

Mukhtiar Singh Rathi v. Satwant Kaur (J. V. Gupta, J)

nearly eight years from the time he gained knowledge of the alleged act. The case is, therefore, squarely covered by the ratio of *M/s. New Garage Limited's* case (supra).

(10) Consequently, we allow this revision petition, set aside the orders dated 31st March, 1981 and 22nd May, 1984 passed by the Rent Controller and the Appellate Authority respectively and dismiss the ejection application filed by the respondent-landlord. However, there shall be no order as to costs.

D. S. Tewatia, J.—I agree.

H.S.B.

Before : D. S. Tewatia and J. V. Gupta, JJ.

MUKHTIAR SINGH RATHI,—Petitioner.

versus

SATWANT KAUR,—Respondent.

Civil Revision No. 2465 of 1984

April 24. 1986.

Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—Sections 2(d) & (g) and 13(2) (ii)(a) and (b)—Premises taken on rent by a lawyer for residential purposes—Small part of the aforesaid premises being used as an office by the tenant without the consent of the landlord—Demised building—Whether could be converted into a non-residential one in terms of section 2(d)—Act of tenant in using part of the building as an office—Whether amounts to change of user—Said tenant—Whether liable to be evicted under the provisions of Section 13(2) (ii) (b) of the Act.

Held, that a reading of Section 13(3) (a) (ii) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, would show that the landlord is entitled to seek ejection of the tenant if he requires it for use as office or consulting room by his son who intend to start practice as a lawyer or as a registered practitioner. In other words the building continues to be a residential building even if it is got vacated for the said purpose to start practice as a lawyer, and is being used as such. This by itself is indicative of the fact that the

building continues to be residential building even if it is used as an office or consulting room by the lawyer. As such it has to be held that the demised building will continue to be residential building and is not converted into non-residential building as defined by Section 2(d) of the Act.

(Para 5)

Held, that once it is found that the building rented out for residence only is being used as office-cum-residence the tenant is liable to ejection on the ground of change of user of the building, i.e., that such building was being used for the purpose other than the one for which the same had been leased out and as such the tenant is liable to be evicted from demised building under the provisions of Section 13(2) (ii)(b) of the Act.

(Paras 7 and 8)

Petition u/s 15(6) of the Haryana Act No. 11 of 1973 for the revision of the order of the Court of Shri K. C. Gupta, Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act 1973, affirming that that of Shri J. D. Chandna, HCS, Rent Controller, Panipat, dated 2nd June, 1982, accepting the petition and ordering the respondent to hand over the vacant possession of the premises in dispute to the petitioner within a period of two months from the date of this order.

K. S. Thapar, Advocate with Deepak Thapar, Advocate and Moti Lal Saini, Advocate, for the Petitioner.

R. L. Sethia with Shri V. K. Jhanjhi, Advocates, for the respondent.

JUDGMENT

J. V. Gupta, J.

(1) This is tenant's petition against whom order of eviction has been passed by both the authorities below.

Sarwant Kaur, respondent, sought the ejection of Mukhtiar Singh, tenant, from the demised premises which consists of a residential house No. 11-L, Model Town, Panipat. let out to him on a monthly rent of Rs. 1.06 since July, 1970. His ejection therefrom was claimed *in per alia* on the grounds that the house was rented out to him for residential purposes but he had converted it into a non-residential building without her written consent and that he was using it for the purpose other than the one for which it was let out

Mukhtiar Singh Rathi v. Satwant Kaur (J. V. Gupta, J)

to him, i.e., it had been let out to him for residence but he had started using it for legal practice. The eviction application was contested by the tenant *inrer alia* on the ground that the application was barred by the principles of *res judicata*, and therefore, the same was not maintainable. On merits, it was pleaded that from the very beginning he had taken the demised premises for his residence as well as for his profession of advocacy, and since then he had been carrying on his legal profession in one room of the house and was residing in the remaining portion thereof. The other allegations made in the ejection application were also controverted. It may be mentioned here that prior to the filing of the present ejection application, the landlady had filed an ejection application dated August 9, 1976, for ejection of the tenant from the demised premises on the ground that she *bona fide* required the same for her own use and occupation. In the said application, the plea taken on behalf of the tenant was that the building was non-residential one as a part of it was being used for business purposes by him, as he was a practising lawyer at Panipat, for having his office and library; hence the said ejection application merited dismissal. A certified copy of the Written Statement therein is Ex. P. 4. Not only that, the tenant had also moved an application in the said eviction application, a certified copy of which is Ex. P. 3, for framing of additional issues. In paragraph 2 thereof, it was stated,—

“That the respondent in his amended written statement dated 4th April, 1977 in para No. 2 of the preliminary objections has raised the plea that the property, in dispute, was non-residential one as the main part of it is being used for business purposes by the respondent having his office and library who is a practising lawyer at Panipat, but no issue has been framed by the Hon'ble Court in this respect which is very much material for decision of controversy between the parties and in the interest of justice.”

This plea of the tenant was negatived both by the Rent Controller and the Appellate Authority. A certified copy of the judgment of the Appellate Authority is Ex. P. 5. It has been held therein,—

“Nevertheless, there is no evidence for the respondent (tenant) to show that he had obtained this building on rent for both purposes, i.e., for his office as a lawyer and for his residence and not for mere residence.”

Thus, the plea of the tenant that the building was a non-residential one because he was carrying out his business of advocacy in a portion of it, was negatived. However, the landlady failed in the said ejection application because she could not prove her *bona fide* requirement of the demised premises for her use and occupation. The eviction application out of which the present revision petition has arisen was filed on September 27, 1979, by her mainly on the ground that there was a change of user of the premises by the tenant. This ground of eviction was made available to her by the tenant himself on the basis of the plea taken by him in the earlier ejection application wherein it was pleaded by him that the building in question was non-residential one because he was running his office of Advocate and a library therein.

(2) The learned Rent Controller found that the tenant was liable to be ejected from the demised premises on the ground of the change of user thereof. The plea that the landlady required the premises *bona fide* for her son's use and occupation was negatived. The plea of *res judicata* raised on behalf of the tenant was also negatived. Consequently, the eviction application was allowed and an order of eviction passed against him. In appeal, the learned Appellate Authority affirmed the finding of the Rent Controller, on the question of change of user of the demised premises, and, thus, maintained the eviction order passed against him and in favour of the landlady. Dissatisfied with the same, the tenant preferred this revision petition which came up before me while sitting singly.

(3) It was at that time contended on behalf of the tenant that even though he was using one of the rooms of the building for his office and library, it did not amount to change of user because the building still continued to be residential under the Haryana Urban (Control of Rent and Eviction) Act, 1973, which did not provide for any category of 'scheduled building' as is the case under East Punjab Rent Restriction Act. Since the matter was found to be of importance, the case was referred by me,—*vide* order, dated March 5, 1985, to a larger Bench so as to decide if a part of residential building, is used for purposes of carrying out the profession of advocacy by an Advocate, would that amount to change of user within the meaning of section 13(2) (ii) (b) of the Act or not. This is how this case has been put up before us.

(4) Learned counsel for the petitioner contended that the profession of an advocate was not 'trade' or 'business', and, therefore, using

Mukhtiar Singh Rathi v. Satwant Kaur (J. V. Gupta, J)

the building as office-cum-resident did not change the nature of the building as such, and it still continued to be residential building as defined under section 2(g) of the Act. According to the learned counsel, the definition of a non-residential building is given under section 2(a) which means a building being used mainly for the purpose of business or trade, or partly for the purpose of business or trade and partly for the purpose of residence, subject to the condition that the person who carries on business or trade in the building resides there. Thus, argued the learned counsel, the term 'business and trade' in the said definition of non-residential building did not cover the case of an advocate. In support of this contention, he referred to *V. Sasidharan v. M/s. Peter & Karunakar* (1). On the other hand, learned counsel for the landlady/respondent submitted that as soon as the tenant starts using the residential building as an Advocate office, it ceases to be a residential building and would fall within the meaning of non-residential building. In support of this contention, he referred to *S. Mohan Lal v. R. Kondiah* (2) and *Dharam Vir v. Dr. Vinod Mahajan* (3).

(5) After hearing the learned counsel for the parties on this point, we are of the considered view that if a part of the residential building is used by an advocate for his office as well, the building still continues to be residential building and is not converted into non-residential building as provided for by section 2(d). The reason is not far to seek because under section 13(3) (a) (ii), the landlord is entitled to seek ejection of his tenant if he requires it for use an office or consulting room by his son who intends to start practice as a lawyer or as a registered practitioner It means that a landlord is entitled to seek the ejection of a tenant from the residential building for the purpose of office or consulting room by his son who intends to start practice as a lawyer. In other words, the building continues to be residential building even if it is got vacated for the said purpose to start practice as a lawyer, and is being used as such. Apart from that, section 2 starts with the opening words, "In this Act unless there is anything repugnant in the subject or context". Therefore, whether the profession of a lawyer can be termed to be business or trade or not has to be seen in the context the said term

(1) A.I.R. 1984 S.C. 1700.

(2) A.I.R. 1979 S.C. 1132.

(3) A.I.R. 1985 Pb. & Hry. 169.

is used. In a given case, the term 'business' may include the profession of a lawyer as well whereas in another case it may not include as such. In this context, the following observations of their Lordships of the Supreme Court in *V. Sasidharan's* case (supra) are quite relevant :

"Whatever may be the popular conception or misconception regarding the role of today's lawyers and the alleged narrowing of the gap between a profession on one hand and a trade or business on the other, it is trite, that, traditionally, lawyers do not carry on a trade or business nor do they render services to 'customers'. The context as well as the phraseology of the definition in Section 2(15) is inapposite in the case of a lawyer's office or the office of a firm of lawyers."

In any case, the very fact that the residential building can be got vacated for an office or consulting room by a son of the landlord who wants to start practice as a lawyer is itself indicative of the fact that the building continues to be residential building even if it be used for the said purpose. In these circumstances the contention of the learned counsel for the tenant-petitioner that the building still continues to be residential building is held to be correct.

(6) This by itself does not decide fate of the case because for the eviction of a tenant on the ground available under section 13(2) (ii) (b) of the Act that the tenant without the consent of the landlord uses the building or rented land for a purpose other than that for which it had been leased, it is not necessary that the tenant has changed the nature of the building from residential to non-residential or *vice-versa*. The tenant is liable to ejection if it is proved that he has put the building to use for a purpose other than that for which it was leased. In the present case, it has been found as fact by both the authorities below that the demised premises were let out to the tenant for residence alone. This finding was neither challenged before me while hearing the case singly nor before this Bench. It is the case of the tenant himself that he was having his office as a lawyer in one of the rooms of the building though he had also pleaded that from the very beginning he had taken the demised for residence as well as for his profession. However, as observed earlier, this plea was never accepted by the authorities below and it was found as a fact that the building had been rented

Mukhtiar Singh Rathi v. Satwant Kaur (J. V. Gupta, J)

out for residence only. It is, therefore, to be determined as to whether it amounts to change of user, as the building has been put to use for a purpose other than that for which it was leased.

(7) Faced with this situation, the learned counsel for the petitioner submitted that by merely taking the briefs to his house and preparing cases at his residence, the petitioner did not change the purpose of tenancy, and in this behalf he strongly relied on a judgment of Delhi High Court in *Waryam Singh Duggal vs. Smt. Savitri Devi* (4), where it was held that "keeping business records and files in one's home did not convert it into an office. Nor the writing of letters and accounts pertaining to one's business. Most working people carry home their unfinished tasks to be done in the evening but no one would ever dream of suggesting that this converts their homes into office or business premises. Otherwise, there would hardly be any premises which could be said to be used for purely residential purposes." As a matter of fact, this was never the case set up by the tenant that he simply carries his briefs to the house for preparation of cases. The categorical stand taken by him in the earlier ejection application filed against him was that the main part of the building was being used for business purposes by him by having his office and library, being a practising lawyer at Panipat. Even in the present ejection application, the stand taken in the Written Statement is that the premises were let out for office-cum-residence and not for residence alone. Thus, it could not be successfully argued that the demised premises were being used for residence only, and not for office-cum-residence. The distinction has itself been made by the Delhi High Court in the judgment relied on by the learned counsel for the petitioner where it was observed (as per para 56) :

"I recognise that it is not easy to define the stage at which an activity becomes a commercial activity. But an almost invariable characteristic of commercial activity is some kind of dealing with the public. It may be the buying and selling of goods, *the meeting of clients by a lawyer*, the treatment of patients by a doctor and so forth. In the case of a building contractor, that would mean, at least, meetings, negotiations and conferences with his clients, if nothing more. There is no evidence to indicate that any such activity was carried on in these premises. Not even Waryam

(4) 1984(1) R.C.R. 52.

Singh says that he met his clients here. The farthest he goes is to say that 'labour and various other persons keep on coming'."

It is the case of the tenant himself that he is having his office in the demised premises which clearly means that he has been meeting and dealing with his clients as a lawyer there. That being so, it is quite obvious that the residential building is being used for a purpose other than the one for which it was let out. In this behalf, a reference be made to the Full Bench decision of this Court reported as *Des Raj v. Sham Lal* (5), where it was held that when the demised premises was let out as a shop, and the same was being used as a godown, it amounted to change of user. While dealing with that case it was observed :

"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 dead, it is not further postulated that the demised building has to be used exclusively for residential purposes."

The reason, is, if the building was given for residential purposes only, and the tenant starts his office as a lawyer and uses the building as office-cum-residence, in that situation the clients will be coming to see him and it may cause harassment or nuisance to the landlord if he is residing in a portion thereof. It is also likely to damage the building to some extent. Thus, the argument raised on behalf of the tenant-petitioner that unless the change of user prejudiced the rights of the landlord in any manner, he is not entitled to seek the ejection has no substance. The moment the tenant uses the building for a purpose other than that for which it had been leased, he is liable for ejection as provided for under section 13(2)(ii)(b) of the Act. Use of the building for residence and office-cum-residence both could not be equated.

(8) It is not disputed that this is the only house in the urban area concerned which is owned by the landlady Satwant Kaur. Earlier, she had filed the ejection application on the ground that she *bona fide* required the premises for her own use and occupation,

Ravinder Kumar v. Gian Chand (S. P. Goyal, J.)

and there the plea taken by the tenant was that it was a non-residential building as the main part thereof was being used for business purposes by him as his office and library, he being a practising lawyer at Panipat. As a matter of fact, it was this stand taken by the tenant which compelled the landlady to take the ejectment proceedings against her tenant on the ground that he had changed the user of the building. Under these circumstances, once it is found that he was using the building as office-cum-residence, he is liable to ejectment on the ground that he had changed the user of the building, i.e., he started using the same for a purpose other than the one for which the same had been leased to him. Consequently, this petition fails and is dismissed with costs.

(9) However, the tenant is allowed three months' time to vacate the demised premises provided all arrears of rent, if any, are deposited within one month along with an undertaking in writing that after the expiry of the said period of three months vacant possession shall be handed over to the landlady, and the rent for the said period of three months will be paid regularly in advance by the 10th of each succeeding month.

D. S. Tewaria, J.—I agree.

H.S.B.

Before: S. P. Goyal and Pritpal Singh, JJ.

RAVINDER KUMAR.—Petitioner.

versus

GIAN CHAND.—Respondent.

Civil Revision No. 1161 of 1985

April 29, 1986

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3) (a)(ii)—Landlord seeking eviction of tenant claiming that the rented land was required for starting an independent business for his son—Such ground for eviction—Whether covered by Section 13(3) (a)(ii)—Landlord—Whether can be said to require the rented land for his own use and occupation.

Held, that the words 'own occupation' in Section 13(3) (a)(ii) of the East Punjab Urban Rent Restriction Act, 1949, cannot be extended to the case of the rented land which can only be got vacated