

SUPREME COURT OF INDIA

Nand Kishore

Vs.

Yashpal Singh

C.A.No.4578 of 2009

(Tarun Chatterjee and Aftab Alam JJ.)

21.07.2009

JUDGMENT

Tarun Chatterjee, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 1st of November, 2006 passed in Civil Revision Case No. 4735 of 2001 by the High Court of Punjab and Haryana at Chandigarh wherein the High Court had allowed the revision petition and set aside the judgment passed by the Appellate Authority, Chandigarh which had set aside the judgment and order of the Rent Controller, Chandigarh rejecting the application for eviction filed by the landlord/appellant (hereinafter referred to as the `appellant')

3. The appellant, who had purchased the House No. 189, Sector 11-A, Chandigarh (which is in a residential area) in an auction in 1990, raised a construction on that plot which is 500 Sq. Yds. (hereinafter referred to as the demised premises). As the appellant has settled in U.K., his father Shri Mange Ram, who is a permanent resident of India, had inducted the respondent as a tenant in a part of the residential premises for residential use in the month of April, 1994. The tenant/respondent (hereinafter referred to as the `respondent'), according to the appellant, without the consent and permission of the appellant, started commercial activities in the demised premises from December 1994. The appellant filed an application under Section 13 of the *East Punjab Urban Rent Restriction Act, 1949* (hereinafter referred to as the Act), for eviction of the respondent from the demised premises on the ground that although the demised premises was let out for residential purposes, the respondent had, without the consent and permission of the appellant, started using it for commercial use. The eviction application was dismissed by the Rent Controller, Chandigarh, against which an appeal was taken before the Appellate Authority, Chandigarh, which was allowed by its order dated 14th of August, 2001. Against this order of the Appellate Authority, the respondent filed a revision petition before the High Court and by the impugned Judgment of the High Court, the eviction petition of the appellant was dismissed and the order of the Rent Controller, Chandigarh was restored.

4. Feeling aggrieved, the appellant has filed this Special Leave Petition, which on grant of leave, was heard in presence of the learned counsel for the parties.

5. We have heard the learned counsel appearing for the parties and examined the impugned judgment as well as the judgment of the Appellate Authority and the Rent Controller, Chandigarh and other materials on record.

6. The questions that need to be decided in the present appeal are whether:

“(i) the demised premises which is situated in a residential area and in a residential building can be used for commercial purposes even by consent of the appellant in view of Section 11 of the Act and the provisions of the Development and Regulation Act; and

(ii) if the residential premises is let out for commercial purposes, by a mutual agreement between the landlord and the tenant, can the landlord still seek eviction of the tenant on the ground that using of such residential premises for commercial purposes entails the tenant to be evicted from the demised premises?”

7. Before we deal with question No.1 as posed herein earlier, let us first decide the question No.2.

8. In our view, this question must be decided in favour of the appellant. In *Vinod Kumar Arora vs. Surjit Kaur*¹ this Court has dealt with this question. At page 719, this court observed that –

Even if the landlord and tenant had converted a residential building into a non residential one by mutual consent, it would still be violative of Section 11 of the East Punjab Rent Restriction Act and, therefore, the landlord cannot be barred from seeking recovery of possession of the leased building for his residential needs. We are therefore, of the view that the findings of the Rent Controller and the Appellate Authority about the appellant having taken the hall on lease only for running a clinic and that he had not changed the user of the premises have been rendered without reference to the pleadings and without examining the legality of the appellant's contentions in the light of Section 11 of the Act. We do not, therefore, think the High Court has committed any error in law in ignoring the findings rendered by the statutory authorities about the purpose for which the hall had been taken on lease. (Emphasis supplied).

9. Again in *Kamal Arora vs. Amar Singh Ors.*² this Court in paragraph 3 observed as follows:

“The High Court after examining the provisions of the Capital of *Punjab (Development and Regulation) Act, 1951* read with Section 11 of the Rent Act held that statute prohibits conversion of residential building into non-residential by act

inter vivos. It was said that the landlord and the tenant by their mutual consent cannot convert a residential building into a non- residential building because that would be violative of the provision of Section 11. And it is admitted that building is situated in a sector falling within the residential zone. (Emphasis supplied)

10. In view of the above two decisions of this Court and after considering the provisions of Section 11 of the Act, it must be held that the landlord cannot permit a tenant to use the premises which is situated in a residential area for commercial purposes as it would be violative of Section 11 of the Act which is mandatory in nature. Accordingly, we are of the view that question No. 2 must be answered in favour of the appellant.

11. Let us now come back to question No.1 formulated earlier.

12. Before we deal with this question, we may refer to the relevant provisions of the Act. Section 13(2)(ii)(b) and Section 11 of the Act are such sections which would be required to be considered first to decide this appeal. Section 13(2)(ii)(b) of the Act runs as under :-

“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 applicant, is satisfied-

(i) xxxxxxxxxxxx

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord-

(a) xxxxxxxxxxxx

(b) used the building or rented land for a purpose other than that for which it has been leased, (iii) x x x x x x x x x.

(iv) xxxxxxxxxxxx

(v) x x x x x x x x x.

The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

Section 11 of the Act runs as under:-

Conversion of a residential building into a non-residential building –

No person shall convert a residential building into a non- residential building except with the permission in writing of the Controller.”

13. From a bare reading of the provision under Section 13(2)(ii)(b) of the Act, it would be evident that if a tenanted premises is let out for residential purposes, but is being used other than that for which it has been leased out, i.e., for commercial purposes, the tenant is liable for eviction from the tenanted premises. In the application for eviction the appellant pleaded that the demised premises was let out to the respondent for a period of 11 months in the month of April, 1994 at a monthly rental of Rs.1000/- for residential use. Therefore, the appellant pleaded that since the purpose for which the demised premises was let out was violated as it was brought into commercial use, the respondent was liable for eviction under Section 13(2)(ii)(b) of the Act from the demised premises.

14. The eviction application was hotly contested by the respondent by filing a written objection in which the respondent disputed the very purpose of tenancy for which the tenancy was taken. The respondent, inter alia, made out a case in his defence that the eviction application filed by the appellant under Section 13(2)(ii)(b) of the Act was not maintainable as the demised premises was let out for commercial purposes from the very inception of the tenancy and, accordingly, the use of the demised premises for commercial purposes from the very inception of the tenancy even in a residential building and also in a residential area can not give any right to the landlord to get an order of eviction under Section 13(2)(ii)(b) of the Act and in view of the above, the respondent contended that the eviction application filed by the appellant must be rejected.

15. In support of their respective case before the Rent Controller, parties adduced evidence and went into trial. As noted herein earlier, the Rent Controller, Chandigarh, by its judgment and order rejected the eviction application on the ground that since the appellant had not appeared in the witness box to support the contents of the eviction application an adverse inference must be drawn against him for non- production of the Rent Note, no order for eviction could be passed against the respondent. As noted herein earlier, this order of the Rent Controller was reversed by the Appellate Authority, Chandigarh, inter alia, on the findings that non- production of Rent Note and non-appearance of the landlord/appellant in the witness box could not be taken to be a ground for rejecting the eviction application. Relying on two decisions of the Punjab and Haryana High Court, namely, *Sudarshan Kumari vs. Anand Kumar Khemka*³ and *Ms. Kamla Khanna Vs. Lal Chand Palta*⁴ the Appellate Authority held that even if the building was let out for commercial purposes, still the respondent could not be allowed to continue to occupy the demised premises for commercial purposes in a residential area and also in a residential building in view of the provisions of the Development and Regulation Act and Section 11 of the Act.

16. As noted herein earlier, the High Court, in Revision, had set aside the order of the Appellate Authority and restored the order of the Rent Controller, Chandigarh, rejecting the application for eviction filed by the appellant.

17. A reading of the impugned judgment of the High Court would clearly show that the judgment of the High Court was based only on the ground that the building was let out for commercial purposes from the time of induction of the respondent in the demised premises and the respondent had been using the same as such since the inception of the tenancy and, therefore, the provision of Section 13(2)(ii)(b) of the Act could not be attracted because the respondent had not used the demised premises for a purpose other than that for which it was leased out to him and accordingly, no order of eviction could be passed against the respondent.

18. Before we proceed further, as noted herein earlier, we may keep it on record that neither the appellant nor the respondent had brought the Rent Note on record, on the basis of which, the Court could straight away determine and adjudge the purpose for which the demised premises was let out.

19. Learned counsel appearing on behalf of the appellant, in the first instance, contended that in fact the respondent was inducted as a tenant in respect of the demised premises for residential use as the appellant could not induct him for commercial use in view of Section 11 of the Act as well as in view of the bar imposed under the Development and Regulation Act. It was further contended by the learned counsel for the appellant that even if the respondent was inducted as a tenant in respect of the demised premises for commercial purposes in a residential area and in a residential building, still in view of Section 11 of the Act and also the relevant provisions of the Development and Regulation Act, the tenant was liable to be evicted from the demised premises, as it satisfied the conditions for eviction enumerated in Section 13(2)(ii)(b) of the Act. In support of this contention, reliance was placed on a decision of this Court in the case of *Rajinder Singh vs. Jatinder Dev Nanda*⁵ and also on the decisions of this Court in the cases of *Vinod Kumar Arora vs. Surjit Kaur*⁶, *Kamal Arora vs. Amar Singh Ors.*⁷ and *Rai Chand Jain vs. Miss Chandra Kanta Khosla*⁸. Relying on these decisions, it was, therefore, contended by the learned counsel for the appellant that the High Court was in error in rejecting the eviction application of the appellant.

20. The submissions so made by the learned counsel for the appellant were seriously contested by Mr. V. C. Mahajan, learned senior counsel appearing on behalf of the respondent. After taking us to Section 13(2)(ii)(b) of the Act as well as Sections 11 and 19 of the Act, the learned senior counsel contended that if there was any violation of Section 11 of the Act either by the landlord or by the tenant, the Act only empowers the authority to impose fine which may extend to one thousand rupees on the landlord or the tenant as the case may be. In this connection, attention was drawn to Section 19 of the Act, which runs as under :- Section 19 of the Act confers powers of the authority to impose penalties - if any person contravenes any of the provisions of sub-section (2) of Section 9, sub-section (1) of Section 10, Section 11 or Section 18, he shall be punishable with fine which may extend to one thousand rupees. (emphasis supplied).

21. Relying on Section 19 of the Act, Mr. Mahajan has, therefore, contended that when statute confers only the power to impose penalty for contravention of Section 11, it cannot be held that for such contravention the tenant can be evicted by the landlord under Section 13(2)(ii)(b) of the Act. So far as the decisions cited by the learned counsel for the appellant are concerned, Mr. Mahajan appearing on behalf of the respondent sought to contend that those decisions were clearly distinguishable on facts. Accordingly, Mr. Mahajan contended that the High Court was not in error in rejecting the eviction application. Finally, Mr. Mahajan submitted that this was not a fit case to interfere with the impugned judgment of the High Court in the exercise of discretionary power under Article 136 of the Constitution.

22. We have carefully examined the rival submissions of the learned counsel for the parties, as noted hereinabove. After examining the respective submissions, we are of the considered opinion that this appeal must succeed. Reasons are as follows:

23. Before we deal with the submissions of the learned counsel for the parties, as noted hereinabove, let us first decide an allied question that has cropped up during the arguments. This question is whether the tenant was inducted in the demised premises for residential use or for commercial use or was he inducted for residential use but he converted such tenancy to be used for commercial use at a later date. To answer this question appropriately, we have to look into Section 11 of the Act and the materials on record. We have already quoted this section earlier. It is quite clear from a bare reading of Section 11 of the Act that a tenant or a landlord would not be permitted to convert a residential premises situated in a residential area for a commercial use. In this connection an admission made by the respondent in his evidence would be necessary to be extracted:- It is correct that demised premises are situated in the residential vicinity. It is incorrect to suggest that I have not taken any permission from my landlady to carry on the commercial activity. It is correct that I have not taken any permission from the Rent Controller for carrying on the commercial activity. It is correct that the demised premises can be resumed at any time because of carrying on the commercial activity.(Emphasis supplied).

24. From the above admission of the respondent, it is evidently clear that the demised premises is situated in a residential area and the building in which the demised premises is situated is also a residential building and he had also not taken any permission from the Rent Controller for carrying on commercial activities and that the demised premises can be resumed at any time because of carrying on commercial activity. Such being the position, it can be safely concluded that the demised premises being in a residential area and in a residential building in which the commercial activity was being carried out by the respondent without the permission of the Rent Controller, the production of the Rent- Note to find out the purpose for which the tenancy was created shall not be decisive.

25. It is also clear from such admission of the respondent himself that the appellant can resume the demised premises at any time because of carrying on the commercial activity and that the demised premises is in a residential area and also in a residential building. That apart, Section 11 of the Act clearly prohibits a landlord or a tenant to convert the purpose of tenancy without the permission of the Rent Controller.

26. Such being the position, we must conclude that the respondent was inducted by the appellant at the initial stage in the demised premises for residential purposes but later on converted the tenancy for commercial use. In the eviction application as well as in evidence, it was the case of the appellant that in the month of April, 1994, the respondent was inducted for residential use and the commercial activities were started by him in the month of December, 1994 onwards. In view of our discussions made hereinabove, we must hold that the respondent was inducted in the demised premises for residential use and not for commercial purposes but the respondent converted the tenancy later on from residential to commercial use.

27. For this purpose, we may safely rely on the observation of this Court in Rajinder Singh's Case (Supra) as under :- Section 11 of the Act prohibits an owner and occupier of the premises to convert a residential building into a non-residential building except with the permission in writing by the Controller. Therefore, a residential premises could not be used for non-residential purpose, namely, for running a school. In view thereof, we are of the opinion that the judgment of the High Court suffers from serious infirmity and deserves to be set aside. [Emphasis supplied]

28. In view of the findings made hereinabove, we are in agreement with the submissions of the learned counsel for the appellant that the respondent had clearly violated the provisions of Section 13(2)(ii)(b) of the Act.

29. At this stage, we may deal with the submission of Mr. Mahajan, learned senior counsel for the respondent. As noted hereinabove, Mr. Mahajan, argued that in view of Section 19 of the Act, which clearly says that the Court or the Rent Controller is conferred with power to impose penalty for violation of the provisions of Section 11 of the Act and since the Act is a beneficial legislation and benefits the tenant, it would be difficult to conceive that for the same offence, a tenant can also be evicted from the demised premises. In our view, this submission of Mr. Mahajan has no substance. Section 11 speaks about conversion of a residential building into a non-residential building and also prohibits an owner or an occupier to convert the residential building into a non residential building.

30. Section 13 speaks about the ground on the basis of which a tenant can be evicted. In our view, the scope of Sections 11 and 13 are quite different. From a reading of Section 19 of the Act, it is clear that Section 19 gives an additional right to the authorities to impose penalty if a person has contravened the provisions of Section 11 of the Act. Therefore, it would not be difficult to hold that Section 13 gives only a right to a landlord to bring action against a tenant who has used the demised premises for a purpose other than for which it was leased out, whereas for conversion of residential premises into a commercial premises would also entail a tenant to be punished with fine under Section 19 of the Act. That apart, from a bare reading of the Act and object for which the Act was introduced and also after looking into the scope and on consideration of the entire provisions of the Act, it cannot be said that for violation of Section 11 of the Act, that is to say, a person uses a particular premises which can only be used for residential purposes but is being used for other purposes which entails

imposition of penalty under Section 19 of the Act, would not mean that Section 13(2)(ii)(b) and Section 19 cannot go hand in hand. Therefore, the only question that remains to be seen is whether a person who has converted the purpose for which the premises was let out without the permission of the Rent Controller, can be punished only with fine under Section 19 or can he also be evicted under Section 13(2)(ii)(b) of the Act. Looking at the object of the Act and the provisions made therein, and considering the fact that the Act is a beneficial legislation not only for the tenant but also for the landlord, it can safely be inferred that both the sections namely, Section 13 and Section 19 can be applied when there is a violation of Section 11. Therefore, in our view, reading of Section 13 and Section 19 together, we can safely come to the conclusion that the tenant or the landlord can be punished with fine under Section 19 of the Act and at the same time the tenant can be evicted under Section 13(2)(ii)(b) of the Act if the conditions laid down in the said sections are satisfied. That apart if violation of Section 11 of the Act results in fine under Section 19 of the Act, in that case the tenants who have violated the provisions of Section 11 of the Act could get away from eviction only by paying fine that may be imposed upon them [tenants]. If this can be accepted, the purpose and object of the Act for which this Act was introduced would be frustrated as the residential area would be converted into commercial- cum-residential area or vice-versa, which was not the intention of the Legislature and therefore, it cannot be said that for violation of Section 11 of the Act, the only remedy available was under Section 19 of the Act i.e. imposition of fine. In view of our discussions made herein above, we are of the view that the appellant had successfully made out a case for eviction of the respondent on the ground mentioned herein above.

31. For the reasons aforesaid, the impugned judgment of the High Court is set aside and that of the Appellate Authority is restored and the application for eviction filed by the appellant is thus allowed.

32. Considering the facts and circumstances of the present case, we grant six months time to the respondent to vacate the premises subject to filing of a usual undertaking in this Court within a month from this date.

33. The appeal is thus allowed. There will be no order as to costs.

¹1987 (3) SCC 711

⁴1989 (2) RCR 67

⁷[1986 Suppl. SCC 481]

²[1986 Suppl. SCC 481]

⁵[1999 (9) SCC 18]

⁸[1991 (1) SCC 422]

³1985 (2) RCJ 590

⁶[1987 (3) SCC 711]