PANJAB AND HARYANA HIGH COURT

Des Raj

Vs

Sham Lal

Civil Revision No. 1893 of 1978

(I.S.S. Sandhawalia, C.J., P.C. Jain, D.S. Tewatia, J.)

03.04.1980

JUDGMENT

D. S. Tewatia, J.

1. Whether the identification of a demised premises as shop in the lease-deed, which otherwise is silent in regard to the purpose, per se spells out the purpose for which the premises in question is leased out or not is the legal question of some significance that arises for determination in this referred civil revision petition.

2. The facts concurrently found by the two Courts below and which have a bearing upon the appreciation of the question posed can be stated thus.

3. The respondent, hereinafter referred to as the landlord, leased out the premises which were described as 'Ek Addad Dukan (one shop)....' to the petitioner-tenant, hereinafter referred to as the tenant. The landlord used out for the ejectment of the tenant on the ground of the change of user of the shop alleging that the shop was being used as 'godown' which tantamount to the change of the user. Both the Courts below have fund that the shop in question was being used for storing bags of grain any boxes of tea and no business, wholesale or retail, was transacted by the tenant in that shop. It deserves highlighting at the outset that these findings of fact have not been assailed before us.

4. The Courts below relying on the Division Bench decision of this Court in *Chhaju Ram v. Tulsi Dass*[1], in which it was held that a 'shop' is different from 'godown' in that the premises described as shop when used as godown are not being used for the Purpose for which the shop is meant, ordered the eviction of the tenant.

5. The tenant, relying upon the judgment of the Supreme Court in *Sant Ram v. Rajinder Lal*[2], canvassed that in the light of the ratio of the Supreme Court decision, the decision in Chhaju Ram's case [supra] cannot be considered to be laying down a correct law. This led to the reference of the revision petition to the larger Bench and that is how the matter is before us.

6. The subject-matter of lease transaction between the landlord and the tenant in generic terms is

'building' which, by virtue of inclusive definition to be presently noticed, inter-alia, includes land and godown. Hence before averting to the rival contentions canvassed on behalf of the parties reference to such provisions of the East Punjab Urban Rent Restriction Act, 1949 [East Punjab Act No. III of 1949], hereinafter referred to as the Act, as define the generic term 'building' and its species is necessary. Also is necessary, for facility of reference, the extraction of the relevant provisions of the Act envisaging eviction on the ground of change of user.

7. Section 2, clause (a) of the Act defines 'building' as under :

> "building' means any building or part of a building let for any purpose whether being actually used for that purpose or not including any land, godown, out-houses, or furniture let therewith but does not include a room in a hotel, hostel or boarding house."

Section 2, clause [d], of the Act defines 'non-residential building' as under :

> "non-residential building' means a building being used solely for the purpose of business or trade".

Section 2, clause (g), of the Act defines 'residential building in the following terms :

> "residential building' means any building which is not a non-residential building".

Section 2, clause [h], of the Act defines 'scheduled building' as follows :

> "scheduled building' means 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."

Schedule to the Act is reproduced below :

> "SCHEDULE
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> 1. Lawyers
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> 2. Architects.
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> 3. Dentists.
>
> 4. Engineers.
>
> 5. Veterinary Surgeons.

6. Medical practitioners, including practitioners of indigenous systems of medicine."

> Section 13, sub-section (2), clause (ii), sub-clause (b), of the Act, which envisages eviction of the tenant for change of user of the rented building or land is in the following terms :

"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, if satisfied :

(ii) that the tenant has after the commencement of the 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, or

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.

8. Considering now a hypothetical simplest lease deed such as the lease-deed wherein the building leased out is described only as a 'building' without any further description thereof except the giving of its boundaries, would such a lease-deed be considered to be implying indicating the use for which the demised 'building' is intended to be leased out ? In my opinion, such a lease-deed would be considered totally silent as to the use for which the demised building is leased out. Not only this, such a lease-deed by itself would even be considered silent as to the category of building, that is, it would not show whether the demised building is land or a godown or a out-house or 'non-residential building' or 'residential building' or a 'Scheduled building', with the result of that in such a case, it would perhaps be open to lessee, if no other indication is available from the evidence, oral or documentary, which the parties would be entitled to adduce, suggestive of the category of the building and its intended use by the lessee, to put the building so leased to any use without attracting the provisions of Section 13(2) (ii)(b) of the Act.

9. The Act categorizes further the building into 'non-residential building', 'residential building' and 'scheduled building'. If in a given lease-deed, the demised building is identified as non-residential building', in such a case even when no express purpose is mentioned in the lease-deed, the identification of the building as 'non-residential building' would at least restrict its use to only such purposes as a 'non-residential building' as exclusively 'residential building'. In the reverse case, where the building is identified as 'residential building', this identification would indicate the purpose for which the demised building can be used which can only be the residential purpose and if the same is used for non-residential purposes even partly, it would amount to the change of user for reasons which would be set out in detail a little later.

Further a 'residential building' can be identified in a given lease-deed as 'house', 'Kothi', 'bungalow', 'villa', or 'Palace' etc. All these terms, in my opinion, would be indicative of only one use being intended of the demised building, that is, residential purpose.

10. A 'no-residential building' can also be variously identified say as 'shop', 'godown', 'restaurant', 'cinema', 'hostel', etc. In such a case, different descriptions are indicative of different purposes to

which a given demised non-residential building can be put to use and not to one 'identical purpose' as would be the case with the 'residential building' variously named.

11. Hence, in my opinion, it would be utterly illogical to say that the identification of a demised building in a rent-note by itself is not indicative of the use to which the demised building was intended to be put by the lessee.

12. Accordingly, if a demised building is identified as a 'house' in a lease deed, it would be taken that the parties had used the expression 'house' in the sense in which the 'house' is understood in common parlance or as indicated by its dictionary meaning. Similar would be the situation where the expression 'shop' is used. In such a case, the parties would be taken to have used the expression 'shop' as understood in common parlance and the meaning given to the same in the dictionaries.

13. If the record is innocent of any evidence, oral or documentary, indicating expressly or circumstantially the use to which the premises described as a 'shop' in the rent note were to be put by the lessee, then the purpose to which the demised premises can be put by virtue of its identification as 'shop' in the rent-note would be a purpose to which a 'shop' can be put and not a purpose to which demised premises could be put if the same had been merely identified as 'non-residential building'. Again, assuming that the expression 'shop' connotes premises which can be used for the purpose of carrying on wholesale or retail business of sale and purchase, then if the demised premises are only identified as 'shop' (and if the lease-deed is silent about the specific purpose for which the shop was to be used), then the business of sale and purchase, whether wholesale or retail, could be carried out in the said shop by the lessee in every kind of merchandise or article without attracting the provisions of Section 13(2)(ii)(b) of the Act i.e. he could carry on therein the retail or wholesale business of cloth merchant or of a Halwai or of a hardware or of a cycle-repairs and so on and so forth. But if in the lease-deed besides identifying the building as 'shop', it is further mentioned that the same is given for the purpose of running a cloth merchant's business, then such an expression would limited the use of the 'shop' for the purpose of carrying on wholesale or retail business of cloth, and the lessee without attracting the provisions of Section 13(2)(ii)(b) of the Act would not be able to use the 'shop' for a purpose other than the one mentioned in the lease-deed. If afterwards he were to start using the 'shop' as hardware merchant or as a Halwai, he would be considered to have changed the user of the premises and would be liable for eviction on that ground.

14. This hypothetical discussion is meant to emphasize that where a demised 'building' is identified merely as 'shop', then the same can be used only as a 'shop', although various kinds of trade could be carried on therein, but if the said demised 'building' came to be used later on exclusively as 'residential building', then that would tantamount to the change of user. Similarly, if such a demised 'building' was put to use exclusively as a 'godown' (for the moment assuming that the expression 'godown' connotes a 'building' that is used for the purposes of only stocking provisions therein), then that would tantamount to the change of user. The reason being that when the demised 'building' is used as a 'shop', it is being put to constant use by the lessee which, by implication, ensures its proper upkeep like timely, repair, timely white-washing etc, but when a building is used as a 'godown', which is merely used for dumping goods therein, such an upkeep may neither be possible nor, by implication, envisaged as such. A 'godown' remains mostly closed, while a 'shop' remains mostly open. The premises used as a 'godown' are bound to

deteriorate and a landlord, if had been informed at the time of entering into the lease transaction that the lessee intended to use the demised premises described as 'shop' he might not have agreed to enter into the said lease transaction. Hence, when the demised premises are used for a purpose to which having regard to its description as 'shop', 'house', etc. the landlord may not have intended, had the said different purpose, which the lessee had in mind, been made known by the lessee to him, then the landlord may not have agreed to lease the said building for that purpose (see in this connection *Telu Ram v. Om Parkash Garg*[3],. Hence putting to use the demised premises to a purpose, which the given description or identification of the demised building in the rent-note did not warrant, would tantamount to the change of user.

15. Accordingly, if the expressions 'shop' and 'godown' indicate two diametrically opposite purposes to which the respective premises so described can normally be put, then, when in a given lease-deed a building is identified as 'shop' without any more, such premises cannot be used as 'godown'.

16. Now the question that arises for consideration is as to whether the demised 'building' when variously described as 'shop' or as 'godown' is to be understood as warranting diametrically opposed uses thereof. Such a question cropped up for consideration before a Division Bench in Chhaju Ram's case (1977-79) Pun LR 259 : 1977 (2) R.C.R. 156 [supra]. In that case, the Bench formulated for its consideration the question in the following terms :

> "Whether a 'shop' as it is commonly understood can be used as a 'godown' for storage of goods alone and if it is so used, then does that amount to putting it to a different use than one for which it was let out as contained in Section 13(2)(ii)(b) of the Act ?"

K.S. Tiwana, J.

17. who delivered the opinion for the Bench, observed that the expression 'shop' having not been defined the Act, parties should be taken to have used the said expression in the lease-deed, as the said term in common parlance is known and the parties incorporating that expression in the lease-deed must be taken to have attached thereto an ordinary dictionary meaning. The learned Judge, as would be clear from his following observations, carried out exhaustive search for the meaning of the expressions 'shop' and 'godown' in various dictionaries and Law Lexicons :

> "In the 'Concise Oxford Dictionary' (4th Edition) the meanings of the word 'shop' are given as 'building, rooms etc. for detail sale of some commodity'. In 'Chambers' Twentieth Century Dictionary'(revised 1964 Edition), the meanings of the word 'shop' are given as a 'building or a room in which goods are sold'. In 'Webster's New Twentieth Century Dictionary', Volume II (second edition), the meanings of the word 'shop' are given as 'a place where goods are sold at retail'. According to 'Stroud's Judicial Dictionary', third edition, the word 'shop' implies a place where a retail trade is carried on'. In 'Law Lexicon' of British India, 1940 edition, by Aiyer 'shop' is stated to be 'a place kept and used for the sale of goods'. It is further stated in the book that 'the word 'shop' implies a place where a retail trade is carried on'.

In Aiyer's Law Lexicon the word 'godown' is defined as a store, a warehouse. In 'Webster's New

Twentieth Century Dictionary', Volume I, Second Edition, the word 'godown' is meant as 'in India, China, Japan, etc. a warehouse.' In the 'Concise Oxford Dictionary', fourth edition, the meaning of this word is given as 'warehouse in part of Asia, esp. India.' The 'warehouse' has been defined in 'Law Lexicon of British India', 1940 edition, as 'a warehouse is, properly speaking, a building used for the purpose of storing goods imported at a reasonable rent'. According to 'Stroud's Judicial Dictionary', third edition, a warehouse, in common parlance, certainly means 'a place where a man stores or keeps his goods which are not immediately wanted for sale'. In 'Wester's New Twentieth Century Dictionary', Volume II, second edition, the meanings of the word are given as 'a building where wares or goods are stored, as before being distributed to retailers, a storehouse.

The word 'shop' has not been defined in the Act. We do not take upon ourselves to attempt for giving any comprehensive meaning or definition to this word, but we are to take its ordinary dictionary meanings for the purpose of the Act, so that the dispute between the landlords and the tenants may be resolved regarding the change in the user of the tenanted premises."

The learned Judge, in view of the observations extracted above, felt persuaded to hold that the expression 'shop' connotes a purpose to which a 'non-residential building' would be put, as being entirely distinct and contrary to the purpose to which a 'non-residential building' described as 'godown' is normally put.

17. The learned counsel for the petitioner-tenant, however, canvassed that the Division Bench in question does not lay down a correct law and laid emphasis on the ratio of two single Bench decisions of this Court - be rendered in *(Krishan Lal v. Madan Gopal[4] decided on 12.8.1960* and the other, which followed the earlier decision, rendered in *(Chhabil Dass v. Fateh Chand[5]) decided on 25.11.1966.*

18. These decisions were relied before the Division Bench as well by the counsel in support of the proposition that a 'non-residential building' described as 'shop' could be put to use for exclusively storing goods without involving the change of user of the demised building. In Kishan Lal's case, which is the first in point of time, the controversy was not sharply focused on the point as to whether 'non-residential building' described as 'shop' could be used exclusively for the purpose of storing, that is, for the purpose for which a 'godown' is used. In Chhabil Dass's case, Mehar Singh, C.J. merely followed the said decision.

19. In our opinion, the Bench in Chhaju Ram's case (1977-79 Pun LR 259 : 1977 (2) R.C.R. 156) (supra) rightly expressed its respectful disagreement from the ratio of the aforesaid two decisions while holding that the word 'shop' did not mean or include a 'godown' for the purposes of Section 13(2)(ii)(b) of the Act and the premises which were mentioned as 'shop' in the rent-note could not without the consent of the landlord be converted into 'godown' for storing the goods being sold at other premises by the tenant.

20. Now coming to the Supreme Court decision in Sant Ram's case (AIR 1978 SC 1601) (supra) on which massive reliance has been placed on behalf of the petitioner-tenant, it may be observed that in that case it is no doubt true that on behalf of the tenant it had been urged that no specific commercial purpose had been mentioned in the rent-note of the demised building, described as shop' and, therefore, it was not possible to postulate a diversion of purpose, but it may further be observed that in that case their Lordships neither sharply posed the question for consideration

that mere identification of demised building as 'shop' would not be indicative of the use that such demised building was intended by the parties to be put to. In fact, impliedly the decision was rendered on the assumption that a building described as 'shop'. That such is the ratio of the said judgment would be clear when the facts of that are kept in view. In that case where the premises described as 'shop' was leased out to a Harijan cobbler wherein after some time, besides carrying on the job of cobbler, the said tenant started residing along with his mentally deranged wife during week days. They, however, used to reside in their house during week-ends and holidays. The landlord had orally given permission to do so and had even provided a sink in the shop for the purpose of using the same as partly residential premises. Later on, the ejectment was sought on the ground that the tenant by using the premises partly for residing had changed the user of the same.

21. The learned counsel for the petitioner-tenant, however, drew your pointed attention to the following observation of V.R. Krisna Iyer, J., who rendered the judgment for the Court, and particularly to the underlined portion thereof :

> ".....The law itself is intended to protect tenants from unreasonable eviction and is, therefore, loaded a little in favour of that class of beneficiaries. When interpreting the text of such provision - and this holds good in reading the meaning of documents regulating the relations between the weaker and the stronger contracting parties -we must remember what in an earlier decision of this Court has been observed (*Moti Ram v. State of M.P*[6]*.,*).

Where doubts arise the Gandhian telisman becomes a tool of interpretation, whenever you are in doubt .... apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him".

If we remember these two rules, the conclusion is easy that there is no exclusiveness of purpose that can be spelt out of the lease-deed. That knocks at the bottom of the case of the landlord."

In our opinion, the aforesaid observations cannot be read in isolation, they have to be read and understood in the context of the following observations (particularly the underlined portion thereof) of Krishna Iyer, J. : -

> "It is impossible to hold that if a tenant who takes out petty premises for carrying on a small trade also stays in the rear portion, cooks and eats, he so disastrously perverts the purpose of the lease. A different 'purpose' in the *context is not minor variations but* majuscule in mode of enjoyment. This is not a case of man switching over to a canteen business or closing down the cobbler shop and converting the place into a residential accommodation. On the other hand, the common case is that the cobbler continued to be cobbler and stayed in the shopat night on days when he was running his shop but left for his home on shop holidays. A sense of proportion in social assessment is of the Judicial essence.

It may be stated that their Lordships can also be not understood to mean that a demised building given for a certain purpose, which purpose is either expressly mentioned in the deed or is so understood by the identification of the building as 'shop', 'house', 'cinema', 'hotel', 'restaurant' etc.

and that when part of it is put for a different use, the same would be so permissible without attracting the provisions of Section 13(2)(ii)(b) of the Act. For instance, in a case where the demised building is described as 'residential building' or 'house' etc., the same has to be used for residential purposes alone, even when in the rent-deed it is not further postulated that the demised building has to be used exclusively for residential purposes otherwise even if a small portion is put to use for business purposes by the lessee mentioned in the Schedule, such as lawyers, architects, dentists, engineers, veterinary surgeons, and medical practitioners, including practitioners of indigenous systems of medicine, without the express permission writing of the landlord, the said demised building might be taken out from the category of 'residential building' and turned into a 'scheduled building', the consequences of which are extremely grave for the landlord in that while the possession of the 'residential building' can be secured back by the landlord if he establishes a *bonafide* need of personal occupation, he cannot succeed in getting back the possession of a 'scheduled building' even on the ground of *bonafide* personal necessity and the building is lost to the landlord for all practical purposes.

22. The observations of their Lordships of the Supreme Court that the description of the demised building as 'shop,' although indicative of the use to which 'shop' can be used, but at the same time would also not show that the present use of a part thereof for a different purpose, even though without the express written permission of the landlord, would not be in consonance with the original purpose or would be destructive of the original user of the demised 'shop', has to be read and understood in the context of the facts of that case, for as already observed in regard to a 'residential building' to which the provisions of the Act are applicable, even part use thereof for business purposes, if the lessee happens to be one who carries on one of the professions mentioned in the schedule attached to the Act, would not only be destructive of the original user of the residential building, but would even change the very category of the demised premises from 'residential' to 'scheduled building' and I am sure their Lordships could not have intended such a fear-reaching consequence.

23. Coming now to the case in hand, the purpose to which a 'shop' can normally be put being inherently different from the normal use to which a building described as 'godown' is put as already observed, the (shop) herein having been used exclusively as 'godown' the conclusion in the light of what is held above, is inevitable that the tenant had changed the user and was liable to be evicted in terms of Sections 13(2) (ii)(b) of the Act. Accordingly, the order of the Rent Controller evicting the tenant and that of the Appellate Authority sustaining that order, are upheld and the revision petition is dismissed, but with no order as to costs.

Revision dismissed.

Cases Referred.

11977-79 Pun. LR 259 : 1977[2] R.C.R. 156
2AIR 1978 SC 1601 : 1978 [2] R.C.R. 601
31971-73 Pun. LR 1) (1970 R.C.R.) 840
4Civil Revision No. 698 of 1959
5Civil Revision No. 237 of 1966
6AIR 1978 SC 1594