2025:PHHC:041594-DB

In the High Court of Punjab and Haryana at Chandigarh

[**102**]

(1) **CWP-4478-2010 (O&M)**

DEVINDER KUMAR SINGLA ..... PETITIONER

VERSUS

CHANDIGARH ADMINISTRATION & OTHERS .....RESPONDENTS

(2) **CWP-21071-2011**

SHAILNDER BHALLA ..... PETITIONER

VERSUS

CHANDIGARH ADMINISTRATION & OTHERS .....RESPONDENTS

(3) **CWP-3614-2012**

CHANDER BHUSHAN ANAND ..... PETITIONER

VERSUS

CHANDIGARH ADMINISTRATION & OTHERS .....RESPONDENTS

Date of Decision: 26.03.2025

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Akshay Bhan, Sr. Advocate assisted by
Mr. Shaurya Khanna, Advocate
Mr.Sushant Kareer, Advocate and
Mr. Deepak Arora, Advocate for the petitioner(s)
(in CWP-4478-2010).

Mr. B.S.Sudan, Advocate for the petitioner(s)
(in CWP-21071-2011).

Mr. Pawandeep Singh, Advocate and
Mr. Anand Vardhan Khanna, Advocate for the petitioner.
(in CWP-3614-2012).

Mr. Amit Jhanji, Sr. Standing Counsel for
Chandigarh Administration with
Mr. Ashish Rawal, Advocate
Mr. Sanjiv Ghai, Advocate and
Dr. Eliza Gupta, Advocate for U.T. Chandigarh.

Mr. Rajeev Anand, Advocate for respondent No.9
(in CWP-3614-2012).

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SURESHWAR THAKUR, J. (ORAL)

1. Since the present three writ petitions(supra) arise from a common order, therefore, the same are amenable to be decided through a common verdict.

2. The petitioners in *CWP-4478-2010,* and, also in *CWP-3614-2012,* become aggrieved from a common order Annexure P-11, dated 25.02.2010, the relevant operative part whereof becomes extracted hereinafter, wherebys the purported misuser *M/s. Anand & Anand Architects,* was directed, vide interim order dated 23.12.2019, thus to pay the misuse charges, but since the same became not complied with, therebys, the relief claimed therein by the petitioner i.e. Devinder Kumar Singla in CWP No.4478 of 2010, rather for annulling the resumption order dated 04.06.2008, became declined. Resultantly, all the CWPs are required to be decided through a common verdict.

> *"After hearing the parties and going through the record, I find that the site was resumed vide order dated 21.8.2003 on the ground of misuse. Thereafter, the petitioner Sh. Davinder Kumar Singla and M/s Anand and Anand Architects had filed an appeal before the Chief Administrator and the Chief Administrator vide order dated 13.2.2008 remanded the case to the Estate Officer for giving a fresh hearing to the present owner and all other relevant parties including M/s Anand & Anand Architects and pass appropriate order. The Estate Officer after hearing the parties came to the conclusion that the misuse at the site is still existing. Thus, the order dated 21.8.2003 was confirmed and it was also directed to calculate the penalty chargeable on account of misuse and recover the same from the occupier misuse since in this case it is admitted fact that the site is being misused as office by the M/s Anand &*

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Anand Architects filed an appeal before the Chief Administrator and the Chief Administrator vide order dated 8.9.2009 dismissed the same. The misuser M/s Anand & Anand Architects was directed to pay the misuse charges vide interim order dated 23.12.2009 but the same has not been complied with. I, therefore, see no justification to give any relief to the petitioners and while upholding the order of the Chief Administrator, dismiss the present petition being devoid of merits."

3. Moreover, the legal heirs of the vendor of the petitioner in CWP No.4478 of 2010, who claimed relief for becoming impleaded as a party to the said *lis*, but the said espoused relief also became declined. The petitioner, namely, Shailnder Bhalla in CWP No.21071 of 2011, thus becomes aggrieved from the said passed order besides become(s) aggrieved from the passing of those directions, as embodied in the order dated 02.02.2010 Annexure P-7 in CWP No.21071 of 2011, wherebys the misuse charges comprised in a sum of Rs.45,99,595/-, have been directed to be liquidated by the petitioner Shailnder Bhalla in CWP No.21071 of 2011, to the respondent(s) concerned.

4. The acquisition of the right, title and interest in respect of the disputed premises emanated from right, title and interest becoming vested in the petitioner Devinder Kumar Singla in CWP No.4478 of 2010, through the makings of the registered deed of conveyance(Annexure P-2), in CWP No.4478 of 2010. The said registered deed of conveyance, became executed between the said petitioner(s) with his vendor(s) i.e. the predecessor-in-interest of the petitioner(s) in CWP No. 21071 of 2011, i.e. G.K. Bhalla.

5. Be that as it may, there is no dispute amongst the learned counsels appearing today before this Court, that the premises, as became acquired by the petitioner Devinder Kumar Singla in CWP No.4478 of 2010,

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rather from the predecessor-in-interest of G.K. Bhalla, was to be used only for residential purposes.

6. Since the premises became purportedly altered from the said designated purpose, rather to a commercial purpose, inasmuch as, the lessee inducted in the disputed premises by the predecessor in interest of Shailnder Bhalla, who is the vendor of the petitioner(s) in CWP No.4478 of 2010, thus, rather contrary to the terms and conditions of the contract of tenancy/oral or otherwise, as became entered into amongst them, thus proceeding to change the purpose of the demised premises in respect whereof it became leased to the petitioner in CWP No.3614 of 2012. The said occurred purportedly on his altering the user of the demised premises from their initially contemplated designated purpose as residential, thus as commercial premises, inasmuch as, his using the entire demised premises for commercial purposes.

7. Imperatively there is *inter se* connectivity, *inter se,* the passing of the resumption order and the levying of misuse charges. Therefore, unless this Court initially settles the issue, as to whether upon whom the misuse charges, as detailed in the Annexure concerned, thus are to be levied, thereupon, subsequently, this Court may also proceed to pass such orders as may be deemed fit, wherebys, relief may become granted to the petitioner in CWP No.4478 of 2010, wherebys, the resumption order may be declared to be warranting, qua the same being quashed and set aside.

8. The learned counsel for the petitioner appearing in CWP No.3614 of 2012, submits that since in terms of the *notification* (Annexure P-13), relevant contents whereof become extracted hereafter, rather, the demised premises under the occupation of *M/s. Anand & Anand Architects,* thus, become permitted to be used for residential purposes, but only when the

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residential users of the demised premises, rather evidently covering an area 50.50 sq.m. or 25% of the covered area. Consequently, he submits that since therebys there is no change of user of the demised premises at the instance of the petitioner, namely, Chander Bhushan Anand in CWP No.3614 of 2012, inasmuch as, his purportedly impermissibly changing the entire demised premises from residential purposes to commercial purposes. Therefore, he further submits that therebys both the resumption orders and the levying of misuse charges, thus, are required to be quashed and set aside.

"CHIEF ADMINISTRATOR'S OFFICE

CHANDIGARH

ORDER

August 14th 1986

No.2367-UTFI (3) 10255: In exercise of powers conferred under Section 4 of the Capital of Punjab (Development and Regulation) Act, 1952, the Chief Administrator, Chandigarh, is pleased to issue the following directions regarding construction of buildings in Chandigarh:-

1. The design of the building in Chandigarh shall be Architect prepared only by a Registered and the construction work shall also be undertaken under the supervisions of the registered Architect. It shall be the prime responsibility of the Architect to ensure that the building is constructed as per approved building plans.

Due to negligence on the part of the Registered Architect, it any building is constructed in deviation to the sanctioned plan, the Architect who designed and supervised the building shall be held responsible and his registration for undertaking his practice in Chandigarh shall be liable to be withdrawn and the council of Architecture shall also be requested to initiate action against him.

2. As per rule 112 of the Capital of Punjab(Development and Regulation) Building Rules, 1952, as amended by the Punjab Capital (Development and Regulation) (Amendment) Rules. 1983 made effective from 22.1.1993, no connection of any drain to any sewer or storm water drain is to be made unless the Chief Administrator grants permission to occupy the building.

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Prior to this amendment, chose who have occupied their building after obtaining the sewer connection only, they shall not to be liable to pay the extention fee, but shall have to obtain the occupation certificate. The profession/consultants viz, Doctors, Advoates and Architects etc. shall be permitted to use part of the area of their residence to the maximum extent 50.50 sq m or 25% of the covered area, whichever is less for offering professional consultancy only. However, provision of the Chandigarh Advertisement Control Order, 1954 as amended from time to time shall be strictly observed.

4. The Balcony shall be permitted upto full width of the plot where construction of the building is governed by the Frame Controls subject to condition that no part of the Balcony shall project beyond the outer line of the frace control respective clause of the various Frame Controls shall deem amended to that extent.

5. In the residential houses the gate of the standard design and any of the standard width as shown on standard Drg. No. 5-1/S-5, shall be permitted along the side boundary wall abutting on the..... street/road. No gate shall be allowed over 3 roads public open space, reserved space etc. the relevant clause of the respective frame Controls and the zoning plans shall deem to be amended to that extent.

6. Dish antena for personal use shall be permitted on the roof top of the buildings in Chandigarh. However, a detailed Scheme shall be submitted by the owner to the Chief Administrator for approval, in each case if Dish Antena is used for commercial purposes.

7. The show windows in the commercial buildings may be omitted provided the owner makes alternate arrangement for the provisions of proper light and ventilation of the basement storey. For this purpose, the owner shall submit the detailed Scheme to the Administrator and seek his prior approval. The relevant clause of the respective Architectural Control shall deem amended to that extent.

8. The brick jail of any design shall be permitted in the residential houses governed by the Frame Controls subject to condition that no solid wall shall be constructed in any part of the Jali as prescribed in the Frame Controls. The jail shall not vilate the building lines prescribed in the frame capitals. The relevant clause of the respective Frame Controls shall deem to be amended to that extent.

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9. The water tank shall be permitted under the public corridor/public verandah of the commercial buildings where required. It shall be constructed in such a manner that it does not obstruck the free movement of the general public. A detailed scheme in this regard shall be submitted to the Chief Administrator by the owner to seek prior approval. The relevant Clause of the respective Architectural Controls for commercial sites shall deem to be amended to that extent.

10. Under-ground water tank shall be permitted in the rear courtyard of the residential/commercial buildings. A detailed scheme for the construction of such under-ground water tank shall be submitted by the owner to the Chief Administrator for approval.

11. To facilitate parking and movement of the vehicle, two gates shall be permitted along the accessible road in the front boundary wall of the residential building in Chandigarh. The relevant clause of the respective Zoning Plans, Architectural, Controls, Frame Control etc. shall deem to be amended to that extent.

12. Different types of building materials shall be permitted in the houses governed by the Frame Controlers and the relevant Clause of the Frame Controls shall deem to be amended to that extent.

13. Car parking/Porch covered with A.S. Sheets of fibre glass roof shall be permitted in the front courtyard of the residential houses.

14. Whenever road terms in front side or back of the building have been encroached, these shall be get vacated.

15. The dustbins, gate-pillars and liable which are not in accordance with the standard design and point of show window of the shops, doors and shalters which are not as per prescribed colour scheme, shall be ignored.

16. Non-construction of sky lights where these already stand mentioned in the building plans shall be made non-compoundable violation.

17. In case the construction has been raised in violation of Rule 5 of Punjab Capital (Development and Regulation) Building Rules, 1952, as amended from time to time i.e. construction without sanction but in conforms to the Zoning regulations/Architectural Controls/other building bye-laws, the composition shall be charged at the revised rates as under:-

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i)	*Residential buildings*	*@Rs.10/-per. sq.ft. of covered area including area under basement storey.*
ii)	*Industrial buildings*	*@ Rs.20/- per. sq. ft. of covered of area including area under basement storey.*
iii)	*Commercial buildings*	*@ Rs.30/- per.sq.ft. of covered of area including area under basement storey.*
iv)	*Institutional, religious, cultural and any other building not covered under (i) (ii) & (iii) above*	*@ Rs.20/- per. sq.ft. of covered of area including area under basement storey.*

14. Devices sources based shall on be non-conventional energy permitted at the roof tops provided they match with the standard I.S.I. Specifications.

15. Maximum to permitted sq.yrds shall kitchens per floor shall be on the residential plots of 250 of not more be in area. This permitted at facility the Barsati floor. This facility shall also not be permitted at the top floor/barasati floor.

In the duplex design houses only one kitchen per floor shall be permitted.

16. Those orders shall come into effect from the date of notification.

Anuradha Gupta

Chief Administration, Chandigarh

Endst.No.2367-UTE1(3)-96/10236

dated, Chandigarh the 14/8/1996."

9. Now, the power to order for resumption of the disputed premises becomes engrafted in <u>*Section 8(A) of Capital of Punjab (Development & Regulation)Act, 1952 (hereinafter referred to as "the Act of 1952")*</u> and the power to levy the misuse charges becomes engrafted in <u>*Rule 9-A of the Chandigarh (Sale of Sites and Buildings) Rules, 1960(hereinafter referred to as "the Rule of 1960")*</u>, provisions whereof become extracted hereinafter:-

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"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 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 percent 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.

"***9-A. Procedure in case of misuse of site or building*** *- (1) When a misuse of a site or building including violation of Section 2, 4, 5, 6 or 12 (2) of the rule 9, is reported or comes to the notice of the Estate Officer then, without prejudice to action under Section 8-A of the Act, a notice shall also be served on the transferee(s) and on the occupier(s) of the site or building requiring that the transferee and the occupier shall, within a period of one month, remove the said misuse, and pay such monthly charges as are notified by the Chandigarh Admintration from time to time. Such charges shall be payable jointly and severally by the transferee and the occupier of the site or building for every month or part thereof the misuse occurs.*

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Explanation: - Where it is determined by the Estate Officer that the misuse is on the part of the occupier, charges shall be recoverable in the first instance from the occupier."

10. After making extraction(s) of supra, therebys there is an interlink *inter se* the passing of the resumption order and the levying of misuse charges, as has been alleged to take place in the instant matter.

11. For determining the validity of the submissions addressed before this Court by the learned counsels, it is relevant to allude to the relevant portions of the findings returned by the Ld. Rent Controller concerned, on issue No.3, which became struck in a Rent Petition bearing No.51 of 13.06.2007,and, which became decided on 04.01.2011 (Annexure P-33). It is also but imperative to extract the relevant issue no.3 and the relevant portions of the findings returned thereon, which are so done hereinafter:-

"It has been alleged by the petitioner that the respondent is guilty of misusing the tenanted premises as he is guilty of using the premises without the consent of the previous owner or the petitioner for the purpose of office. He is using the premises for providing architectural services in the name and style of M/s Anand and Anand Architects and Interior Designers. The demised premises being residential premises cannot be used for aforesaid service by the respondent. UT Administration has already initiated resumption proceedings against the previous owner as well as the respondent The petitioner had called upon the respondent to stop the mi number of times but he has not cared for the Chin act of the respondent has caused material impairment which has affected its value and utility. So, on this ground respondent is liable to be evicted from the demised premises. This fact has been admitted by the respondent in his pleadings as well as his evidence that the premises have been resumed by the Estate Office. Respondent has himself admitted in his cross examination that resumption order has been passed relating to H. no. 3127, Sector 21D, Chandigarh. On the ground of misuse he has

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received notice from the Estate Office. He has contested the case and also filed an appeal against the order of the Estate Office. However, he has given evasive replies regarding the orders passed by the appellate authority in the appeal filed by him and as to the fact whether the order was passed in his presence or not and whether misuse charges have been levied on him. It is admitted case of the respondent that he is running his business in the demised premises in the name and style of M/s Anand and Anand Architects and Interior Designers. In the written statement he has submitted that the premises were given for office since the inception of tenancy. However, he has failed to produce any document showing that he was given the premises for the purpose of running business. It is clear from his cross examination where he has stated that I cannot produce any letter from GK Bhalla mentioning the purpose the premises were let out to him. However, learned counsel for the respondent has argued on this point that the tempo has specifically stated in his examination in chief that he is not misusing the premises and as per the notification Ex RW2/6 respondent is legally entitled to use the part of the tenanted premises for office of architect being professional a architect but he has not placed any document on the record showing that he got any permission from the Chandigarh Administration for using the premises as office. Moreover, respondent has taken contradictory stand in his cross examination where he has stated that he is residing in H. No. 330 MDC, Panchkula for last approx. 15 years. He is not having any office in that premises. He is getting all mixed work in his office. He is doing the business under the name and style of Anand and Anand architects and interior designers in the demised premises. He voluntarily stated that this is in addition to his residence in the demised premises. His wife and children has their permanent resident in H. No. 330 MDC Panchkula. He does not have any ration card and voter card at the demised premises address. So, from this statement of the respondent it is clear that he is using the demised premises address. So, from this statement of the respondent it is clear that

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*he is using the demised premises only for the purpose of running business of architect and interior designer inspite of the fact that the demised premises is meant for residential purposes. From the statement of RW4 it is also clear that the demised premises are a residential house. He has stated in his examination in chief that according to the record at present Sh GK Bhalla is re-allottee of the residential site H.NO. 3127, Sector 21D, Chandigarh. So from all these facts it is clear that the respondent is using the residential house for the purpose of running business which cannot be done without prior permission of the landlord as is envisaged in Section 11 of the Rent Act, Even under the rules of Chandigarh Administration a residential building cannot be used for commercial purpose without getting permission from the Estate Office. So, from the above discussion it becomes crystal clear that the respondent has been using the demised premises for office purpose which amounts to change of user and on account of such misuse the building has been resumed by the Chandigarh Administration. It is also settled law that if the tenant is guilty of misusing the premises and exposes the landlord to the peril of resumption such tenant should be evicted. In **Amrik Singh Chatha vs. Bishamber Dass and ors, PLR (1) pg 649** our own High Court has held that tenant changed the user of the building and such change puts the landlord in jeopardy of resumption there is likelihood of damage and loss to the landlord. Eviction order passed."*

12. It is but candidly forthcoming from making readings of the above extracted findings, that became returned on issue No.3, that despite the demised premises becoming leased to petitioner in CWP No.3614 of 2012, thus exclusively for residential purposes, yet the entire component or the entire covered area of the demised premises, rather than being used as such for residential purposes, thus, becoming converted into commercial purposes, inasmuch as thereovers commercial activity becoming carried on. Resultantly,

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a binding and conclusive verdict of eviction became rendered on the supra eviction petition(s).

13. The consequence of the above findings is that, especially when, it is stated to acquire binding and conclusive effect, qua therebys, in terms of the supra underlined apposite Rule(s)**,** the burden of liquidating the levied misuse charges as embodied thereins, was to be encumbered upon the occupier/tenant concerned.

14. In aftermath, *CWP No.4478 of 2010* and *CWP No.21071 of 2011* are allowed. However, *CWP No.3614 of 2012* is dismissed. It is also directed that the petitioner, namely, *Chander Bhushan Anand* in CWP No.3614 of 2012, shall within a period of one month from today, deposit the misuse charges, and, in case the said is not done, thereupon, such measures, as may be deemed fit and appropriate, be undertaken by the respondent(s) concerned, to ensure the realization of the said amount from the said petitioner in CWP No.3614 of 2012.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

MARCH 26, 2025
ANJAL

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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