

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Civil Writ Petition No.12409 of 2010  
Date of Order: 13.12.2011**

**Harbhajan Lal Bhatia through attorney  
Shri Suraj Parkash Bhatia.**

**...Petitioner**

**Versus**

**Advisor to the Administrator, UT, Chandigarh  
and others.**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA  
HON'BLE MR. JUSTICE NARESH KUMAR SANGHI.**

Present: Mr. Amit Rawal, Advocate  
for the petitioner.

Ms. Lisa Gill, Advocate  
for the respondents.

**RAJIVE BHALLA, J (Oral)**

The petitioner prays for issuance of a writ in the nature of certiorari for quashing orders dated 07.04.2010, 10.06.2009 and 08.09.2008, passed by respondent Nos.1, 2 and 3 respectively and the original order dated 27.06.1995, passed by the Estate Officer, UT, Chandigarh, resuming the plot/house in dispute.

Counsel for the petitioner submits that as misuse of the house by the tenant in running a school has admittedly stopped, the order of resumption and orders passed in appeal and revision should be set aside, and the respondents may be directed to restore the plot.

Counsel for the respondents submits that, though, the

misuser has ended but as the petitioner voluntarily allowed the use of his premises for a school and has made incorrect statements, the impugned orders cannot be said to be illegal so as to warrant the issuance of a writ.

We have heard counsel for the parties and perused the impugned orders.

The respondents admit that the school being run by the tenant has been shut down but still insist that the resumption order be affirmed. The Capital of Punjab (Development and Regulation) Act, 1952 confers a discretionary power upon the Estate Officer to resume property for misuse. This extra ordinary power, has to be exercised sparingly and in the rarest of rare cases. A reference may be made to a judgment of the Hon'ble Supreme Court in M/s Teri Oat Estates (P) Ltd. v. U.T., Chandigarh 2004(2) S.C.C., 130, as the nature of the power, and to its exercise:-

22. One of the question which, therefore, must always be posed by the Estate Officer, while initiating a proceeding under Section 8A of the Act is as to whether the drastic power of resumption and forfeiture has been taken recourse to as a last resort. The order of the Estate Officer dated 13.3.1992, does not say so. No reason has also been assigned in the said order.

24.	XX	XX	XX	XX
XX	XX	XX	XX	XX
XX	XX	XX	XX	XX

*The question as to whether the extreme power of resumption and forfeiture has rightly been applied or not will depend upon the factual matrix obtaining in each case. Each case may, therefore, have to be viewed separately and no hard and fast rule can be laid down therefor, In a case of this nature, therefore, the action of the Estate Officer and other statutory authorities having regard to the factual matrix obtaining in each case must be viewed from the angle as to whether the same attracts the wrath of Article 14 of the Constitution of India or not.*

43. *In terms of the provisions of the Act, the respondents are entitled to, (1) resumption of the land, (2) resumption of the building and (3) forfeiture of the entire amount paid or deposited. Having regard to the extreme hardship which may be faced by the parties, the same shall not ordinarily be resorted to.*

44. *The situation, thus, in our opinion, warrants application of the doctrine of proportionality.*

45. XX XX XX XX

46. *By proportionality, it is meant that the question whether whole regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by*

*the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative “maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purposes which they were intended to serve.”*

47.       XX       XX       XX       XX

48.       XX       XX       XX       XX

49.       XX       XX       XX       XX

50.       *In Om Kumar (supra), however, this Court evolved the principle of primary and secondary review. The doctrine of primary view was held to be applicable in relation to the statutes or statutory rule or any order which has the force of statute. The secondary review was held to be applicable inter-alia in relation to the action in a case where the executive is guilty of acting patently arbitrarily. This Court noticed **E.P.Royappa v. State of Tamil Nadu [(1974(4) SCC3)]** and observed that in such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions as for example punishment in a departmental proceeding*

*the doctrine of proportionality was equated with wednesbury unreasonableness.*

51 to 53 XX XX XX XX

54. *Keeping in view the aforementioned principles in mind would it be proper for us to take a view as has been suggested by Ms. Jaiswal? The answer to the said question must be rendered in the negative, if competing interest can be balanced.”*

A perusal of the judgment reveals that it is not every infraction that would invite resumption. The exercise of the power of resumption would depend upon the nature of the infraction. Where the infraction ceases or is brought to an end, to deprive a person of his property, would be to extreme to step to countenance. However, the order to be passed would depend on the facts of each case.

Counsel for UT, Chandigarh, has admitted that the premises in dispute are no longer being used as a school and the misuse has been brought to an end. We are, therefore, satisfied that in view of the misuser having ceased, the authorities should reconsider the matter in this light and pass an appropriate order.

As a consequence, the writ petition is allowed, the orders dated 27.06.1995 (Annexure P-2), 08.09.1998 (Annexure P-3), 10.06.2009 (Annexure P-8) and 07.04.2010 (Annexure P-10) are set aside and the Estate Officer, UT, Chandigarh, is directed to reconsider the matter afresh and in accordance with law. The Estate Officer would be at liberty to levy misuser charges, in accordance with law.

Parties are directed to appear before the Estate Officer, UT, Chandigarh, on 18.01.2012, for further proceedings.

The Estate Officer, UT, Chandigarh, shall decide the matter within three months from receipt of a certified copy of this order.

**(RAJIVE BHALLA)**  
**JUDGE**

**December 13, 2011**  
**nt**

**(NARESH KUMAR SANGHI)**  
**JUDGE**