

in those cases are, therefore, not applicable to this case. It may be relevant to mention that the latter case was a Letters Patent Appeal from the former case.

(8) For the aforesaid reasons, I do not find any merit in the revision petition & dismiss the same with no order as to costs.

N. K. S.

Before R. N. Mittal, J.

INTERNATIONAL RADIO AND ELECTRIC ENGINEERS CO.

AND ANOTHER, —Petitioners

versus

SHEELA WANTI,—Respondent

Civil Revision No. 765 of 1978

March 21, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(d) & (g)—Garage forming part of a residential building let out to a business house for the parking of a car—Tenant sought to be ejected on the ground of personal necessity—Such letting out—Whether for business purposes.

Held, that the premises used for conducting business or storing goods in which a business house is dealing can be said to be used for business purposes but not a garage which is used for the parking of a car. The case may, however, be different if the company is dealing in cars or is having an automobile workshop or running taxies. Thus, a garage let out to a business house for the parking of a car cannot be said to be used for business purposes particularly when the garage forms part of a residential building. (Para 8).

Petition under section 15(5), Rent Restriction Act, for the revision of the order of the court of Shri G. S. Teji, Appellate Authority Amritsar, dated 29th March, 1978, confirming the order of the Court of Shri I. C. Aggarwal Rent Controller, Amritsar accepting the appeal and an ejectment order in respect of the garage in question is hereby passed in favour of the applicant and against the respondents and giving three month's time to vacate the same and hand over its possession to the applicant.

M. K. Mahajan, Advocate, for the Petitioners.

Amar Dutt, Advocate, for the Respondents.

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JUDGMENT

Rajendra Nath Mittal, J.

(1) This revision petition has been filed by the tenants against the order of the Appellate Authority, Amritsar, dated March 29, 1978 affirming the order of ejection from a garage.

(2) Briefly, the facts are that Shrimati Sheela Wanti, petitioner (respondent in the revision petition) purchased the property in dispute from Dr. Sarudaman Chatrath, who had inherited it from his mother, Dr. Sawitri Devi. The respondents took the garage, which is a part of the premises purchased from Dr. Sawitri Devi, at a rent of Rs. 50 per mensem, and executed a rent note, dated April 12, 1968, in her favour. It is alleged by her that she required the premises for her own use and occupation. Consequently, she filed an application for ejection under section 13 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act). It was contested by the respondents who pleaded that respondent No. 1 was a business concern and the garage was taken by it for business purposes. It was also pleaded that the petitioner did not require the premises *bona fide* for her own use and occupation and that the accommodation with her was sufficient for her requirements. Some other pleas were taken by the respondents but they are not relevant for the purposes of the determination of the revision petition.

(3) The learned Rent Controller held that the garage did not constitute non-residential premises and that the petitioner required it *bona fide* for her own use and occupation. Consequently, he ordered ejection of the respondents.

(4) The respondents went up in appeal before the Appellate Authority who affirmed the order of the Rent Controller and dismissed the same. They have come up in revision against that order to this Court.

(5) It is contended by the learned counsel for the petitioners that the garage was taken by the petitioners for the purpose of parking the car of petitioner No. 1, which is carrying on a business. He argues that it was not being used for a residential purpose but for business. According to him, it was, therefore, a non-residential building and no application for ejection under section 13 of the Act was maintainable, for ejection of the petitioners.

(6) I have given due consideration to the arguments of the learned counsel. In order to determine the question as to whether the garage constitutes a non-residential building, it is necessary to refer to the definitions of non-residential and residential buildings, which have been defined in clauses (d) and (g) of section 2 of the Act. These are as follows:—

“(d) ‘non-residential building’ means a building being used solely for the purpose of business or trade.

(g) ‘residential building’ means any building, which is not a non-residential building”.

From a reading of the aforesaid definitions it is evident that in order to prove that the building is a ‘non-residential building’ it is to be shown that the building is being used solely for the purpose of business or trade. A Full Bench of the Madras High Court in *T. Dakshinamoorthy v. Thulja Bai and another* (1), has laid down the following criteria for determining as to whether a building is a residential or a non-residential one:—

“(1) Where there is an instrument of tenancy specifically and explicitly declaring the purpose of the letting as residential or non-residential no difficulty generally arises; (2) where there is no such instrument of tenancy the question will have to be considered on the basis of direct evidence aliunde concerning the purpose of the letting, which may be adduced in a case; (3) If no such evidence too is forthcoming, the Court can only look at the evidence concerning the user of the premises by the tenant down to the date of the application for eviction as acquiesced in by the landlord. For such user and such acquiescence afford a safe basis for an inference of agreement between the parties as to the purpose of the letting : (4) where there is evidence of such user, but there is no evidence of such acquiescence, the structural design, the antecedent user of the building by the landlord as known to the tenant and other surrounding circumstances, if any, will also have to enter into the determination of the question whether

(1) A.I.R. 1952, Madras 413.

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the building is or is not residential; (5) difficulty may sometimes still remain, i.e., after applying the tests above indicated, if the building is found let for both kinds of purposes, residential and non-residential, no distinction being made between one part as let for one purpose and the other for the other purpose. In such a case what has to be determined as a question of fact is, what was the real, main and substantial purpose of the letting?"

I am in respectful agreement with the above observations.

(7) In order to determine whether the garage is a residential or a non-residential building, it will be necessary to take into consideration the evidence of the parties. The petitioners executed rent deed dated April 12, 1968, Exhibit A-10 in favour of Dr. Sawitri Devi. In the deed, the purpose of taking the garage on lease is stated to be "for personal use of the firm". It is not specifically mentioned therein that it was taken for the purpose of business. Therefore, it cannot be inferred from the rent deed that it was taken for the purpose of business only. Kamal Kishan, Accountant of the firm, has stated that the garage was being used for parking the car of the firm and that the car was being used for the business purposes. Ram Parkash petitioner supports him. He further states that the landlady was residing in the building of which the garage was a part. These witnesses also do not say that the garage was taken for the purposes of business. Thus from the rent note and the statements it cannot be said that it was taken for the purpose of business only.

(8) It is now to be seen to what use the garage was put. It is evident from the evidence of the petitioner-tenants that it was being used for parking the car of petitioner No. 1. The question arises, whether a garage used for parking a car of a company can be said to be used for a business purpose. In my view, the premises used for conducting business or storing goods in which the company is dealing can be said to be used for business purposes but not a garage which is used for parking a car. The case may, however, be different if the company is dealing in cars or is having an automobile workshop or running taxies. In the present case, there is no evidence that the company is carrying on any of the above business. It may also be mentioned that the garage admittedly forms part of a residential building. After taking into consideration the aforesaid circumstances, I am of the opinion that the petitioners have failed to

show that the garage is being used for the purpose of business and is thus a non-residential building.

(9) In the aforesaid view, I get support from a decision of this Court in *M/s India Motors Private Ltd. v. Megh Raj, etc.* (2). In that case Megh Raj was the owner of the property. He filed an application for the ejection under the Act against *M/s New India Motors Private Ltd.*, and Subodh Chand from the premises *inter alia* on the allegations that he required them for his own use and occupation. The application was contested by the landlord who pleaded that the premises were non-residential, as these were being used for residential purposes by an employee of the company. The plea of the respondents was repelled by this court observing that the residential building cannot become non-residential because a company had taken that on rent for the purpose of residence of its employees. The building was not being used for the purposes of business or trade as no business or trade was being carried on therein. It was also held that a residential building could not be converted into a non-residential one simply because a company carrying on business had taken it on rent. The above observations fully apply to the facts of this case.

(10) The learned counsel for the petitioners made reference to *Sarla Devi v. Union of India and others* (3), *Mohan Lal v. The Haryana State* (4) *Rattan Lal v. Mst. Laxmi Devi* (5) and *Shrimati Sarup Devi v. Om Parkash* (6). In the first two cases, i.e., *Sarla Devi's case* and *Mohan Lal's case* (supra) the buildings were let for the purposes of offices to the Government. In *Rattan Lal's case* (supra) and *Smt. Sarup Devi's case* (supra), the buildings were used for the purposes of godowns. In those circumstances, this Court held that those were to be treated as non-residential buildings. All the aforesaid cases are, therefore, distinguishable and the counsel for the petitioners cannot get any benefit from the observations therein.

(11) For the aforesaid reasons, the revision petition fails and the same is dismissed. In the circumstances of the case, I, however, make no order as to costs. The petitioner is given two months' time to vacate the premises.

(2) C.R. 83/68, decided on 14th August, 1968.

(3) 1967 P.L.R. 769.

(4) (Punjab and Haryana) 1976 R.C.R. 117.

(5) (Punjab and Haryana) 1971 R.C.R. 68.

(6) C.R. 739/60 decided on 23rd May, 1961.