

CHANDIGARH ADMINISTRATION THROUGH THE ESTATE
OFFICER, UNION TERRITORY, CHANDIGARH

v.

M/S. JOHNSON PAINTS AND VARNISH CO.

MARCH 22, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Capital of Punjab (Development and Regulation) Act, 1952/Chandigarh (Sale of Sites and Building) Rules, 1960 :

S.8-A/Rule 11-D—Industrial site—Allotment of—Resumed for default of allottee—Application for retransfer of site to outgoing transferee—Third party right effected by transferee by way of will and power of attorney—Held, once the original allotment stands cancelled and the resumption became final, the allottee has no right in the allotted site—Rule 11-D does not clothe such person with any right to allotment—It being a discretionary benefit to be given to the outgoing transferee in the language of the rule, the outgoing transferee must, in fact and in reality, be the real, genuine and bona fide transferee—Outgoing transferee acting for and on behalf of third party not entitled to the benefit.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7115 of 1996.

From the Judgment and Order dated 4.11.93 of the Punjab & Haryana High Court in W.P. No. 2677 of 1993.

Arun Jaitley and Ms. Kamini Jaiswal for the Appellant.

M.L. Verma, L.K. Pandey and Mahabir Singh for the Respondent.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order of the High Court of Punjab and Haryana in Writ Petition No. 2677/93, dated November 4, 1993. The admitted facts are that the site bearing No. 187-B, Industrial area, Chandigarh was allotted to M/s. Johnson Paints & Varnish Co. for

industrial use. The allottee was Kulraj Singh Paul, S/o Sardar Gurbax Singh. The allotment came to be made in the year 1965 at a concessional rate of Rs. 10 per sq. yd. Default was committed in payment of the instalments. Consequently, the site was resumed on April 26, 1967. On payment with penal amounts prescribed under the Rules the property was handed over again to the respondent. Thereafter, since it was not constructed, the property was again resumed in the year 1981. The respondent filed the writ petition, which was dismissed. LPA was also dismissed and when the SLP was filed, this Court confirmed the order of dismissal. Thus entitlement to the allotment became final and the controversy became quiteous.

Subsequently, the respondent filed an application under Rule 11-D of the Chandigarh (Sale of Sites and Building) Rules 1960 (For short, the 'Rule'). Rule 11-D (i) envisages that where a site has been resumed under Section 8-A of Act 27 of 1952 for any reason, the Estate Officer may, on an application, retransfer the site to the out-going transferee on payment of an amount equal to 10 per cent of the premium originally payable for such property or 1/3rd of the difference between the price originally paid and its value at the time when the application for retransfer is made, whichever is more. The other clauses are not relevant for the purpose of this case including the proviso which bears relevance provided sub-clause (1) of Rule 11-D is satisfied. Hence they are omitted. The Estate Officer had refused to make retransfer of allotment and the petition was rejected. Consequently, the respondent filed a writ petition in the High Court which was allowed directing the appellant to allot the site to the respondent. Thus this appeal by special leave.

Shri Arun Jaitley, learned senior counsel appearing for the appellant, contended that it would appear from the circumstances in this case that the respondent Kulraj Singh Paul is only acting for the benefit of Tejpal Singh Brar, Narindra Brar and Gurinder Brar, s/o Sardar Gursewak Singh Brar r/o 5997, Sector 18, Chandigarh. Therefore, the respondent is not a transferee. The Estate Officer is not obliged to order retransfer to the allottee Kulraj Singh Paul. In support thereof, he read out the recitals in the general power of attorney, the conditions of allotment and also the recitals in the Will purported to have been executed by Kulraj Singh Paul in favour of the aforesaid three individuals. Shri M.L. Verma, learned senior counsel appearing for the respondent contended that the condition

precedent for rejection of the claim is that the third party right is created by Kulraj Singh Paul in favour of third parties. There is no evidence to establish that any third party rights have been effected by Kulraj Singh Paul. The original order of rejection does not contain any reasons. The High Court has given valid reasons in directing reallocation under Rule 11-D of the Rules. Therefore, it is not a case warranting interference.

The only question is : whether the High Court was justified in directing reallocation of the industrial site to the respondent ? After looking into the facts and circumstances and the material before us, we are of the considered view that the High Court was not justified in giving the direction. It would appear that Kulraj Singh Paul is not acting for himself as a transferee. He appears to be acting for and on behalf of S/Shri Tej Paul Brar, Narinder Brar and Gurinder Brar, s/o Shri Gursewak Singh Brar. It is an admitted fact that Kulraj Singh Paul is now staying with Gursewak Singh Brar. If he really is staying as such, there is no need for him to mention in his rejoinder affidavit filed in this Court his factory number instead of his residential number as residence. In the Power of Attorney, one would generally come across giving the power to specified individual to act for the on behalf of the principal. It would be redundant to give power of attorney in favour of three persons instead of the single individual to deal with a single industrial site which is the subject matter of the proceedings. Unless there is a right created in him, there would be no need to execute a power of attorney of the very self-same property. We can understand if there is any allotment made and he became the owner; then he may legitimately be entitled to entrust its management to any of his agents in whom he has confidence. It is not the situation available under the record. It would further be clear that a Will is purported to be created in favour of three parties, namely, the self-same three persons. When the Will and the General Power of Attorney are read together, it would be clear that he is purporting to act not for himself, but on behalf of the aforesaid three persons mentioned in the General Power of Attorney who do not appear to have a confidence in each another to obtain the property from Kulraj Singh. The entitlement appears to be on behalf of their joint family. Although it was to pre-empt possible claim by any one as his individual property, the power of attorney was executed in their favour, the question is : whether the appellant is required to regrant the industrial site to the said person ?

It is seen that once the original allotment stands cancelled and the resumption became final, the allottee has no right in the allotted site. Rule 11-D deals with only discretionary power given to the Estate Officer. The only right the erstwhile outgoing transferee had was to make an application. On making the application, he has to satisfy the criteria laid down under the Rule. We doubt the very *bona fides* in introducing Rule 11-D to provide a back door entry from the lost rights. But on the facts in this case, it is not necessary to go into the wisdom of introducing Rule 11-D. Suffice it to state that it does not clothe him with any right to the allotment as of right. It being a discretionary benefit sought to be given to the out-going transferee in the language of the rule, the out-going transferee must, in fact and in reality, be the real, genuine and *bona fide* transferee and for him alone the benefit may be given for consideration under Rule 11.

On the facts in this case and for the circumstances narrated above, it is clear that he is not a transferee. But he is acting for and on behalf of the aforesaid three persons. Under those circumstances, the High Court was wholly wrong in giving the direction to the appellant to exercise the power under Rule 11-D and to reallot the site.

The appeal is accordingly allowed with costs quantified at Rs. 10,000.

Appeal allowed.