

# SUPREME COURT OF INDIA

Jagdish Lal

Versus

Parma Nand

(S. Saghir Ahmad and D.P. Wadhwa, JJ.)

Civil Appeal No. 2231 of 2000 (Arising out of S.L.P. (Civil) No. 14147 of 1998).

27.03.2000

## JUDGMENT

**S. Saghir Ahmad, J.** - Leave granted.

2. The appellant is the tenant of the shop in question under a lease dated 21.3.1982 executed by the respondent in his favour, under which the shop was let out for the business of Maniyari [(General Merchant) Readymade & Cloth Merchant] on a monthly rent of Rs. 600\-. On 15th June, 1987, the respondent filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for short, the "Act"), for eviction of the appellant on several grounds, including the arrears of rent, structural alteration, *bona fide* need and changing the user of the shop for which it was let out. This application was allowed by the Rent Controller by his order dated 25th March, 1995 only on the ground of change of user of the shop. The other grounds namely, the grounds relating to arrears of rent, structural alterations and genuine need of the landlord were rejected. The appellate authority before whom an appeal was filed by the present appellant dismissed the appeal by judgment dated 4th April, 1998 and upheld the judgment passed by the Rent Controller. The Revision filed thereafter in the High Court was dismissed on 25th May, 1998.

3. Learned counsel appearing for the respondent has raised a preliminary objection that since the appellant had given an undertaking before the High Court that he would vacate the shop in question by a specific date provided he was granted time for that purpose, the present appeal is not maintainable. The relevant portion of the High Court judgment which relates to this undertaking is reproduced below :

"Mr. Goel, learned counsel for the petitioner, states that the petitioner be allowed some reasonable time to vacate the premises. He undertakes on behalf of the petitioner to hand over vacant possession to the landlord on or before September 1, 1998 and also undertakes to deposit the arrears of rent, if any, together with future rent within two weeks from today. In case the petitioner deposits the arrears of rent, if any, alongwith future rent within two weeks, the ejection order against him will not be executed till September 1, 1998 in view of his undertaking."

4. It is contended that since the appellant had furnished an undertaking in terms of the judgment passed by the High Court, he was bound to vacate the premises. Since he did not honour the undertaking and instituted the present appeal in this Court by filing initially a Special Leave Petition under Article 136 of the Constitution, he cannot be heard in the matter as the filing of the Special Leave Petition in this Court amounts to a breach of the undertaking given to the High Court which must be honoured by him and he must be directed to vacate the premises in terms of the undertaking. Reliance for this purpose has been placed by the learned counsel for the respondent on a decision of this Court in ***Thacker Hariram Motiram v. Balkrishan Chatrabhu Thacker and others, 1988(2) RCR (Rent) 168 : 1989 Suppl(2) SCC 655***, in which also an undertaking was given by the tenant and on that undertaking he was allowed sufficient time to vacate the premises. It was held that in terms of the undertaking given by him, he must vacate the premises. We are not prepared to accept this contention.

5. The question was examined by this Court in a subsequent decision in ***P.R. Deshpande v. Maruti Balaram Haibatti, 1998(2) RCR (Rent) 215 : (1998)6 SCC 507***, in which it was laid down by a Bench of three Judges of this Court that even if the tenant gives an undertaking in the High Court to vacate the premises, his right to approach this Court under Article 136 of the Constitution is not affected. The tenant would still have a right to approach the higher Court and even seek interim relief of stay of eviction despite the undertaking given by him to vacate the premises. This decision, decisively and clearly, has the effect of overruling the earlier decision in Thacker Hariram Motiram's case (supra) as also two other decisions in ***Vidhi Shanker v. Heera Lal, 1987 Supp. SCC 200*** and in ***Ramchandra Jai Ram Randive v. Chandanmal Rupchand, 1987 Supp. SC 254***. The preliminary objection is accordingly overruled." eing used for a purpose other than that for which it was let out. He contends that the shop in question was being used for commercial purposes, it continues to be used for that purpose and its user has not been converted into a 'residential purpose'.

9. Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the respondent has contended that since the shop in question was let out for a specific purpose of carrying on the business in General Merchandise and Readymade & Cloth Merchant, the appellant could not legally have used the shop for the purpose of a restaurant or for selling sweetmeat. The shift of business from General Merchandise to Restaurant Business was in itself a serious nuisance on account of the furnace which was ignited for making tea or boiling milk or preparing other eatables, including sweetmeat and, therefore, the term of the lease deed that the shop could not be used for other purposes, stood violated giving to the landlord a cause of action for seeking appellant's eviction. Categorisation of buildings into commercial and residential is a broad categorisation, but it is the user of the shop which is material for seeking eviction of the tenant. The words of this Section, it is contended, are clear and convey a plain meaning that if the purpose for which the shop was to be used was abandoned and it was put to use for any other purpose, though it may be commercial in nature, the tenant would be liable to be evicted.

10. The provisions of the Act, as we shall presently see, have been differently interpreted at different times.

11. Mr. Dave referred to a decision of this Court in *Rattan Lal v. Asha Rani, (1988) 3 SCC 586 : 1988(2) RCR 549*, in which the shop was let out for grocery business but the tenant started selling books in that shop. The tenant, from a grocer, became a bookseller and it was for this reason that his eviction was sought. But it was held that the change of business does not amount to change of user as contemplated by the Act and, therefore, the tenant was not liable to be evicted. The Court, instead of directing eviction, enhanced the rent of the shop. In *Mohan Lal v. Jai Bhagwan, (1988)2 SCC 474: 1988(1) RCR 444 (SC)*, which was also a case under Section 13 of the Act which is presently under our consideration, the shop which was let out for running the business of English Liquor Vend was used for General Merchandise. It was held that it would not amount to change in user. It was further held as under :

"The business purposes must be adjudged in the light of the purposes 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."

12. In yet another decision in *Gurdial Batra v. Raj Kumar Jain, (1989) 3 SCC 441 : AIR 1989 SC 1841*, a similar provision under Section 13(2)(ii)(b) of East Punjab Urban Rent Restriction Act 1949 came to be considered. The shop was let out for cycle and rickshaw repairing business, but the tenant started the television business. The question which arose before the Court was whether the premises had been used for a purpose other than that for which it had been let out. This Court held that in the circumstances of the case, "the business of selling television sets" which was started by the tenant in that shop cannot be said to be a purpose other than that for which the shop was let out. Reference was also made to the provisions of Section 108(o) to the Transfer of Property Act, 1882 which, *inter alia*, provides as under :

"the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were 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 ....."

13. The words "use the property for a purpose other than that for which it was leased" occurring in this clause mean that the change of business would not bring about change of user as contemplated by this clause.

14. It will thus be seen that mere change of business does not amount to change of user within the meaning of the Act. The philosophy behind this proposition seems to be that a shop which is meant to be used exclusively for commercial purposes must be used for that purpose. If the tenant has started a business in that shop and that business does not succeed and it does not bring in sufficient monetary returns to

enable him to earn his livelihood, he would naturally abandon that business and start a new venture. The new venture may not be the same which was initially carried on. It will be permissible only to a limited extent, that is to say, if the tenant was permitted to sell his goods and the shop was meant as an outlet for the goods manufactured by him elsewhere, he cannot start the manufacturing process in the shop itself. It was for this reason that this Court in **Ram Gopal v. Jai Narain and others, 1995 Supp.(4) SCC 648**, which again was a case under this Act, held that where a premises were demised for running a shop, the tenant cannot legally install an "Atta Chakki and Oil Kolhu" on the premises as it would amount to a change of user.

15. In **Dashrath Baburao Sangale and others v. Kashimath Bhaskar Data, 1994 Supp. (1) SCC 504 : AIR 1993 SC 2646 : 1995(2) RCR 59 (SC)**, an open piece of land was let out for carrying on the business of sugarcane crushing. The tenant used it for selling cloth and readymade clothes. This Court did not interfere with the findings of fact concurrently recorded by the Rent Controller, the Appellate Authority and the High Court that there was a change of user as the land let out the tenant was not being used for the purpose for which it was let out. The tenant was held liable for eviction.

16. In **Bishamber Dass Kohli (D) by LRs. v. Satya Bhalla (Smt.), (1993)1 SCC 566**, the Court held that if the building was let out solely for residence, but in a part of the building a lawyer's office was established without the written permission of the landlord, it would amount to a change in the user and consequently the tenant would be liable to be evicted.

17. The Punjab and Haryana High Court in **Om Prakash v. Parmeshri Dass, 1984(1) All India RCJ 241** held that a tenant to whom the shop was let out for carrying on the business as General Merchant and "Kirana" had changed his business and started a tea-stall where he was also selling cold drinks, would be treated to have changed the user and the tenant was liable to eviction. The same High Court in **Pratap Singh v. Ajmer Singh, 1984(1) All India RCJ 431** held that if the shop was let out to the tenant for doing business in "dry fruits and soda water", he could not set up an "oven" and prepare 'pakoras' as it would amount to material and substantial change in user of the shop in question. The High Court followed its own Full Bench decision in **Sikandar Lal v. Amrit Lal, 1984(1) RSJ 116**. In **Banwari Lal v. Iqbal Singh, (1980) 2 RCR 119**, the shop portion of the building was let out to the tenant for carrying on the business of "General & Provision Store", but he switched over to the business of selling "stones and marble chips." It was held that since there was a change of user, the tenant was liable to ejection.

18. On a consideration of these decisions, it comes out that where the new business started by the tenant in the premises let out to him was an allied business or a business which was ancillary to the main business, it would not amount to change of user. It is true that where a premises is let out for commercial purposes, carrying on of a new business activity therein would not change the nature of the building and it would still remain a commercial building. But that is not enough. Having regard to the provisions of the Act and the intendment of the Legislature in providing that the tenant would not use the premises for a purpose other than that for which it was let

out, the new business should either have some linkage with the original business, which under the agreement of lease the tenant was permitted to carry on, or it should be an allied business or ancillary to that business. Where local laws provide a specific prohibition in respect of the use of the premises under the Rent Legislation and that provision has been interpreted in a particular manner by the High Court consistently, it would not be proper to disturb the course of decisions by interpreting that provision differently.

19. In the instant case, the premises in question was let out to the appellant for "Maniari" [(General Merchant) Readymade & Cloth Merchant] business. The setting up of a restaurant therein and serving tea and cold drinks would, in the circumstances of this case, amount to change of user within the meaning of Section 13. The redeeming feature, however, is that the appellant has reverted back to his original business during the pendency of the eviction petition before the Rent Controller and for many years now has been carrying on the original business. In these circumstances, where the change of business was only for a very short period and the appellant, during the pendency of the eviction proceedings reverted to the original business which he is carrying on since then, and more particularly because all other grounds, namely, arrears of rent, structural alterations made in the premises in question and *bona fide* requirement of the landlord, on which the eviction of the appellant was sought, have been negated, we feel that the ends of justice would be better served if the appellant is allowed to stay in the premises in question as tenant, subject, however, to his paying rent at the rate of Rs. 1,500\ - p.m. than the original rent of Rs. 600\ - p.m.

The appeal is disposed of in the manner indicated above. There will be no order as to costs.

**D.P. Wadhwa, J.** - I agree with the order made by my learned and noble brother Saghir Ahmad, J. However, I wish to add a few words.

In the case of *P.R. Deshpande v. Maruti Balaram Haibatti, (1998) 6 SCC 507* this Court approved the observations made by the two Judge Bench while referring the issue to the larger Bench. These observations are quoted in para 7 of the judgment which I reproduce :-

"Learned Judges who referred this matter have expressed in the reference order that remedy under Article 136 is a constitutional right which cannot be taken away by legislation, much less by invoking the principles of election or estoppel. The following observations made in the reference order are worthy of quotation here :

"The principle of `approbate and reprobate' or the law of election which is the basis of the decision in R.N. Gosain case [(1992)4 SCC 683] cannot, in our opinion, be applied appropriately to preclude this Court from exercising its jurisdiction under Article 136. The doctrine of election is founded on equitable principle that where a person persuades another one to act in a manner to his prejudice and derives any advantage from that then he cannot turn around and claim that he

was not liable to perform his part as it was void. It applies where a vendor or a transferor of property tries to take advantage of his own wrong. This principle cannot, in our opinion, be extended to shut out or preclude a person from invoking the constitutional remedy provided to him under Article 136. The law that there is no estoppel against statute is well settled. Here it is a remedy under the Constitution and no law can be framed much less the principle of election which can stand in the way of the appellant from invoking the constitutional jurisdiction of this Court."

Then this Court, after referring to certain observations of English Judges, said :-

"A party to a lis can be asked to give an undertaking to the Court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no Court can scuttle or foreclose a statutory remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same Court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the directions to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order. No doubt he is bound to comply with his undertaking so long as the order remains alive and operative. *However, it is open to such superior Court to consider whether the operation of the order or judgment challenged before it need be stayed or suspended having regard to the fact that the party concerned has given undertaking in the lower Court to abide by the decree or order within the time fixed by that Court.*"

(emphasis added)

There is no gainsaying that jurisdiction of this Court under Article 136 of the Constitution cannot be impinged upon. But then the Court has absolute discretion in the matter to grant leave to appeal to it under this Article. The judgment in P.R. Deshpande's case, in my view, cannot be read as laying down a universal rule that this Court in a petition under Article 136 cannot, while exercising its discretion, examine the circumstances under which undertaking was given - as to whether the petitioner has not misled the Court or duped the other party. This Court cannot close its eyes to a solemn undertaking given by a party to the Court. Two things come to mind. Take the case where order of eviction has been passed against the tenant. On the request of the tenant the Court grants him time to approach the higher Court and meanwhile stays the operation of the judgment on undertaking given by the tenant. In the other case the tenant requests the Court to grant him time to vacate the premises, which could be for a longer period than the period prescribed for filing the appeal, the Court grants time on the tenant giving the usual undertaking. In the latter case it would be a moot question if the Court will still exercise its discretion in granting leave to appeal under Article 136 of the Constitution.

RESULT = Appeal allowed.