

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4569 OF 2017
[@SPECIAL LEAVE PETITION (C) No. 13576 of 2015]

THE HARYANA URBAN DEVELOPMENT AUTHORITY & ORS. Appellant(s)

VERSUS

DES RAJ CHAWLA Respondent(s)

O R D E R

1. Heard the learned counsel for the parties.
2. Leave granted.
3. The facts, in short, indicates that initially an industrial plot No. 120, Industrial Area, Phase - I, Panchkula measuring $\frac{1}{4}$ Acre area was allotted to Shri Madan Mohan Sharma for running Printing Press in 1973 who died and in 1978, his wife namely, Savitri succeeded him. Thereafter, the land was transferred by HUDA to Kuldipinder Singh and Bhupinder Singh in 1986. They executed a Power of Attorney in favour of the present Respondent-Des Raj Chawla in 1988. On the strength of the Power of Attorney, he started misuse of plot by constructing 13 shops for commercial purposes on the plot which was meant for the purpose of industrial use.

Admittedly, the plot had not been used so far for the industrial purposes at any point of time, after 1986.

4. Consequently, a show cause notice was issued on 5.8.1996 for cancellation of the allotment owing to the misuse.

5. Aggrieved thereby, the same was questioned by filing statutory Appeal and revision thereafter, which were dismissed.

6. On 6.8.2000, the respondent preferred Civil Writ Petition against the orders of resumption, appeal and revision. The same was allowed by the High Court by the impugned judgment and order dated 3.12.2014. Aggrieved thereby, the appeal has been preferred by HUDA.

7. We have heard the learned counsel for the parties at length. In our opinion, the High Court has gravely erred in law in allowing the writ application. The High Court has given a finding that upto 2007, the industrial plot was misused for the commercial purposes. Thereafter, misuse has been stopped. However, the fact remains that the plot has not been used for industrial purpose till today. Even after cancellation order on 1996, the misuse had continued till 2007 and misuse was made w.e.f. 1988 onwards for the commercial purposes. Thus, there was blatant misuse of the

plot in question. At no point of time, the respondent intended nor used it for industrial purposes for which it was allotted. But it is not a case where the High Court should have made indulgence by allowing the respondents to continue with the allotment of industrial plot. The respondents had taken the stand that not 13 but 3 commercial shops were there. Be that as it may, it was also a case of inconsistent user.

8. The learned counsel appearing on behalf of the respondent has placed reliance on the decision of this Court in (2004) 2 SCC 130 Teri Oat Estates (P) Ltd. v. U.T. Chandigarh and Ors. in which it has been laid down that the power of resumption and forfeiture of money deposited by the lessee in case of default in making due payment should be exercised sparingly. However, we find that the said case is totally on different factual matrix. Whereas the plot was to be transferred, there was delay in making payment. As such, the case referred to, has no application to the instant case. Though, power to resume allotment was not to be on trivial breach but on material breach, we find that the case at hand was the one in which blatant misuse was there. Thus, the power of resumption was rightly exercised.

9. Unhesitatingly, we set aside the impugned order passed by the High Court and, accordingly, allow the appeal.

10. Parties to bear their respective costs.

.....J
(ARUN MISHRA)

.....J
(S.ABDUL NAZEER)

New Delhi;
March 27, 2017

