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C.A.No. 1245-1246 OF 1999

ITEM No.101

Court No. 9

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 1245-1246 of 1999

K.D. BHARDWAJ Appellant (s)

VERSUS

UNION TERRITORY, CHANDIGARH & ORS.Respondent (s)

(With office report)

Date : 16/03/2004 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. K.G. Bhagat,Adv.
Mr. Vineet Bhagat,Adv.
Mr. Kamal Baid,Adv.
Mr. Monohar Singh,Adv.
Ms. Sangeeta Gaur,Adv.
Mr. Debasis Misra,Adv.

For Respondent (s)Ms. Kamini Jaiswal,Adv.
Ms. Shomila Bakshi,Adv.
Ms. Inklea Barooah,Adv.
Mr. M.C. Dhingra,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the appellant and the first respondent from 10.45 a.m. to 11.25 a.m.

The civil appeals are disposed of.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

K.D. Bhardwaj ...Appellant(s)

Versus

Union Territory, Chandigarh & Ors. ...Respondent(s)

O R D E R

In these appeals, the order made by the High Court in writ petition as also the order made on a review application seeking review of the order made in the writ petition are under challenge

The appellant was allotted site No. 24 in Sector 18-A, Chandigarh, by the first respondent. After construction of a residential building on the said site, the appellant let out the building to three different tenants, who were carrying on commercial activities. As per the terms of the allotment, the building ought to have been used only for residential purpose. Since the building was used for the purpose other than for which it was allotted, the authorities issued a notice calling upon the appellant to show cause why the site property should not be resumed for the breach of conditions of allotment read with Rule 9 of the Chandigarh [Sale of Sites and Buildings] Rules, 1960 [for short, "the Rules"]. The appellant did not appear

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before the estate officer, pursuant to the show cause notice. In the circumstances, the estate officer passed the order dated 9th October, 1987 for resumption of the premises in question.

The appellant was not successful in the appeal and revision filed by him challenging the order of resumption before the appellate and revisional authorities. Thereafter, the appellant filed a writ petition before the High Court, which came to be dismissed by the impugned order dated 20th November, 1997. A review application filed by the appellant seeking review of the order made in the writ petition was also dismissed on 6th March, 1998. Hence, these appeals. The learned counsel for the appellant contended that the use of the building by the tenants for the purpose other than for which it was allotted was for the reasons beyond the control of the appellant; at any rate, two tenants, namely, Dr. Jasbir Singh Dhody and Inder Sain Bansal, Chartered Accountant, have filed affidavits stating that they have closed down the clinic and office of the chartered accountant respectively; the order of resumption has resulted in a great hardship to the appellant, who is ninety five years' old and a retired person. The learned counsel submitted that a lenient view may be taken, having regard to the facts and circumstances of the case, and the site may be re-transferred and appropriate orders may be passed in this regard.

The learned counsel representing the first respondent submitted that the appellant may apply under Rule 11-D of the Rules and in case he applies, the authorities will pass an order re-transferring the site to the appellant in terms of Rule 11-D of the Rules. She further submitted that this submission is being made on the instructions of the first respondent.

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At this stage, the learned counsel for the appellant submitted that the appellant may be given some concession in regard to payment, as indicated in Rule 11-D of the Rules. The learned counsel for the first respondent submitted that the requirement of Rule 11-D of the Rules in the matter of payment of price cannot be varied.

Having considered the respective contentions of the learned counsel for the parties and having due regard to the facts and circumstances of the case, we think it is just and appropriate to dispose of these appeals in the following terms:

The appellant shall apply to the first respondent under Rule 11-D of the Rules seeking re-transfer of the site within a period of four weeks from today. On such application being made, the first respondent and its officials/authorities shall consider the application and pass orders for re-transferring the site in favour of the appellant in terms of Rule 11-D of the Rules. The civil appeals are, accordingly, disposed of.

No costs.

.....J.

[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
March 16, 2004.