

Mohan Lal

Vs

Jai Bhagwan

Civil Appeal No. 50 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

23.03.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana dated August 14, 1987. The appellant took on rent the premises in dispute from the respondent at a monthly rent of Rs. 120 and executed a rent note in his favour on April 19, 1975. Clause (4) of the said rent note provided, inter alia, as follows :

That the tenant will run the business of English Liquor Vend in the shop - will do sale of liquor.

2. The landlord, respondent herein filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called 'the Act') against the appellant on the ground of arrears of rent from April 1, 1979 to August 31, 1979 and change of user from liquor vend business to that of general merchandise at the shop in dispute by the appellant.

3. The appellant tendered the entire arrears of rent at the first date of hearing and thereafter he contested by filing written statement. The appellant submitted that after March 1979, the licence of liquor vend in his favour was not renewed and he had to discontinue that business of liquor vend at the shop in dispute and had to start the business of general merchandise. According to the appellant the purpose of the user still remains commercial and that in the rent note there was no clause prohibiting the appellant to change to any other business in the shop in dispute.

4. The Rent Controller held that the appellant had changed the user of the shop in dispute and he was liable for eviction under the Act. There was an appeal to the Appellate Authority and the Appellate Authority dismissed the said appeal. The appellant went in civil revision to the High Court of Punjab and Haryana. The High Court dismissed the civil revision and upheld the eviction. Hence this appeal.

5. The question is, whether a ground for eviction was made out under clause (b) of Section 13(2)(ii) of the Act. The said Act was passed to control the increase of rent of certain buildings and rented land situated within the limits of urban areas, and the eviction of the tenants therefrom. Section 13(2)(ii)(b) of the Act reads as follows :

13(2) A landlord who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. If the Controller, after giving the tenant a reasonable

opportunity of showing cause against the application is satisfied, -

(ii) that the tenant has after the commencement of the 1949 Act, without the written consent of the landlord,- (b) used the building or rented land for a purpose other than that for which it was leased :

6. The High Court of Punjab and Haryana has relied on a Full Bench decision of the said High Court in *Sikander Lal v. Amrit Lal* ((1984) 86 Punj LR 1). That was a case under the East Punjab Urban Rent Restriction Act of 1949. The Full Bench of the Punjab and Haryana High Court in the facts and circumstances of that case held that it was a common ground that the premises was originally leased for the business of handlooms. Thereafter it was used for small carding machine not occupying a space of more than 4 feet x 4 feet which converted cloth into thread. It was held that there was no change of user. The Full Bench, however, observed that it emerged from the long line of authorities that, where the subsequent use of the premises is merely ancillary to the specific original purpose then it would imply no change of user within the meaning of the statute. If by custom or convention or on the finding of the court it could be held that the added use of the premises was ancillary to the main original purpose then in the eye of law it would be deemed to have been within the terms of the original lease. It was further held that both on principle and on binding precedent it emerged that the specific original purpose could not be, according to the Full Bench, extended by adding to it any and every purpose thereto, and the same must be confined within the limitation of being either a part or parcel of, or ancillary to, the original purpose. There the court was concerned with Section 13(2)(ii)(b) of the Act which is an identical provision as the present one. So far as the High Court held in that case that allied business would not amount to change of user but for a business which is not allied for (sic to) the business for which it was let out would amount to change of user come within the mischief of clause (b) of Section 13(2)(ii) of the Act, the same must be read with reservation.

7. Our attention was drawn to a decision of this Court in *Maharaj Kishan Kesar v. Milkha Singh* (Civil Appeal No. 1086 of 1964, decided on November 10, 1965 (SC)). That was a decision under the East Punjab Urban Rent Restriction Act, 1949. There on the facts the court found that selling petrol was an allied business of the workshop and as such it is a part of the business. The court held that there was no evidence to show that in the trade a petrol pump is not regarded as a part of motor workshop business. The sale of petrol is an allied business and would not amount to conversion to a different business or change of user. There is nothing in the said decision which would give any assistance to the respondent in this case. The business purposes must be adjudged in the light of the purpose of the Rent Act in question which is to control the eviction of tenants therefrom. In the expanding concept of business now-a-days and the growing concept of departmental stores, we are of the opinion that it cannot be said that there was any change of user in the facts of this case which would attract the mischief of the provisions of Section 13(2)(ii)(b) of the Act. The building was rented for purpose of carrying on a business, using it for another business, it will not in any way impair the utility or damage the building and this business can be conveniently carried on in the said premises. There was no nuisance created.

8. Our attention was drawn to the observations of Lord Diplock in *Duport Steels Ltd. v. Sirs* ((1980) 1 All ER 529, 541). That was a decision in respect of the Trade Disputes Act, 1906. Lord Diplock said :

My Lords, at a time when more and more cases involving the application of legislation which gives effect to policies that are the subject of bitter public and

parliamentary controversy, it cannot be too strongly emphasised that the British Constitution, though largely unwritten, is firmly based on the separation of powers : Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount.

9. While respectfully agreeing with the said observations of Lord Diplock, that the Parliament legislates to remedy and the judiciary interpret them, it has to be borne in mind that the meaning of the expression must be found in the felt necessities of the time. In the background of the purpose of rent legislation and inasmuch as in the instant case the change of the user would not cause any mischief or detriment or impairment of the shop in question and in one sense could be called an allied business in the expanding concept of departmental stores, in our opinion, in this case there was no change of user which attract the mischief of Section 13(2)(ii)(b) of the Act. The High Court, therefore, was in error.

10. In that view of the matter this appeal is allowed and the order of eviction is set aside. The parties will pay and bear their own costs.

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