

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Civil Writ Petition No. 4225 of 2006  
Date of Decision: 31.5.2007

Tarlochan Singh and others

..Petitioners

Versus

Union Territory Chandigarh, Administration  
and another

..Respondents

CORAM: HON'BLE MR. JUSTICE H.S.BHALLA

Present:- Mr. C. M.Munjal, Advocate for the petitioners

Mr. K.K.Gupta, Advocate for Chandigarh  
Administration.

H.S.BHALLA, J.

Invoking extraordinary writ under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondents to refund the amount of Rs.3.60 lacs, which has been charged by them illegally on account of conversion charges of Shop-cum-flat to Shop-cum-office. The petitioners have further prayed for deciding the legal notice dated 21.12.2005 (Annexure P-14) served upon the respondents in accordance with law.

The facts required to be noticed for the disposal of this petition are that respondents allotted one commercial site in Sector 30-C, namely, SCO No.76 on 11.6.1968 for a sum of Rs.34,000/- for a trade of Printing Press-cum-General in favour of one Smt. Bimla Devi wife of Ram Gopal, resident of Chandigarh. A copy of the allotment letter is annexed with the writ petition as Annexure P-1.

She sold the same vide registered sale deed dated 27.7.1998 in favour of Shri G.P.Bansal son of Shri Krishan Dass Bansal, resident of Delhi for a consideration of Rs.2.25,000/-. It is the case of the petitioners that the allotment letter and the sale deed executed by its original allottee clearly spells out that right from the very beginning the premises was Shop-cum-Office and at no point of time, it was ever described as Shop-cum-Flat. The petitioners purchased the said Shop-cum-Office No.76 from the abovementioned G.P.Bansal vide registered sale deed dated 17.6.2003 for a consideration of Rs.42 lacs, a copy of which is annexed with the petition as annexure P-3. After the registration of the sale deed, the petitioners applied for transfer of Shop-cum-Office in their favour and the same was allowed vide letter dated 26.6.2003. The petitioners, in order to change the trade, which was earlier shown as Printing Press-cum-General applied to the respondents for conversion of trade in the said SCO No.76 and enclosed draft of Rs.50,000/- along with the same and also submitted the drawing for its approval. In response to the above letter, the respondents on 27.10.2004 addressed a letter to the petitioners to first get the shop-cum-flat into Shop-cum-Office. In response to the letter, the petitioners sent a reply that they had applied for conversion of trade and their premises was already Shop-cum-Office and not Shop-cum-Flat and therefore, it is totally wrong and irrelevant to get the conversion from Shop-cum-flat to Shop-cum-Office, but this request was not accepted by the respondents and the petitioners again applied and requested that only the conversion charges of the trade be charged from them. The petitioners moved a representation to the respondents, but they did not approve the

building plan and also did not allow the conversion of trade. The petitioners again vide two separate representations requested the respondents to withdraw the conversion from Shop-cum-Flat to Shop-cum-Office by written request/representation dated 6.12.2004, but to no effect. It is further pointed out that the respondents through their Sub Divisional Officer Buildings again addressed a letter to the petitioners to get the premises converted from Shop-cum-Flat to Shop-cum-Office and in response to this letter, in order to avoid any delay in conversion of the trade, as the petitioners were to open the Guest House, deposited the conversion charges from Shop-cum-Flat to Shop-cum-Office to the tune of Rs.3.60,000/- under protest subject to reserving their right to get it adjusted towards conversion fee of the trade. In response to the above said letter, the respondents issued a letter dated 10.1.2005 regarding conversion of SCO site No.76 from Shop-cum-Flat to Shop-cum-Office after receipt of Rs.3,60,000/-. A copy of the letter dated 10.1.2005 is annexed with the petition as Annexure P-13. The petitioners many a times, requested for the refund of the said illegal amount, which they have taken by force and under the garb of conversion of trade, but the respondents on one or the other pretext refused to refund the same. Thereafter the petitioners on 21.12.2005 sent a legal notice through their counsel, but the respondents have not refunded the amount and this necessitated the filing of the petition in hand.

On the other hand, the petition was contested by the respondents and through the written reply pointed out that the petitioners have no locus - standi to refund the amount of conversion charges of Shop-cum-Flat to Shop-cum-Office, which the petitioners

have willingly deposited and thereby got converted the trade from General to Guest House and now they cannot be allowed to agitate upon the matter. It is further admitted by the respondents that Plot No.76, Sector 30-C, Chandigarh, was initially allotted in the name of Bimla Devi wife of Ram Gopal, but in the allotment letter issued to her, some how the aforesaid site was wrongly described as SCO instead of SCF as under the Zoning Plan/Control Sheet, the said site is provided as SCF. It is also admitted that the original allottee sold the said site in favour of G.P.Bansal and it has been again asserted by the answering respondents that the site in question was SCF as per the Zoning Plan, but some how in the allotment letter, it was wrongly described as SCO. It has been admitted that the aforesaid G.P.Bansal then sold the site in favour of the petitioners. The respondents have also admitted that petitioners applied for the transfer of the rights in their favour consequent upon the purchasing of the site from the said Shri G.P.Bansal. The respondents have also admitted that the petitioners applied for the conversion of the trade from General to Guest House and also deposited the token money of Rs.50,000/-. The respondents have also admitted that in response to the letter of the petitioners, the petitioners were informed that the petitioners shall have to first get the SCF converted into SCO and then for conversion of the trade, which was duly complied with without any protest as is clear on perusal of the letter whereby demand of conversion was acknowledged to the petitioners and conversion allowed, which the petitioners duly accepted without any protest. It is further pointed out that the petitioners deposited the amount for conversion of SCF and also deposited without any protest

and it is only after the needful was done, the petitioners cannot be allowed to agitate upon the matter that the site in question was not SCF as the respondents have to go with the Zoning Plan/Control Sheet wherein the site has been described as Shop-cum-flat and the plan has also been sanctioned. If some how on the allotment letter instead of SCF, it was mentioned as SCO, it does not mean that the petitioners got any vested rights specifically. Moreover, conversion charges were without any protest and by denying the other assertions raised in the petition, it was prayed that the petition be dismissed.

The petitioners chose to file replication wherein they challenged the stand taken by the respondents and denied the assertions made in the written statement and reiterated their stand taken in the petition.

I have heard the learned counsel for the parties and have also gone through the record of the case meticulously.

The entire case of both the parties revolves around the contents of the allotment letter (Annexure P-1). Before proceeding further and in order to arrive at a right conclusion, it is necessary to reproduce the relevant portion of this allotment letter, which runs as under:-

Registered AD                      Union Territory  
Chandigarh Administration

No.7324/CP/1854                      Dated 19.6.68

Smt. Bimla Devi w/o Ram Gopal,  
C/o Shri Gopal & Sons,  
Sector 22-D, Chandigarh.

Sub: Allotment of Commercial Sites at Chandigarh

Memo:

Reference your bid at the auction held on 26.5.68 following commercial site is hereby allotted to you on the conditions mentioned hereunder:

Sector	Serial No. of the site	Dimension	Area in Sq. Yard	Price	Trade
30-C	SCO 76	22'-6" x 72'-00	180.00	34,100	Printing Press- -cum- general
xx	xx	xx	xx	xx	xx

16 The site and the building constructed thereon shall be used only for the purpose for which it is actually sold, i.e, Printing Press-cum-General.”

I have scrutinised the allotment letter dated 19.6.1968 in the name of original allottee Bimla Devi, which clearly spells out that in Sector 30-C, a shop-cum-Office No.76 was allotted to her for a sum of Rs.34,100/- for Printing Press-cum-General and the respondents have categorically admitted that in the allotment letter, building in question has been shown as Shop-cum-Office, but at the same time, they have submitted an explanation that some how the aforesaid site was wrongly described as Shop-cum-Office instead of Shop-cum-Flat, but this explanation of the respondents cannot be accepted since there is nothing on record that at a later stage, this error was corrected and the learned counsel appearing for the

respondents could not point out as to what action has been taken against the officer/official, who issued this allotment letter with this material error, which has changed the entire character of the property and no notice was ever issued to the petitioners for the correction of character of the property mentioned in the allotment letter. The zoning plan and the control-sheet, which, as per the respondents, spells out that this property is Shop-cum-flat and not Shop-cum-office is of no help to the respondents since the petitioners can not lay their hands on this official record of the respondents and moreover, a legal notice was also issued by the petitioners before filing this writ petition in the year 2005, but for the reasons best known to the respondents, they have not responded to that legal notice and when the petitioners knocked the door of this Court, they have come forward with the explanation that due to inadvertence mistake committed on the part of the respondent-department, the clock cannot be put back and moreover, the original allottee Bimla Devi has sold this property as SCO No.76 to the present petitioners. Then again vide order dated 26.6.2003 (Annexure P-4), respondents transferred this S.C.O. No.76 in favour of the petitioners. The contents of the transfer order are as follows:-

“Regd.

44470

Union Territory  
Chandigarh Administration

No. 40087/CP-1854/CIA dated 26.6.2003

To

Shri Gurmeet Singh

Shri JagMohan Singh and  
Shri Tarlochan Singh,

H.No.164, Sector 21-A,  
Chandigarh.

Subject: Transfer of SCO No.76 Sector 30-C  
Chandigarh.

Memo:

Reference your letter dated 18.6.03 on the  
subject cited above.

Transfer of rights in SCO Site No.76 Sector  
30-C, Chandigarh, held by Shri Govind Prasad Bansal is  
hereby noted in your favour on the basis of sale deed on  
the following conditions:-

1. You shall abide by the provisions of the  
Capital of Punjab Development and Regulation)Act, 1952  
as amended upto date and the rules framed thereunder.
2. You will complete the construction of the main  
building by...-
3. You shall be liable to pay an amount in  
arrears if due towards the price of the plot.
4. You shall execute/register redemption deed in  
respect of loan within 90 days.

In the event of your failure to comply with the  
above mentioned conditions further action under Section  
8-A of the Capital of Punjab (Dev. & Reg.) Act, 1952  
Chandigarh Amendment Act, 1972 for the resumption of  
the site shall be initiated against you.

Sd/-  
Estate Officer,  
U.T.Chandigarh.”



A perusal of the transfer order clearly spells out that the property in question, i.e., S.C.O.No.76 was transferred in the name of the petitioners showing it to be as SCO No.76 Sector 30-C, Chandigarh. Learned counsel for the respondents has submitted that a bona fide error took place with regard to the character of the property at the time of issuance of letter falls to the ground in view of the transfer order dated 26.6.2003 (Annexure P-4). The fact that the property was transferred in favour of the petitioners showing it to be SCO No.76, has added another nail to the coffin of the case of the respondents with regard to the character of the property. This transfer took place on 26.6.2003. Even at this stage, the mistake, if at all, occurred in the issuance of the letter, has not been rectified by the department nor the department has taken action against the erring officer/officials, who have issued allotment letter and the transfer order by closing their eyes. The zoning plan and the control sheet was available in the department even at the time of issuance of the allotment letter and the transfer order and now when the petitioners applied for the change of trade and respondents woke up all of a sudden with regard to the character of the property taking a plea that in fact, it was not Shop-cum-office, but the property in question is a shop-cum-flat. Moreover, both the vendees purchased the property in question purported it to be Shop-cum-Office and not Shop-cum-flat and at the cost of repetition, I would again like to observe that ultimately property was transferred in the name of the petitioners as Shop-cum-Office No.76 and no notice i.e., after passing of the order till today, was ever issued to the petitioners with regard to the correction in the allotment letter as well as transfer

order. It was on the basis of this transfer order that the petitioners assert their rights for the change of the trade and for this purpose, he deposited a sum of Rs.50,000/-, but it is strange to note that the respondents took up a plea, which was neither available in the allotment letter nor in the transfer order. Just to defeat the legitimate right of the petitioners, they were forced to pay a sum of Rs.3,60,000/-, which is for the conversion charges, in spite of the fact that the petitioners through letter dated 15.10.2004 (Annexure P-5) informed the Estate Officer that they want to convert the first and second floor of the said SCO to Guest House from General Trade. Meaning thereby that, the petitioners wanted to change their trade and the question of converting the building from Shop-cum-Flat to Shop-cum-Office does not arise. The building plan was also submitted by them in this regard and vide order dated 27.10.2004, the petitioners were called upon to remove the objections enabling the office to expedite their case with regard to the sanctioning of building plan and as per objections raised by the respondents, conversion of Shop-cum-flat into Shop-cum-Office be submitted first and thereafter conversion letter into Guest House be submitted afresh. The petitioners were not required to remove these objections since the character of their building was Shop-cum-Office and not Shop-cum-Flat, as is being asserted by the respondents. Vide letter dated 29.10.2004 (Annexure P-7), the petitioners categorically asserted their right by informing, S.D.O.(Building), Chandigarh Administration, Union Territory, Chandigarh that the concerned site is Shop-cum-Office and not Shop-cum-flat and all the relevant papers have been submitted for approval of plans and he was requested not

to harass them in any manner. He was also informed that a sum of Rs.50,000/- has been paid as part payment towards the conversion of Guest House. Another letter dated 18.11.2004 (Annexure P-8) was written by the petitioners to the Estate Officer, Union Territory, Chandigarh administration, Chandigarh, wherein they informed that the building is lying unused and they are suffering heavy loss and requested the Estate Officer that the S.D.O. (Building) may be asked to release their drawings and they be intimated the conversion charges from Shop-cum-Office to Guest House so as to enable them to deposit the same . Since no action has been taken in this regard and in order to avoid delay in the conversion of the said premises into Guest House, the petitioners paid a sum of Rs.3,60,000/- through Bank Drafts of state Bank of Patiala on account of fee for conversion of Shop-cum-Office. They also asserted through letter dated 23.12.2004 (Annexure P-12) that if this fee, at a later stage, is not found applicable to their Shop-cum-office, the amount deposited shall be adjusted towards the conversion fee of 1st and 2<sup>nd</sup> floor to Guest House. They also requested to intimate the fee for the conversion of 1st and 2<sup>nd</sup> floor of the abovesaid Shop-cum-Office to Guest House. All this clearly spells out that the petitioners have been asserting at every stage that they are not bound to pay the charges for the conversion of the site from Shop-cum-office to Shop-cum-flat and through letter dated 10.1.2005 (Annexure P-13), respondents acknowledged the receipt of Rs.3,60,000/-. All this clearly spells out that in view of what has been discussed above, it is, ipso facto, clear that the petitioners were required to knock the door of the respondent-department only for

change of trade and they were not required to pay conversion charges from Shop-cum-flat to Shop-cum-office since the original allotment letter and the transfer order clearly spells out that the building in question was Shop-cum-Office and the question of any conversion to Shop-cum-Flat for the change of trade was not required and the petitioners were pressurised to pay a sum of Rs.3,60,000/-. However, for the change of trade, the petitioners are required to pay charges in accordance with rules and regulations.

For the reasons recorded above, the petition is allowed and the respondents are directed to refund the amount, which has been charged by the respondents on account of conversion charges of Shop-cum-flat to Shop-cum-Office after adjusting the amount required to be charged for the conversion of trade. The amount, so calculated, be refunded to the petitioners, within a period of two months from the date a certified copy of this order is received by them.

May 31,2007  
vk

( H.S.BHALLA )  
JUDGE