

Dr. Sewa Singh

Vs

Smt. Ravinder Kaur and Another

Civil Appeal No. 408 of 1967

(Shah, J.)

13.03.1970

JUDGMENT

SHAH, J. -

1. The appellant is the tenant since 1942 of a portion of House No. B-III-674, Gukhram Nagar, Ludhiana, belonging to the respondents. The appellant is a medical practitioner and has a dispensary in Chaura Bazar, Ludhiana. The respondents moved an application under the East Punjab Urban Rent Restriction Punjab Act (3 of 1949) in the Court of Rent Controller Ludhiana for an order in ejectment against the appellant on two grounds : (1) that the appellant committed default in payment of rent, and (2) that the premises is required by the respondents for personal use. Before the first hearing the rent in arrears was paid in Court, and the question as to the liability to be evicted on the ground of non-payment of rent no longer survives. The Rent Controller held that the respondents required the premises for personal use, but since the building was a "scheduled building" within the meaning of the East Punjab Urban Rent Restriction Act, 1949, no order in ejectment could be passed. The order of the Rent Controller was confirmed in appeal by the appellant authority. The respondents then invoked the original jurisdiction of the High Court of Punjab under Section 15 of the Act. In the view of High Court the house which was let out for residential purposes could not at the option of the appellant, be converted into a "scheduled building". The High Court also opined that even though a part of the premises let out to the appellant "was used for business-cum-residence purposes" it was "a casual user". The High Court accordingly allowed the petition and made an order that the appellant be evicted from the house. Against that order in the special leave this appeal is preferred.

2. A "scheduled building" is defined in Section 2(h) of the East Punjab Urban Rent Restriction Act as meaning "a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to this Act, partly for his business and partly for his residence". It is impossible to hold on the language of the definition that the original purpose of the tenancy is decisive of the question whether it is a Scheduled building. In terms it is enacted that a residential building will be deemed to be a Scheduled building if it is used by a person engaged in one or more of the professions, partly for his business and partly for his residence. The building in the occupation of the tenant is undoubtedly residential and on the evidence it is partly used for his business.

3. Mr. Mehta, appearing on behalf of the landlord, contended that the High Court has found that the user for business purposes was purely casual, and in determining whether the building let out to the appellant may be regarded as scheduled building such user must be ignored. But it must be pointed out that the appellant authority had clearly found that one of the rooms in the disputed premises was

used by the appellant for his profession. He examined his patients in that part of the house and prescribed medicines for them. On the evidence it appears that even the members of the respondents' family were treated by the appellant in the portion set apart for his professional use. Granting that the portion in the house occupied by the appellant as a tenant of the respondent may not be as extensively used as dispensary as the one at Chaura Bazar, no inference may be raised as was sought to be done for the first time in the revision application before the High Court, that the "user was casual". In our judgment the finding of the High Court that the user for professional purposes was casual cannot be sustained.

4. The appeal is allowed, the order passed by the High Court is set aside and the order passed by the appellate authority restored. There will be no order as to costs throughout.

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