Law Reporter 122 D.B.

Cancellation of allotment - Petitioner challenged the order of cancellation of allotment before lower appellate authority with a prayer of stay of order during pendency of appeal - But no stay was granted - Hence writ petition - Lower Appellate Authority committed an error by refusing to grant interim relief - Lower Appellate Authority directed to decide the matter after hearing the parties on merits - Relief of stay granted to the petitioner till final decision by

lower appellate authority – Matter remanded for fresh decision and stay will continue till the final decision - *Surinder Kumar Gupta v. Union Territory, Chandigarh*, 2014(1) Haryana Law Reporter 292 D.B.

Cancellation of allotment – Allottee failed to deposit balance installment despite on several extensions of time – Order of cancellation of allotted plot justified – 2013(1) Haryana Law Reporter 395 D.B.

Cancellation of allotment – Violation of terms – Misuse of site – Petitioner violated terms of allotment repeatedly despite warning – Cancellation of allotment upheld – 2016(2) Har. LR 582

Cancellation of lease – Construction – Extension fee – Resumption of site or cancellation of lease is the last resort to deprive a person of his property – Cancellation of house on ground of delay in construction set aside – Extension fee deposited within extended period – 2012(1) Haryana Law Reporter 189 D.B.

Cancellation of lease - Restoration of appeal against order of cancellation of lease ordered - Dismissal of appeal without notice to appellant is illegal - 2002 HRR 588

Cancellation of lease - Application for restoration of appeal was allowed - But on the same date, appeal was disposed of without any notice to petitioner or his counsel - Nor any intimation was given about disposal of appeal - Impugned order liable to be set aside - Ejectment proceedings subsequently instituted under Public Premises Act, also quashed - *Gilton Industries v. Chandigarh Administration*, 2006 (Suppl.) HRR 206

Cancellation of plot - Blanket order - Where a public authority passed a blanked order cancelling the allotment of plot, the order held to be unsustainable - *Baldev Kaur v. State of Punjab*, 1988 (4) P.L.R. 649.

Change of user - The premises in dispute were leased out to the tenant for his residence - He started running a printing press in the name of a Firm solely owned by himself - Conversion of building from residential to non-residential one in violation of provision of Capital of Punjab Act, 1952 is illegal - Tenant held liable to eviction for conversion of building unauthorisedly - Even the plea of consent of landlord against the statute, cannot help the tenant - *Shri Rai Chand Jain v. Miss Chandra Kanta Khosla*, 1991 HRR 1 S.C.

Change of user - Landlord's house resumed on account of change of user by tenant who started a Guest House therein - Act of misuser being beyond control of landlord, resumption set aside - 2003 HRR 882

Change of user – Residential/commercial area – Petitioner's contention is that Chandigarh Administration has permitted to open business centres in residential area including Doctors, Architects, barber and photographers etc. In similar way, banks also should be allowed to open bank in residential area – Held, if contention of the petitioner is accepted, it would be permitting violations of policies and rules of the Administration which cannot be allowed – Petition dismissed - *Punjab & Sind Bank v. Union Territory, Chandigarh*, 2014(1) Haryana Law Reporter 307 D.B.

—Provision of Section 8-A and Rule 11-D are meant to ensure that the property is used for the purpose for which it has been given to the person - A residential property should be used for the purpose of residential only and if it is misused in any other way there is a violation of the condition of sale - Property can be lost by way of resumption - The provisions are not violative of Articles 14, 19 & 21 - *Dr. A.P. Sanwaria v. Union of India*, 1996 HRR 504 D.B.

—Both the courts below had concurrently decreed the suit of the plaintiff/respondent restraining the defendant from carrying on business of running a school/college on the 1st and 2nd floor of the demised S.C.O. - No evidence was produced to prove the acquiescence on the part of the landlord - Admittedly original tenant had taken the premises on lease for residence in 1966 when he was a clerk - He retired in 1975 and started a school in the premises - Thus there is no question of acquiescence for permitting running of school by landlord - Appeal, being without any merit stands dismissed - *M/s. Ram Gopal Banarsi Dass's case* AIR 1986 P & H 52 distinguished - *Sat Pal Verma v. Smt. Paramjit Kaur Kang*, 1997 H.R.R. 235

Charitable purpose – Charitable purpose cannot be served where use of land is only for commercial benefit of a person or Institute – Cancellation of allotment made in the name of Law Institute justified – 2015(1) HLR 190 S.C.

Commercial use of residential site - Proceedings of resumption of site initiated due to use of residential site for commercial use by tenant – Proceedings unnecessarily prolonged due to political pressure of tenant – Role of Administration not satisfactory – Petition allowed with cost of Rs. 25,000 - *Bahadur Singh v. Chandigarh Administration, Chandigarh*, 2010(1) Haryana Law Reporter 637

Composition fee – Non completion of construction - Construction work could not be completed due to illegal act of petitioner's son not in good terms with him – Revised plan was submitted – Administration is directed to sanction revised plan by charging composition fee – Resumption set aside - 2013(2) Haryana Law Reporter 501 D.B.

Compoundable violations – Forfeiture - Violation of provisions of Punjab Capital Act - Forfeiture of 10% price justified - Order of resumption is compoundable - *Vidya Sagar v. The Union Territory Administration, Chandigarh* 1998 HRR 59

Compoundable violations - Forfeiture of 10% price and penalty for misuse of such construction held to be justified - However, resumption of site held to be compoundable under rules - 1998 HRR 68

Condition of allotment - Delay in instalment of lease amount cannot be condoned merely for non-providing amenities in the area - 1999 HRR 211 D.B.

Constitutionality - Increase of rent in terms of contract under Capital of Punjab Act, 1952 - Act of Administration is not unconstitutional - 1998 HRR 193 D.B.

Constitutionality - Scope - Natural justice - Before invoking S. 8-A for resumption of site and building it is incumbent on Estate Officer to give a noti-

in writing pointing out default on part of transferee - Such transferee must be provided an opportunity to show cause as to why proposed action be not taken against him - Even the person in occupation of premises should be provided an opportunity of hearing - Adequate safeguard have been provided by S. 8-A and Estate Officer is expected to pass a speaking order - *Dr. A.P. Sanwaria v. Union of India*, 1996 HRR 504 D.B.

Constitutional validity - Pending proceedings - The petitioner challenged the constitutional validity of Section 8-A of the Capital of Punjab Act, 1952 - It was stated by the petitioner that an appeal in respect of the same subject matter was pending before the Chief Administrator, Chandigarh - Under the circumstances it is not desirable to decide the matter of constitutionality of Section 8-A of the Act - Operation of impugned order stayed till the final decision of the pending appeal - *Smt. Kanta Devi Kashyap v. Chandigarh Administration*, 1994 HRR 565 D.B.

Construction in periphery areas - Construction without permission - No construction can be raised without permission of Chandigarh Administration in the villages governed by the provisions of Chandigarh Periphery Control Act, 1952 - 2015(2) HLR 472 D.B.

Conversion charges - Opportunity - Order of resumption for conversion of godown into a shop passed without hearing the tenant who had offered to pay conversion charges - Order of resumption passed without hearing tenant set aside - 2011(2) Haryana Law Reporter 156

Default in payment - Resumption of site - Allottee failed to pay 75% balance amount of booth site allotted by the respondent - Resumption of site rightly ordered as payment was not made despite providing of 20 opportunities for payment - 2013(1) Haryana Law Reporter 408 D.B.

Development Scheme - Where a scheme under the Haryana Municipal Act, 1973 was not implemented for a period of 5 years, it was held that the scheme had lapsed - *Indian Oil Corporation v. Municipality of Thanesar*, 1989 (5) Punjab Legal Reports and Statute 490.

Directions - Chandigarh Administration cannot be allowed to permit any one to grab public land by making allotment at a throughway price - 2015(1) HLR 190 S.C.

Discremination - Question of discremination would arise only if the order in favour of another person passed by allotment authority is legally valid and (ii) the case of writ petitioner was similar in material respects to the other case but the other person had not been accorded the same treatment - Where no such finding was given by the H.C. its order held to be erroneous by the apex court - *Chandigarh Administration v. Jagjit Singh*, 1995 HRR 165 SC = AIR 1995 SC 705.

Discrimination - Precedents - Plea of discrimination should be based upon legal and positive consideration - It does not strengthen the plea of the petitioner that an illegal benefit was availed by many defaulters for a pretty long period - Consistency in administration of justice which creates confidence in the

system can never be achieved without respect to rule of finality - Refusal to make re-allotment by Chandigarh Administration after rules of re-allotment were deleted is not violative of Article 14 of the Constitution - Petition dismissed - *Hari Pal v. Chandigarh Administration*, 2014(2) Haryana Law Reporter 544 D.B.

Dismissal of writ petition in limine - Speaking order - Res judicata - A writ petition filed against the order of resumption of site for insurer was dismissed in limine - A detailed speaking order was passed after hearing contention of the petitioner - A review application against the said order was also rejected - It was pleaded that the order having been passed in limine does not bar the present petition on the principle of *res judicata* - The contention has no force - Once a speaking and detailed order is passed, though in limine, the same would bar subsequent petition on the same cause of action - Petition dismissed - *Sant Singh v. Union Territory, Chandigarh*, 1999 H.R.R. 55 D.B.

Enhancement of rent - Administrator is competent to enhance the rent of leased property under Punjab Capital Act - Lessee cannot run away from the terms of agreement - 1998 HRR 184 D.B.

Extension fee - No policy for charging extension fee was in force when construction was raised by the petitioner allottee - Resumption of site for non-payment of extension fee set aside - 2013(2) Haryana Law Reporter 434 D.B.

Extension fees - The original owner of the house is duly occupying the house in question for a number of years - As per order passed by the Administrator U.T. Chandigarh the extension fees was calculated upto date - In the facts of the case when the house was duly occupied by its owner there is no need for the petitioner to obtain a fresh occupation certificate or to pay extension fees - *Punjab National Bank v. Union Territory, Chandigarh*, 2000 H.R.R. 383 D.B.

Forfeiture - Penalties - Once the order of resumption of site is set aside by the Administration Authorities, the order of forfeiture of 10% of the premium also become in-operative - Petitioner could not be asked to pay this amount - Once the lease is restored, the order of forfeiture could not stand - Amount of Rs. 35,287/- paid by the petitioner ordered to be refunded forthwith - *M/s. Goyal and Company v. Union Territory, Chandigarh*, 1992 HRR 368.

Forfeiture and resumption - Relief of forfeiture cannot be granted merely on the ground that order of resumption has been set aside - Where resumption was set aside, restoring the site alongwith the building but forfeiture was allowed to stand, denial of relief of forfeiture was allowed to stand - Ratio of *M/s. Goyal and Company's case* 1992 HRR 368 could be applied only when order of resumption has been set aside on merits - *Navdeep Kaur Sandhu v. The Advisor to the Administrator, U. T., Chandigarh*, 1995 HRR 170

Increase in rent - Chandigarh Administration increased rent of S.C.O.'s from Rs. 2,671/- to Rs. 15,824/- after expiry of lease - Increase being in terms of contract not arbitrary and unconstitutional - 1998 HRR 193 D.B.

Increased price of plot – Once full price of plot has been paid by the allottee, Chandigarh Administration cannot demand share in increased price of plot – Nor condition of 10 years for sale can be imposed on allottees – 2015(1) HLR 475 D.B.

Instalment - Interest - Petitioner who had purchased a shop-cum-office in an auction had paid 25% price on the spot - 2 instalments were paid in time but there was default in payment of 3rd instalments - Estate Officer ordered resumption and forfeiture of 10% auction money but this order was modified in revision and plot was restored - Order of restoration is justified - Delay in payment made in accordance with the order of Chief Administrator, in revision, was due to the reason that the amount of draft was not got encashed by the authorities, for which the petitioner cannot be penalised for payment of interest - Plot ordered to be restored without any forfeiture and respondents were directed to refund the excess amount of interest, if charged, from the petitioner - *Shri Kulwant Rai v. Union of India*, 1994 HRR 83.

Interest - Petitioners were given option to pay balance of 75% of lease money with 7% interest in 3 equated instalments - Petitioners failed to pay instalments on due dates - Rule amended raising the interest from 7% to 12% w.e.f. 15.12.1979 - Petitioners were charged interest @ 7% till 15.12.1979 but were charged at 12% per annum for the subsequent period - Provisions of amended Rules would fully apply to the case of the petitioner - *Navdeep Kaur Sandhu v. The Advisor to the Administrator, U. T., Chandigarh*, 1995 HRR 170

Interest - Estate Officer held to be justified in charging interest on sum payable for use of unauthorised construction - 1998 HRR 68

Interpretation – Relief – Relief denied to petitioner by a wrong interpretation of judgement of Hon'ble Apex Court – Relief of allotment upheld – 2017(1) Har. LR 479 D.B.

Irregularities - Allotment obtained by appellants from DDA by fraud - Plots were of larger size than the extent to which they were entitled to according to the criteria fixed for allotment - DDA sought retaking of one of the plots by ordering cancellation thereof - Appellant not entitled to retain the plot - Inaction on the part of DDA to take action in compliance of Order of S.C. to examine the irregularities in allotment is no ground to uphold the allotment especially when allotment was not cancelled even by H.C. - Appeal dismissed - *Shori Lal and Sons v. Delhi Development Authority*, 1996 HRR 175 S.C. = 1995 (3) SCC 320.

Irregularity repetition – If irregularity is made in one case the same cannot become a precedent – 2013(1) Haryana Law Reporter 331 D.B.

Last resort – It is settled law that resumption is a last resort – Resumption set aside subject to payment of conversion fee by tenant petitioner – 2015(1) HLR 460 D.B.

Last resort – It is settled law that resumption of site is the last resort – Petitioner had stopped misuse of site – Order of resumption set aside – 2015(1) HLR 485 D.B.

Last resort – Resumption – Stopping of misuse - Misuse of site had ceased to exist when revision petition was filed – Resumption of site should be adopted a last resort - Resumption of site set aside – 2015(2) HLR 110 D.B.

Last resort - Petitioner found in possession of site in question and having an Adhaar Card of this site – Resumption of site being last resort is liable to be set aside – 2015(1) HLR 420 (D.B.)

Last resort – During pendency of petition, misuse of house had already been stopped – Resumption of site should be the last resort – Order of resumption set aside - *Dr. Jotinder Kaur v. Advisor to the Administrator, UT, Chandigarh*, 2015(1) Haryana Law Reporter 74

Lease - It was held in *Indian Oil Corporation v. Union Territory*, AIR 1975 P & H 307 that power to grant lease includes the power to cancel the lease as well.

Lease cancellation - Instalments due not paid despite repeated demand - Cancellation of lease justified - 1999 HRR 211 D.B.

License for Rehri shop - Petitioner applied for grant of license to run a rehri shop in sector 23 of Chandigarh which was denied by the Administrator without solid reasons – Father of the petitioner was running the shop since 1971 and he died on 19.12.2001 – Order of Administrator suffers from legal infirmities and irregularities who should not have adopted policy of pick and choose in such matter – Respondent is directed to re-decide the matter in the light of observations under the order – Petition allowed - *Santosh Rani v. Chandigarh Administration*, 2012(2) Haryana Law Reporter 560

Liquor vendis – Allotment of roadside land for liquor vendees by Chandigarh Administration is illegal and against public interest - 2012(2) Haryana Law Reporter 70 D.B.

Misuse – Petitioner stopped misuse of site during pendency of proceedings – Order of resumption set aside – It is settle that resumption of site is the last resort – 2015(1) HLR 509 D.B.

Misuse beyond control – Misuse of 1st and 2nd floor of SCF by tenant in violation of lease agreement which was beyond control of petitioner – Misuse no more at present – Resumption order quashed - 2014(2) HLR 294 D.B.

Misuse of house - Misuse of house had ceased to exist with an undertaking not to continue such activities in future – Order of cancellation of lease set aside – 2016(1) Har. LR 563 D.B.

Misuse of shop – Rented shop cannot be resumed merely that tenant refused to vacate it even after allotment of other shop unless misuse thereof is proved – Order of resumption set aside – 2015(1) HLR 83 D.B.

Misuser - Resumption - Site in dispute was resumed by Estate Officer for misuse of site - Resumption order under challenge - During the pendency of writ petition petitioner gave a written undertaking that he would not use the premises except for the purpose which is permissible under law - Held, resumption order in view of said undertaking will not be given effect to - Amount of forfeiture will be deposited by petitioner along with interest at the rate of 12% per annum

- Order of resumption can be revised if there is any violations of undertaking in future - *Chhaju Ram v. Union of India*, 1999 H.R.R. 3 D.B.

Mis-user - Residential building being misused for running a school - Resumption of site justified - 1999 HRR 55 D.B.

Mis-user - Misuser of premises stopped by tenant/landlord - Resumption of site not sustainable - 2001 HRR 254 D.B.

Mis-user - Tenant of allottee using building in contravention of terms of allotment - Held liable to eviction - *I.J. Gandhi v. The Estate Officer, Chandigarh*, 2000 HRR 565 D.B.

Mis-user charges - Misuse of site by tenant in violation of lease agreement which was beyond control of landlord - Order of resumption for misuse of site set aside - Misuse charges can be recovered from landlord - 2014(2) HLR 294 D.B.

Mutation - Right of hearing - Resumption order passed without impleadment of petitioner in whose favour a sale deed has been executed - Mere absence of mutation does not affect the right of hearing of petitioner - 2011(2) Haryana Law Reporter 515

Natural justice - Resumption of site without notice to its occupant is illegal - 2001 HRR 254 D.B.

No objection certificate - The object of the "No objection certificate" is not to condone the violations of the Act or the Rules and as such, it cannot have such any fact by implication - *Sohan Singh v. Estate Officer*, 1978 P.L.R. 235

Non-payment of instalments - Resumption - Resumption of site is a matter of last resort - As amount with interest cost and ground rent was paid by allottee - Order of resumption set aside - 2006(1) HRR 554 D.B.

Notice - Order of resumption without notice to tenant for alleged misuser not to be passed without notice to landlord as well as tenants - 2001 HRR 254 D.B.

Notice - Resumption of site without prior notice is illegal - Even a tenant must be served with notice - *International Publishers (M/s.) v. Union Territory, Chandigarh*, 2006 (Suppl.) HRR 274 D.B.

Occupation certificate - Plot was resumed on false ground that petitioner had failed to get occupation certificate in time - Order being illegal set aside - Case remanded for fresh decision - 2016(1) Har. LR 357 D.B.

Opportunity - Misuser - Petitioner's allottee let out her property to a tenant in bona fide manner - Tenant allegedly started misusing the tenanted property for running a Guest House in violation of terms of allotment - Estate Officer passed exparte order against allottee ignoring the principles of natural justice - There is merit in the contention of petitioner - Case remanded to Estate Officer for fresh decision - Petition allowed - *Shama Sachdeva v. Advisor to the Administrator*, 2001 HRR 21 D.B.

Opportunity to tenant - Before taking step to resume a site tenant must be afforded an opportunity of hearing - 2015(1) HLR 460 D.B.

P.I.L. - Petitioner approached the High Court to safeguard public interest and having no personal interest involved - PIL is maintainable in the interest of general public as running of liquor vends on roadside will add to be more congestion - 2012(2) Haryana Law Reporter 70 D.B.

Penalty - Resumption of site - Residential building being misused as guest house - Penalty at Rs. 3,000/- per year imposed on the owner - 1998 HRR 55

Penalty - Interest - Petitioner failed to pay lease amount for the period 1977 to 1991 amounting to Rs. 2,02,500/- towards ground rent - A 100% penalty was imposed on the outstanding amount of ground rent which was ordered to be recovered as arrears of land revenue - Present petition was filed against the impugned order alleging that the penalty is excessive - There is no illegality in the impugned order as the petitioner had flouted the valid and legal orders of the administration with impunity - Petition dismissed with cost of Rs. 5,000 - *Batra Finance Pvt. Ltd. v. Chandigarh Administration*, 1996 HRR 128 DB.

Power of resumption - Forfeiture - Allotment - Authorities can take recourse to Section 8-A of the Act where allottee has dishonest intention or ill motive in not making the payment of balance instalments - But if the default is not wilful or dishonest but due to a situation beyond allottee's control, resumption of site would not be proper - Sympathy or sentiment will not deter the statutory authority from passing an order of resumption if there is violation of legal right - Resumption of site depends on fact to fact of each and every case - *Teri Oat Estates Pvt. Ltd. v. U.T. Chandigarh*, 2004(1) H.R.R. 659 S.C.

Public building - A Petrol Pump in a zoning plan of the Capital of Chandigarh does not fall within the definition of Public Building - Public utility service excludes from its purview a petrol pump and a service station - *Daya Sarup v. State of Punjab*, AIR 1964 Punjab 533.

Public purpose - Acquisition - State cannot be prevented from acquiring a land under constructed house on mere allegation of pick and choose unless mala fide is shown on its parts - 2007(1) HRR 303 D.B.

Removal of violations - Revised plan - Petitioner agreed to remove all non compoundable violations and to submit revised building plan of SCF - Order of resumption set aside subject to compliance of necessary directions - 2015(1) HLR 451 D.B.

Res judicata - Petition dismissed in limine by a detailed and speaking order - Second petition on the same cause of action is barred - 1999 HRR 55 D.B.

Resumption - Resumption of site was resumed by Chandigarh Administration alleging construction raised in violation of building bye-laws - Most of the violations are removed - Violation can be compounded or rectified - Order of resumption quashed - *B.N. Kataria v. Union Territory, Chandigarh*, 2002 H.R.R. 240 D.B.

Resumption - Violation - Tenanted premises was resumed by Administration - Landlord was permitted to remove the violation about which tenant had no knowledge - Landlord sought tenant's eviction on the ground that he had made material changes in the demised premises - Tenant challenged the order of resumption by and large on the grounds taken by landlord at the time of order of resumption - Tenant should have been permitted to comply with the condition as permitted to landlord - *Prem Kumar v. Chandigarh Administration*, 2002 H.R.R. 66

Resumption - Last resort - Petitioner adhered to the time schedule and complied with the order of Court relating to construction on site - It is well settled that resumption of site is the last resort and if the allotted has not violated any rule or regulations, Allotment Authorities should hesitate from taking such step - Respondent directed not to take harsh action of resumption - Petition allowed - *Kalyan Singh v. Estate Officer, Chandigarh*, 2014(2) Haryana Law Reporter 555 D.B.

Resumption - Drastic measures - Power of resumption of site or building under the Act should be used sparingly by authorities - Such measure is a drastic one and should be invoked only when there is flagrant violation of condition of sale - When misuser of property is not by owner but by a lessee being beyond control of the owner - Restoration of resumed site or building can be made to the owner of property - *Dr. A.P. Sanwaria v. Union of India*, 1996 HRR 504 D.B.

Resumption - Order of resumption is an extreme step - Should be passed only as a last resort - 2001 HRR 254 D.B.

Resumption - It is settled law that power of resumption is a weapon of last resort - 2009(1) Haryana Law Reporter 122 D.B.

Resumption - Petitioner continued violating of rules by constructing of Govt. land - Resumption of site justified - 2013(1) Haryana Law Reporter 49 D.B.

Resumption - Misuse - Once misuse of house has stopped, order of resumption cannot be permitted to stand - Petition allowed - 2016(1) Har. LR 217 D.B.

Resumption - Rented shop cannot be resumed merely that tenant refused to vacate it even after allotment of other shop unless misuse thereof is proved - Order of resumption set aside - 2015(1) HLR 83 D.B.

Resumption and Eviction - Landlord filed ejection application against respondent-tenant - Respondent raised preliminary objection that since the demised building had already been resumed by Administration, the petition for ejection was not maintainable - The objection has no merit - Removal of misuser of premises was beyond control of landlord - He was unable to remove this cause of misuser even during extended period as it was not within his control - Specified time for removal of misuser can be again extended in the circumstances of the case - Preliminary objection repelled - *Babu Singh Bain's case* 1998 H.R.R. 511 SC distinguished - *Dr. Amrik Singh Chatha v. Bishanber Dass*, 2000 H.R.R. 28

Resumption as last resort - Petitioner could not raise construction on allotted site in time due to reasons beyond his control - Order of resumption should be last resort - Order of resumption set aside - 2010(2) Haryana Law Reporter 191

Resumption of building - A structure was raised by tenant in violation of provisions of the Capital Act - Notice for resumption of building was served upon landlord by the Administration - Tenant held liable for eviction irrespective of the fact whether building has been impaired or not within the meaning of S. 13 (2) (iii) of East Punjab Urban Rent Restriction Act - *Durga Seeds Farm's case*, 1995 HRR 304 S.C. distinguished - *United Engineers v. Nirmal Bhasin*, 2005(1) HRR 85

Resumption of plot - Respondent allottee failed to complete construction on allotted plot within a long period of 5 years - Resumption of site held to be justified - 2013(1) Haryana Law Reporter 428 D.B.

Resumption of plot - The petitioner had failed to pay the amounts due as per the terms of allotment - The Estate Officer validly passed the order of resumption of plot and forfeiture - It was merely as a measure of concession that the said order was set aside by the revisional authority subject to the petitioner paying the outstanding due and an amount equal to the forfeiture imposed by the Estate Officer - Order of forfeiture has clearly to be held valid and legal - Petitioner whose penalty was waived cannot claim that order of forfeiture also should be set aside - Relief declined - *Ashok Kumar v. Union of India*, 1993 HRI 640

Resumption of plot - Petitioner allottee was not provided any opportunity of hearing before a resumption order was passed by the Advisor, U.T. Chandigarh - Order of resumption cannot be sustained - Even a finding on a point not taken in the show cause is illegal and without jurisdiction - *Harnam Singh v. Union Territory*, 1994 HRR 426 D.B. = 1994 PLJ 294.

Resumption of plot - The building in dispute, had already been constructed when the order of resumption was passed by the authorities - Requirement of law stand fulfilled by the allottee petitioner - There is no justification for ordering the resumption of plot - Submitting of a revised plan is sufficient to meet the requirement of law - Order of resumption set aside - In other words, supposing a person had got sanctioned a plan for a double storey house but he completed only one storey and can get occupation certificate just by submitting revised plan for the single storey; in that eventuality the site should not be resumed - *Kehar Singh v. The Chief Commissioner, U. T. Chandigarh*, 1994 HRR 8

Resumption of site - Purchaser of plot let out the premises to bank - Directed to apply for change of trade in terms of notification issued in this behalf otherwise plot may be resumed - *I.J. Gandhi v. Estate Officer, Chandigarh* 2000 HRR 565 D.B.

Resumption of site - Allottee owner did not deposit conversion fee just to facilitate tenant's eviction - Tenant tried to pay the amount and order of resumption set aside - 2015(1) HLR 460 D.B.

Resumption of site – Lessee was to complete building within prescribed period of three years from the date of allotment – He could not complete construction within this period – Subsequently, plot was resumed by the Authority – Impugned Order cannot be sustained on the following grounds :-

- (i) Allottee spent Rs. 51 crores and had obtained a loan of Rs. 45 crores for completion of building, which proves bona fide intention of the allottee.
- (ii) Authority took 4 ½ years in sanctioning the revised plan.
- (iii) Authority has discretionary powers to grant exemption under the Rules.
- (iv) All the dues had already been paid by the allottee relating to the plot.
- (v) Under section 8A of the Act, resumption of plot is not a mandatory provision for breach of conditions.
- (vi) Allottee was given only a period of 11½ months whereas under Rule 16 of 1973 the limit is 3 years.
- (vii) Allottee had paid Rs. 3.90 crores as extension fee.
- (viii) As huge structure has already been raised, power of resumption ought not to be exercised though alternative power of penalizing the allottee can be exercised - *M/s. James Hotel Ltd. v. Union Territory, Chandigarh*, 2010(2) Haryana Law Reporter 84 D.B.

Resumption of site – Last resort – Before passing an order of resumption it is obligatory on the part of Estate Officer that the wrong doer has been penalized under relevant rules including Rule 15 framed under section 22 of the Punjab Act, 1952 – Every action of defaulter should be explained in the show cause notice – It is also bounden duty of the appellate authority to reverse the order of resumption of site if it comes to the conclusion that order has been passed by the authority below in disregard of the legal provisions of law – If mischief to section 8A has been done, the order should be quashed – The Appellate Authority is expected to perform its plenary duty to ‘confirm’, ‘vary’ or ‘reverse’ the order - *Dheera Singh v. U.T. Chandigarh Admn.*, 2013(1) Haryana Law Reporter 57 F.B.

Resumption of site - Petitioner delayed payment of instalments of his plot, inspite of demand notice - Resumption of plot ordered - Held, extreme step of resumption of plot held to be in contravention of the Act - Resumption of site due to delay in payment of instalment cannot be sustained - Impugned order set aside to that extent - 1989(2) PLR 668 followed - AIR 1991 SC 1453 distinguished - *Jaswant Singh v. Chandigarh Administration*, 1993 HRR 355 D.B.

Resumption of site - Petitioner allottee found to be sincere in complying with terms and conditions of allotment - He invested huge amount on construction of site - Entire premium amount including ground rent paid by petitioner on demand of authorities - Order of resumption of site was passed due to delay in payment of instalment - Owners of property cannot be deprived of their property

by passing harsh order of resumption unless default committed by allottee is intentional and consistent - Impugned order being bad in law cannot be sustained - Petitioner allowed - *Brij Bhushan Sharma v. Estate Officer, U.T. Chandigarh*, 2000 H.R.R. 768

Resumption of site - Notice issued to appellant/allottee to pay the amount due in respect of allotment of plot - Payment made including amount of interest and penalty - Resumption order for non payment of instalment deserves to be quashed - Allotment ordered to be regularised - *Jasbir Kaur v. U.T. Chandigarh*, 1999 HRR 463 S.C.

Resumption of site - Rate of interest - Appellant failed to pay instalments qua the allotted plot on account of her bad financial position - Resumption order was set aside by Appellate Authority restoring the site to appellant - At the same time Appellate Authority imposed regular interest at the rate of 7% and penal interest at the rate of 18% on the delayed payment - In appeal the Hon'ble Supreme Court reduced the interest at the rate of 7% and 11% respectively - Appeal allowed to that extent - *Surinder Kaur v. Govt. of Punjab*, 1999 H.R.R. 63 S.C.

Resumption of site - Leave to appeal - Eviction of allottee and sub-lettee was ordered by Estate Officer and upheld upto High Court for subletting and misuse of booth - The High Court and the Court below came to the conclusion that there was no violation of rules of natural justice - Sub-lettee entering through back door illegally and performing “Akhand Path” - Case of trespass stands established - Allottee appearing to defend his case at very late stage and leasing the same - Equitable ground for grant of leave pleaded - No leave can be granted on equitable grounds - Petition dismissed - *Ishar Singh v. District and Session Judge*, 1999 HRR 170 S.C.

Resumption of site - Order of resumption of site passed by competent authority - Appeal as well as revision also dismissed - Petitioner after order of resumption cannot be allowed to raise construction on the resumed site. However having regard to the fact that petitioner has spent substantial money on construction, he is allowed to retain the possession and to apply for reallocation under Rules to the Administrator by paying prevailing market price - *Sat Pal Bhatia v. Estate Officer, Chandigarh*, 1998 H.R.R. 209 D.B.

Resumption of site - It is settled law that power of resumption of site should not be resorted to illegality - But Court cannot over look the matter where haves of the Society try to grab public property by hook or by crook - Gain of individuals is a direct loss to the public exchequer - Court must not show compassion towards those who want to enjoy public property without fulfilling their duty - *Devinder Singh Pannu v. Chandigarh Administration*, 1998 H.R.R. 93 D.B.

Resumption of site - Provisions of Section 8-A of the Act 1952 or Rule 12 (3) of Rules, 1973 laying down procedure of resumption of site do not offend provisions of Constitution on the ground that these provisions amount to depriving

a person of his right to property - A lessee whose site has been resumed for violation of legal provisions of the Act or Rules is not left without any remedy - He may approach the Administration for retransfer of site under Rule 21-A of the Rules - *Devinder Singh Pannu v. Chandigarh Administration*, 1998 H.R.R. 93 D.B.

Resumption of site - Owner allottee not making full payment of the site in dispute - Title remains with the Government till full payment is made along with interest - Site can be resumed for non payment of instalment within time - During the pendency of resumption of site no person can be inducted as a tenant by the owner / allottee - *M/s. Sadhu Ram Krishan Kumar v. Union Territory Administration Chandigarh*, 1992 HRR 598 D.B.

Resumption of site - Premises resumed by Estate Officer - As long as the order of resumption is not final owner of the premises is entitled to recover the rent from the tenant - Landlord held entitled to receive the rent from the tenant despite resumption of premises - *Vidya Sagar v. Punjab State Warehousing Corporation*, 2002 H.R.R. 548

Resumption of site - Natural justice - Lot of difference between contents of show cause notice and facts reported in inspection report - Order of resumption not based on contents of show cause notice - Violation of cardinal principles of natural justice apparently established in the case - Order of resumption passed by authorities below cannot be sustained - However, Administration is not precluded from initiating fresh action if show cause notice for violation is duly served and facts are proved against the petitioner - *Sh. K.N.T. Nair v. Chandigarh Administration through its Advisor*, 2002 H.R.R. 586

Resumption of site - It is settled law that power of resumption of site should be sparingly used - Recourse to this provision of law should be taken as a last resort - Each case has to be viewed separately - No hard and fast rule can be laid down in this regard - In the present case Estate Officer had levied interest at the rate of 12%, 15% and 24% per annum for different periods which in now subject of writ petition pending before the High Court - Appellant paid the entire amount which was due and ready to pay the balance of Rs. 13 Lacs - They paid the entire ground rent and also penalty was paid for non-payment of balance amount - Conduct of appellant is deprecated for not making the payment in time - But instead of upholding the order of resumption, appellant is directed to deposit a further sum of Rs. 15 Lacs with the Estate Officer within 10 days - *M/s. Teri Oat Estates (Pvt.) Ltd. v. U.T. Chandigarh*, 2004(1) H.R.R. 659 S.C.

Resumption of site - Initially the building in dispute was given on rent to Haryana Government for residence when it started using it as an office - The petitioner had taken immediate steps to get the misuser stopped, and ultimately succeeded in evicting the tenant - Ground for resumption on the ground of violation of the provisions of the Act, does not exist and more - Resumption order set aside - *Smt. Dhanwant Kaur v. Union Territory, Chandigarh Administration*, 1992 HRR 602.

Resumption of site - The petitioner was allotted a plot in the year 1970 - He could not construct the Hotel in the allotted site measuring 13,198.77 square yards though he had paid 25% of the total price of Rs. 13,40,000/- amounting to Rs. 3,35,000/- only - The Estate Officer vide his order, ordered resumption of site but the petitioner sought extension of time by filing review application before the Chief Commissioner who on the ground of mercy petition granted extension of time for construction of the Hotel on the allotted site - The order of Estate Officer resuming the site is justified as there was no power of review with the Chief Commissioner - Order of resumption passed by Estate Officer upheld - *Maharani Deepinder Kaur Burdwan v. Union Territory, Chandigarh*, 1996 HRR 495 D.B.

Resumption of site - Misuser - Special Leave Petition filed by appellant against the order of resumption was dismissed as withdrawn with liberty to file application under Rule 11-D of Chandigarh (Sale of Sites and Buildings) Rule 1960 - As the order of resumption had become final the Estate Officer can look into the propriety of order of resumption only from the stand of point of Rule 11-D of Rules 1960 - Appellant pleaded for the first time that most of the premises has been used for authorised purposes and misuser pertained to front portion of the show room which was let out to tenants - Estate Officer was directed to examine the correct position and to grant proportionate relief in accordance with substantive evidence produced by appellant - *Jyotsna Kohli v. Union Territory of Chandigarh*, 2004(2) HRR 472 S.C.

Resumption of site - Retransfer - For the purpose of computing the value for transfer of site under Rule 11-D of Chandigarh Rules, 1960 the value should be assessed with reference to the date on which application for retransfer was filed - In the case in hand the appellant/applicant was pursuing litigation bona fide to put an end to misuser of site - Estate Officer was directed to treat the application under Rule 11-D as having been filed in the year 1992 instead of year 1996 in the peculiar circumstances of the case - *Jyotsna Kohli v. Union Territory of Chandigarh*, 2004(2) HRR 472 S.C.

Resumption of tenement - Change of user - Tenement was to be used for "fruit and vegetable" which is being used as "Jewellery Shop" - It cannot be said that the subject booth has been mis-used by the allottee in view of the latest policy of Chandigarh Administration notified on 22.01.1993 about change of trade subject to payment of certain charges - Petition allowed - *Shri Ram Avtar v. Chandigarh Administration*, 2008(2) HR 599

Retrospective effect - Validity of provision - Section 8-A of the Act was inserted with retrospective effect from 1966 - Validity of this Section was challenged - Rule 11 D gives discretionary powers to Estate Officer but he cannot reject an application arbitrarily and cannot pass orders without giving reasons - Resumption under Section 8-A can be ordered not only for non payment of rent but also for violation of conditions and rules made in this regard - There is no ground to declare Section 8-A as violative of Article 14 - This ar

enabling clause only - Validity of Sec. 8-A upheld - Order of High Court maintained - *Babu Singh Bains etc. v. Union of India*, 1996 HRR 511 S.C.

Review - A quasi judicial Tribunal has no power to review its order unless it is conferred with such power by statutory provisions - 2013(1) Haryana Law Reporter 395 D.B.

Show cause notice - Unauthorised construction - Petitioner raised illegal construction within four walls - It was not possible for authorities to know the date of construction or its completion - Validity of show cause notice upheld - 2017(1) Har. LR 237 D.B.

Tenant's error - Landlord cannot be penalised by passing order of resumption for error of misuser of tenant - 2001 HRR 254 D.B.

Transfer of plot - Where a person had purchased the plot for consideration and applied to the authority for the registration of the transfer in his name it was held that the registration cannot be refused by the Estate Officer or the Chief Administrator merely on the ground that the proper affidavit undertaking the liability of the said plot is not filed by the transferee - *Gian Singh v. State of Punjab*, 1969 P.L.R. 531.

Undertaking - Allottee's tenant giving undertaking before Court to vacate the building to comply with terms of allotment - Held liable to vacate the premises - 2000 HRR 565 D.B.

Violation by Corporation - Where the Municipal corporation had placed restrictions on constructing more than one storey but it had constructed itself a four storeyed building on similar land, it was held that the action of the Corporation placing restriction on other owners could not be sustained - *Shukan Kumar v. Municipal Committee Ludhiana*, 1989 (5) Punjab Legal Reports and Statutes 426.

Violation of Act - The premises in dispute were leased out to the tenant for his residence - He started running a printing press in the name of a Firm solely owned by himself - Conversion of building from residential to non-residential one in violation of provision of Capital of Punjab Act, 1951 is illegal - Tenant held liable to eviction for conversion of building unauthorisedly - Even the plea of consent of landlord against the statute, cannot help the tenant - *Shri Rai Chand Jain v. Miss Chandra Kanta Khosla*, 1991 HRR 1 S.C.

Violation of Regulation - Demised premises were located in a residential part of a Sector of Chandigarh - Letting out of such building for the purpose of trade in violation of the provisions of the Capital of Punjab Act would not bring the premises within the fold of non-residential building - *Surjit Singh v. Harbans Singh*, 1989 HRR 1.

Violation of terms of allotment - Unauthorized construction - Allotment of site canceled as allottee had raised construction in violation of terms of allotment - Now after removal of illegal construction allotment is restored to the petitioner - 2017(1) Har. LR 286 D.B.

Violations - Four out of five violations in construction of building became compoundable at the time of violation of final hearing of the writ petition - Peti-

tioners gave undertaking to remove the 5th violation in accordance with condition laid down by the Administration - Relying upon Division Bench judgment delivered in *Jagdish Rai's case* 1998 (1) P.L.J. 221 petitioner allowed opportunity to approach Competent Authority and should pay compounding fee as well as remove violated item within one month - Resumption of building set aside subject to these observations - *Amit Pal Singh v. Chandigarh Administration*, 2004(2) HRR 301

Vires of Act - Chandigarh (Sales of Sites and Buildings) Rules, 1960 - Rule 11-D - Deletion of Rule 11D effect on section 8-A - Provisions of section 8A were challenged mainly on the ground that after deletion of Rule 11D, validity of section 8 cannot be upheld - Contention is without merit as Hon'ble Supreme Court has upheld the constitutional validity of section 8A in *Babu Singh Bains case* 1996 HRR 511 S.C. and in *Ram Puri's case* AIR 1982 P&H 301 - Section 8A is not hit by Articles, 14, 19(1)(f), 31 and 300-A of the Constitution - *Dheera Singh v. U.T. Chandigarh Admn.*, 2013(1) Haryana Law Reporter 57 F.B.

Writ of Certiorari - Error of law - High Court can interfere in a finding of fact only when such finding is perverse and there is an error of law - Adequacy or sufficiency of evidence cannot be made the basis for interference - When allottee was found to be wilful defaulter for not paying the instalments despite several opportunities, order of cancellation of plot held not liable to be set aside in a writ petition - *Harpal Singh v. Union Territory, Chandigarh*, 1997 H.R.R. 527 D.B.

Writ petition procedure - Admission of Another writ petition does not prevent - High Court from deciding a writ petition after service of notice to respondent - There is no reason to withhold decision of the writ petition merely on the ground that some other petitions have been admitted - *Jagjit Khanna v. State of Haryana*, 1997 H.R.R. 395 D.B.

[9. *Forfeiture for breach of conditions of transfer* - Omitted by the Capital of Punjab (Development and Regulation) (Amendment) Act, 1973, Central Act No. 17 of 1973 (Section 4).]

COMMENTARY

Resumption order - Striking down of Sec. 9 - Sec. 9 as stood before the amending Act 17 of 1973 was struck down by Supreme Court after about four years of resumption order - Striking down of Sec. 9 cannot invalidate the proceedings taken under Sec. 9 relating to the persons who were not parties before the Apex Court nor the orders having attained finality can be effected thereby - Order of resumption cannot be treated as a nullity by the order passed by the Supreme Court in another case - *Sat Pal Bhatia v. Estate Officer, Chandigarh*, 1998 H.R.R. 209 D.B.

10. Appeals and revision. - (1) Any person aggrieved by an order of the Estate Officer made under [section 8 or 8-A] may, within thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner as may be prescribed :

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Chief Administrator may, after hearing the appeal, confirm, vary, or reverse the order appealed from and may pass such orders as he deems fit.

(3) The Chief Administrator may, either of his own motion or on an application received in this behalf, at any time call for the record of any proceeding in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit :

Provided that the Chief Administrator shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

(4) Where a person is aggrieved by any order of the Chief Administrator, deciding a case under sub-section (2) or sub-section (3), he may, within thirty days of the date of communication to him of such decision, make an application in writing to the ²[Central Government] for revision against the said decision ; and the ³[Central Government] may confirm, alter or rescind the decision of the Chief Administrator.

COMMENTARY

Arbitrary order - Revision - Petitioner was allowed to file his written submission by the Administrator, U.T. by a particular date - Revision petition was dismissed even before the expiry of date fixed for filing the submission without waiting for the particular date - Revision petition not decided in a proper and fair manner - Order suffers from vice of arbitrariness and liable to be quashed - *M/s. Sawan Ram Vijay Kumar v. Advisor to the Administrator, U.T. Chandigarh*, 1997 H.R.R. 606 D.B.

Limitation - Revisional Authority dismissed the revision petition on the ground of limitation as no explanation for delay was given by the petitioner - Order of revisional authority justified and not open to challenge under Article 226 of Constitution - *Assistant Estate Officer, Chandigarh Administration v. Smt. Anita Arora*, 2001 HRR 241 D.B.

Notice - Tenant's eviction - Allottee raised construction in SCO in violation of provisions of the Act 1952 - Five floors instead of 4 floors were constructed and partition was also effected - Show windows on rear sides were converted in booth - Petitioners were inducted as tenant about 5 years after order of resumption - They filed appeal about 10 years after the order of resumption contending that they being necessary parties, order of resumption is not binding on them - There was no need to issue show cause notice to them because they were not occupying the premises when resumption proceedings were initiated -

1. Substituted by Capital of Punjab (Development & Regulation) Amendment Act 17 of 1973

2. Substituted by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "State Government".

No jural relation had come into existence between the petitioner and Chandigarh Administration - There was no violation of rule of natural justice - *Raghubir Singh's case* 1993 HRR 621 and *M/s Rajinder Kumar's case* 2002 HRR 797 (DB) distinguished - Petition dismissed - *M/s. Melody House Agencies v. Union Territory Administration through its Advisor*, 2002 H.R.R. 579 D.B.

Opportunity - Misuse - Cancellation of lease - The revisional authority based its order on Inspection Report made by the Law Officer - No opportunity of hearing was afforded to the petitioner allottee to defend their case while preparing the report of inspection - Order of Revisional Authority suffers from vice of illegalities as it violates principles of natural justice - The plea that report of inspection was available on the record is of no help - Petitioners being interested parties must have been given the notice before making the said report - It is incumbent upon quasi-judicial authority to make available the evidence to the person against whom such evidence is likely to be used - *Bhajan Singh and Sons (HUF) and Others v. Chandigarh Administration, Union Territory, Chandigarh*, 1998 H.R.R. 75 D.B.

Opportunity - Misuser - Petitioner's allottee let out her property to a tenant in bona fide manner - Tenant allegedly started misusing the tenanted property for running a Guest House in violation of terms of allotment - Estate Officer passed ex parte order against allottee ignoring the principles of natural justice - There is merit in the contention of petitioner - Case remanded to Estate Officer for fresh decision - Petition allowed - *Shama Sachdeva v. Advisor to the Administrator*, 2001 HRR 21 D.B.

Power of resumption and forfeitures - Appellate Authority under the Act is vested with wide powers to pass appropriate orders of resumption of site or forfeiting the amount as the circumstances of the case require - An order of forfeiture passed by Estate Officer can be maintained even where order of resumption has been quashed - *Ashok Kumar's case* 1993 H.R.R. 640 followed - *Bhajan Singh and Sons (HUF) and Others v. Chandigarh Administration, Union Territory, Chandigarh*, 1998 H.R.R. 75 D.B.

Review - Power of review is not an inherent power but like the power of appeal it must be conferred by law or by necessary implication - Orders passed by C. C. on the review application of allottee were rightly ignored by Estate Officer being non est - Order passed by Estate Officer resuming the site for non construction of hotel on allotted site does not suffer from any illegality - *Maharani Deepinder Kaur Burdwan v. Union Territory, Chandigarh*, 1996 HRR 495 D.B. = 1996 (3) PLR 598.

—There is no provision of review under the Act or the Rules framed thereunder - Review application rightly dismissed as not maintainable - *Sat Pal Bhatia v. Estate Officer, Chandigarh*, 1998 H.R.R. 209 D.B.

Revisional Power - Chief Administrator can exercise power in his revisional jurisdiction and determine the legality of order passed by Estate Officer - These powers can be exercised without any limitation under Section 10 (3) of the Act suo moto or on an application made in this behalf - But under Section 10

(1) appeal is provided against the order - In the present case Chief Secretary Finance exercising the power of Chief Administrator has fallen in error of law by not entertaining the petitioner's application under Section 10 (3) read with Rule 17 of the Rules 1960 - *Smt. Gursharan Kaur v. Union Territory, Chandigarh*, 2004(1) H.R.R. 38

Tenant's interest - Notice - No order passed by an Authority effecting the interest of a tenant without hearing such tenant can be sustained - The Administration passed an order of cancellation of lease knowing well that tenants were in occupation of the site, without hearing them - Order being illegal was quashed - *Held* further, the authorities basing their decision on new and extraneous grounds of misuse are bound to give notice of grounds to the petitioner allottees - *Bhajan Singh and Sons (HUF) v. Chandigarh Administration, Union Territory, Chandigarh*, 1998 H.R.R. 75 D.B.

Waiver - Alternative remedy - Petitioner challenging the order of Estate Officer failed to avail alternative remedy of appeal provided under the Capital of Punjab Act, 1952 - Petitioner must be deemed to have given up his right to challenge the order of Estate Officer resuming the site - Petitioner not entitled to invoke the certiorari jurisdiction of High Court - *Harpal Singh v. Union Territory, Chandigarh*, 1997 H.R.R. 527 D.B.

11. Preservation and planting of trees. - If it appears to the Chief Administrator that it is necessary or expedient to preserve or plant trees generally or of specified kind in Chandigarh, he may, by notification in the Official Gazette make an Order (hereinafter referred to as the Trees Preservation Order) with respect to trees generally or such kind of trees, as may be specified in that order, and such order may regulate, restrict or prohibit -

- (a) the cutting down, topping, lopping or wilful destruction of trees, except with the previous permission of the Chief Administrator ; and
- (b) the planting and replanting of any trees or kinds of trees in any site or location therein as may be specified in the order.

12. Control of advertisements. - If it appears to the Chief Administrator that it is necessary or expedient to restrict or regulate the display of advertisements in Chandigarh he may, by notification in the Official Gazette, make an order (hereinafter referred to as the Advertisements Control Order) restricting or regulating the display of advertisements and such order may provide -

- (a) for regulating the dimensions appearance and position of advertisements which may be displayed, the sites on which such advertisements may be displayed, and the manner in which they are to be affixed to land or building ;
- (b) for requiring the permission of the Chief Administrator to be obtained for the display of advertisements ;
- (c) for enabling the Chief Administrator to require the removal of any advertisement which is being displayed in contravention of the order or

the discontinuance of the use for the display of advertisements of any site which is being used for that purpose in contravention of the order ;
(d) for fees to be charged for advertisements at places specified in the order.

13. Penalty for contravention of directions, etc. - Any person who contravenes the provisions of sub-section (2) of Section 4 or section 6 shall, on conviction, be punishable with fine which may extend to five hundred rupees and to a further fine which may extend to twenty rupees for each day during which the offence is proved to have continued after the first day.

14. Penalty for Contravention of Trees Preservation Order and Advertisements Control Order. - (1) If any person contravenes any provision of the Trees Preservation Order or the Advertisements Control Order, he shall, on conviction, be punishable with fine, which may extend to five hundred rupees, and whoever after having been convicted of the contravention of any provision of either of the said Order continues to contravene the said provisions, shall, on a subsequent conviction, be punishable with fine, as aforesaid and to a further fine which may extend to twenty rupees for each day of continued contravention, after the previous date of conviction.

(2) The Court while passing an order under sub-section (1) may direct that any tree or part thereof or any material used for advertisement, which is the subject of the contravention shall be forfeited to the '[Central Government]' or impose a fine of an amount which shall be equivalent to the value thereof.

15. Penalty for breach of rules. - Except as otherwise provided for in this Act, any contravention of any of the rules framed thereunder shall be punishable with fine which may extend to five hundred rupees, and in case of a continuing contravention, with an additional fine, which may extend to twenty rupees, for each day during which such contravention continues after the first conviction ; and the Court while passing any sentence on conviction of any person for the contravention of any rule, may direct that any property or part thereof in respect of which the rule has been contravened, shall be forfeited to the '[Central Government]'.

Illustration. - Where an unauthorised structure has been constructed or any obnoxious material or substance is collected or heaped on a site in any unauthorised manner or where an advertisement board has been set up in contravention of the Advertisements Control Order, such structure, material substance or board shall be liable to forfeiture, and not the site or building on which the same may be located or fixed :

Provided that if a building is begun, erected or re-erected in contravention of any of the building rules, the Chief Administrator shall be competent to require the building to be altered or demolished by a written notice delivered to the owner thereof within six months of its having begun or having been completed, as the case may be. Such notice shall also specify the period during which such alteration or demolition has to be completed and if the notice is not complied with, the

1. Substituted by Pujab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "State Government".

Chief Administrator shall be competent to demolish the said building at the expense of the owner :

Provided further that the Chief Administrator may, instead of requiring the alteration or demolition of any such building except by way of compensation such sum as he may deem reasonable.

COMMENTARY

Construction of 5th floor - Composite fee - Opportunity of hearing - Petitioner was ordered to pay a sum of Rs. 7,05,556/- as composition fee for the construction of 5th floor of the Flat - The order was passed by the respondent - authorities at the back of the petitioner - The order suffers from illegality - Chandigarh Administration directed to pass fresh orders in accordance with law - *Dr. Vinod Kumar Sethi v. Union Territory*, 1994 HRR 275

Demolition of building - Notice - The action of the Chandigarh Administration in demolishing a portion of respondent's house was held to be illegal by a Division Bench of Punjab and Haryana High Court as the notice to the respondent was issued after expiry of six months of construction in *Chandigarh Administration v. Harinder Pannu*, 1991 HRR 550 but this judgment was overruled in *Bakshish Kaur Saini's case* 1993 HRR 523 F.B. - It was observed by the Hon'ble High Court that by mere lapse of time of six months, the unauthorised constructing does not stand to be legalise - There is no provision in the Act or Rules tendering to legalise any unauthorised construction by mere lapse of time - Even compounding of contravention was not permitted in the case.

Equity - Respondent obtained allotment of plot in his favour concealing the fact of allotment of another plot in his name within the same Municipal Area - Violation of undertaking given to Allotment Authorities - Cancellation of second allotment justified - No equitable relief can be granted to respondent - *Bihar State Housing Board v. Satya Narayan Prasad (dead) by L.Rs.*, 1998 H.R.R. 153 S.C.

Sanction of Plan - The appellant/landlords had got their building plans sanctioned according to Rule 25 of the Capital of Punjab Building Rules, 1952 - In the meanwhile Rule 25 was amended - The appellants, without submitting fresh plans, extended the floor area of the building taking advantage of the amended rule - The height did not exceed the limits permitted by the amended rule - Non submission of plan is a breach of technical nature - Rate of compensation payable by the landlords was reduced from Rs. 45/- per Sq. feet to Rs. 20/- per Sq. feet only payable within six months - *Raghubir Singh and Chattar Singh v. Union Territory of Chandigarh*, 1993 HRR 621.

Violation of building Rules - Landlord's petition for eviction under the E.P. Rent Act was dismissed - Building resumed by Govt. for violation of building

rules as landlord refused to remove the violation - High Court, in the interest of justice allowed the tenant to remove the violation to save his eviction by landlord - *Ram Murti v. Chandigarh Administration*, 2002 H.R.R. 380 D.B.

16. Registration and licensing of architects, engineers and plumbers, etc. - No architect or engineer who does not possess the qualifications, as detailed in the 'First Schedule] appended to this Act, shall be considered as duly qualified ; and no person other than a duly qualified architect or engineer or any plumber shall be competent to certify any plan or completion of a building, or engage in any plumbing works, as the case may be, unless registered and licensed by the Chief Administrator.

17. Power of entry on buildings or land. - The Chief Administrator, may authorise any person after giving twenty-four hours notice to the occupier, or if there be no occupier, to the owner of any building or land, at any time between sunrise and sunset -

- (a) to enter on and to survey, and to take levels or measurements of any buildings or land ;
- (b) to enter into any building or on any land for the purpose of examining works under construction, or of ascertaining the course of sewers or drains ;
- (c) to enter into any building or on any land for the purpose of ascertaining whether any building is being or has been erected or re-erected without sanction or in contravention of any sanction given under this Act or the rules made thereunder and to take such measurements and do any other such acts as may be necessary for such purpose.

18. Procedure for prosecution. - No court shall take cognizance of any offence punishable under this Act or any rule made thereunder except on the complaint of, or upon information given by, the Chief administrator or any other person authorised by him in this behalf.

19. Bar of jurisdiction. - No court shall have jurisdiction to entertain any suit or proceeding in respect of the recovery of any arrears or penalty under section 8 or in respect of the resumption of any site or building, or both, as the case may be, under section 8-A or the forfeiture of any money under that section or in respect of any order made, by the Central Government or any other authority in the exercise of any power conferred by or under this Act.]

1. Substituted by Pujab Act No. 37 of 1957

2. Substituted by Capital of Punjab (Development & Regulation) Amendment Act 17 of 1973

20. Protection of action taken in good faith. - (1) No suit, prosecution or other legal proceeding shall lie against the Chief Administrator, Estate Officer, or any other person acting under their direction in respect of any thing which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the ¹[Central Government], the Chief Administrator or the Estate Officer or any other person in respect of any damage caused or likely to be caused by any thing which is in good faith done or intended to be done in pursuance of this Act or rules or orders made thereunder.

21. Delegation. - (1) The ¹[Central Government] may by order direct that any power exercisable by it under this Act shall be exercisable, subject to such conditions, if any, also by such officers subordinate to the ¹[Central Government] as may be specified in the order.

(2) The Chief Administrator may delegate all or any of his powers under this Act to any officer of the ¹[Central Government] subject to such conditions, if any, as may be specified by the Chief Administrator.

22. Power to make rules. - (1) The ¹[Central Government] may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely —

- (a) the terms and conditions on which any land or building may be transferred by the ¹[Central Government] under this Act ;
- (b) the manner in which consideration money for any transfer may be paid ;
- (c) the rate of interest payable, and the procedure for payment of instalments, interest, fees, rents or other dues payable under this Act ;
- (d) the terms and conditions under which the transfer of any right in any site or building may be permitted ;
- (e) erection of any building or the use of any site ;
- (f) levy of fees or taxes under section 7 ;
- (g) the terms and conditions for the breach of which any site or building may be resumed ;
- (h) the conditions with regard to the buildings to be erected on sites transferred under this Act ;
- (i) the form of notice and the manner in which notices may be served ;
- (j) the form and manner in which appeals and application under this Act may be filed and the court fees leviable on such appeals and applications ;
- (k) the matters referred to in sub-section (2) of section 5 ;

3. Substituted by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968 for "State Government".

(1) any other matter which has to be or may be prescribed.

¹[(3) (Omitted)]

23. Repeal. - The Capital of Punjab (Development and Regulation) Act, 1952 (President's Act V of 1952), is hereby repealed :

Provided that any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act shall, so far as it is not inconsistent with the provisions of this Act, continue in force and shall be deemed to have been made or issued under the provisions of this Act, as if this Act was in force at that time.

²[(THE FIRST SCHEDULE)]

1. Fellow of the Royal Institute of British Architects (England) or Associate of the Royal Institute of British Architects (England) or an equivalent registration in any other foreign country.

2. Member of the Institution of Engineers (India) or Associate Member of the Institution of Engineers (India).

3. Member of the Institution of Civil Engineers (England) or Associate Member of the Institution of Civil Engineers (England) or an equivalent registration in any other country.

4. Fellow of the Indian Institute of Architects or Associate of the Indian Institute of Architects.

5. B.Sc. in Engineering of any Engineering University in India or abroad or Diploma in C.E. Roorkee.

6. Diploma from J.J. School of Arts. Bombay.

7. Diploma from School of Architecture, Delhi Polytechnic.

8. Diploma degree or certificate from any other institution recognised by the Indian Institute of Architects or Institution of Engineers (India).

1. Omitted by Punjab Re-organisation (Chd.) (Adaptation of Laws) Order, 1968
2. Substituted by Punjab Act No. 37 of 1957

(THE SECOND SCHEDULE)

(See Section 7-A)

Provisions of the Punjab Municipal Act, 1911. Sections
²[3,9,19,31,33,38,39, 41 to 45, 49, 51, 52, 54,55], ³[61,62], ³[62-A, 63 to
 69, 75, 79, 80], ⁴[81,84, 85], ²[86], ¹[93 to 95, 106, 107, 108, 110 to 112],
⁴[114, 115], ¹[121 to 124, 125 to 131, 141 to 150, 151 to 153, 154 to 157,
 167 to 168, 173], ⁵[183], ⁶[184], ¹[188, 197, 197-A, 199, 200, 201, 202,
 203], ²[205], ¹[206, 208, 209, 210, 211, 212, 213, 214 to 223, 223, 225 to
 227, 228 to 230, 232, 234, 236], ²[237], ¹[239 and 240].

1. See Punjab Act No. 37 of 1957, Section 4
2. Inserted by Chandigarh Administration Notification No. 82-UTPII (6) 75/219, Dated the 3rd
 January, 1973
3. Inserted by Chandigarh Administration Notification No. UT-2464-F2-68/18878, dated 10th July,
 1968
4. Inserted by Chandigarh Administration Notification No. UT. 768-F2659/2418, dated 25th February,
 12th March, 1969
5. Inserted by Chandigarh Administration Notification No. UT. 5705-F2-65/13972, dated 10th
 September, 1975

Notification No. C-1713-59/III/1775, dated 14th February,