

Gurdial Batra

Vs

Raj Kumar Jain

Civil Appeal No. 2873 of 1987

(Ranganath Mishra, Kuldip Singh JJ)

18.07.1989

JUDGMENT

RANGANATH MISRA, J. -

1. This is a tenant's appeal by special leave challenging his eviction from a business premises located at Jullandhar.
2. Under a rent note (Ex. A-1), the appellant had taken the premises on rent from the respondent-landlord. The use to which the premises was intended to be put was running a cycle and rickshaw repairing shop. As far as relevant, on the allegation that the tenant had put the premises to different use, an application for his eviction was made under Section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act, 1949.
3. The Controller found that the appellant had continued the business of repairing of cycles and rickshaws but side by side had for a period of about seven months been selling televisions in the premises but he stopped the same as it was not viable. According to the Controller, this did not constitute user for a purpose other than that for which the premises was leased and he accordingly rejected the petition. The appellate authority at the landlord's instance held that the statutory condition was satisfied and granted eviction. The High Court when moved by the tenant declined to interfere.
4. The short question that arises for consideration is whether there has been a violation of the terms of tenancy by using the premises for a purpose other than that for which the premises had been leased. The tenant did not dispute that he had taken the premises for running a repair shop of cycles and rickshaws. In this statement he said that he had commenced the business of selling the televisions side by side in view of the slump in the cycle and rickshaw repairing business. He also accepted the position that he had not obtained the consent of the landlord when he started the TV business. The landlord has accepted the position that in the rent note it was not written that the respondent would not do any business in the shop in dispute except the cycle or rickshaw repairs. On these facts it has now to be decided as to whether the premises has been used for a purpose other than that for which it had been leased.
5. Reliance was placed on the Full Bench decision of the Punjab High Court in Des Raj v. Sham Lal (AIR 1980 P&H 229 : (1980) 82 Punj 647 : (1980) 2 Rent LR 243) where the question for consideration was as to whether when the lease was for the purpose of a shop without anything more specific, user thereof as a godown amounted to change of user. The High Court in course of the discussion in the judgment rightly drew the distinction between residential and non-resident

premises and also classified non-residential buildings into known categories like shop, godown, restaurant, cinema, hotel etc. In course of the discussion the Full Bench referred to the decision of this Court in *Moti Ram v. State of Madhya Pradesh* ((1978) 4 SCC 47 : 1978 SCC (Cir) 485 : AIR 1978 SC 1594) and came to the conclusion that when the letting out purpose was location of a shop and it was exclusively used as a godown, it amounted to a change of user. Not much of support is directly available for the resolution of the present dispute from the judgment. Reliance was also placed on a decision of this Court in the case of *Mohan Lal v. Jai Bhagwan* ((1988) 2 SCC 474) where the very provision of the East Punjab Act was considered in a case of eviction. The decision of this Court in the case of *Maharaj Kishan Kesar v. Milkha Singh* (Civil Appeal No. 1086 of 1964, decided on November 10, 1965 (SC)) was referred to therein. That again was a decision under the very Act and the dispute related to the allegations of change of user when petrol was sold as an allied business of the avowed purpose of locating the workshop. The court found that location of a petrol pump could not be regarded as not being a part of motor workshop business. Rightly, our learned brother Mukharji, J. indicated that the ratio in *Maharaj Kishan Kesar* case (Civil Appeal No. 1086 of 1964, decided on November 10, 1965 (SC)) did not provide any guideline of general nature. What was said in para 9 of his judgment is perhaps useful. Our learned Brother quoted the observations of Lord Diplock, J. in *Duport Steels Ltd. v. Sirs* ((1980) 1 All ER 529 : (1980) 1 WLR 142 : (1980) 1 ICR 161) and said : (SCC p. 478, para 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 attracts the mischief of Section 13(2)(ii)(b).

On that conclusion, the order of eviction was reversed.

6. Letting of a premises can broadly be for residential or commercial purpose. The restriction which is statutorily provided in Section 13(2)(ii)(b) of the Act is obviously one to protect the interests of the landlord and is intended to restrict the use of the landlord's premises taken by the tenant under lease. It is akin to the provision contained in Section 108(a) of the Transfer of Property Act dealing with the obligations of a lessee. That clause provides :

The lessee may use the property and its products, if any, as a person of ordinary prudence would use then if they were of his own; but he must not use or permit another to use the property for a purpose other than that for which it was leased.....

A house let for residential purpose would not be available for being used as a shop even without structural alteration. The concept of injury to the premises which form the foundation of clause (b) is the main basis for providing clause (b) in Section 13(2)(ii) of the Act as ground for the tenant's eviction. The Privy Council in *U Po Naing v. Burma Oil Co.* (AIR 1929 PC 108 : 56 IA 140 : 7 Rang 157) adopted the same consideration. The Kerala High Court has held that premises let out for conducting trade in gold if also used for a wine store would not amount to an act destructive of or permanently injurious to the leased property (*Raghavan Pillai v. Sainaba Beevi*, 1977 Ker LT 417). Similarly, the Bombay High Court has held that when the lease deed provided for user of the premises for business of fret work and

the lessee used the premises for business in plastic goods, change in the nature of business did not bring about change of user as contemplated in Section 108(c) of the Transfer of Property Act (1978 Mah LJ 545).

7. The landlord parts with possession of the premises by giving a lease of the property to the tenant for a consideration. Ordinarily, as long as the interest of the landlord is not prejudiced, a small change in the user would not be actionable.

8. In this case, the premises was let out for running of a repair shop. Along with the repair business, sale of televisions was temporarily carried on. We do not think this constituted a change of user within the meaning of Section 13(2)(ii)(b) of the Act so as to give a cause of action to the landlord to seek eviction of the tenant.

9. The appeal is allowed and the order of eviction passed by the appellate authority and affirmed by the High Court is vacated and the order of the Controller is restored. Parties are directed to bear their own costs throughout.

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