

Before J. V. Gupta, J.

RAM DAYAL,— *Petitioner.*

*versus*

RAM CHARAN DASS,— *Respondent.*

*Civil Revision No. 1161 of 1978.*

January 9, 1984.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)(ii)(b)—Premises let out as a shop after executing a rent note—Rent note not specifying any particular business to be carried on therein—Premises continued to be used as a shop but for a different business—Such user—Whether amounts to change of user so as to entitle the landlord to seek ejectment of the tenant.*

*Held*, that in the absence of any rent note or lease-deed, oral evidence may be admissible to prove the purpose for which the premises were let out but if the premises were let out as a shop only without specifying in the rent note any particular business or trade to be carried on therein, then it could not be successfully argued on behalf of the landlord that there is a change of user even if the premises are being used as a shop. In that situation, it becomes immaterial that in the beginning of the tenancy the premises were used as a tea shop and later on the tenant started his business of selling and repairing cycles. Thus, where there is a rent note on the basis of which the premises were let out as a shop without mentioning any particular business or trade to be carried on therein, it could not be held that there was a change of user because in the beginning the tenant was running a tea shop and later he carried on the business of selling and repairing cycles.

(Para 9)

*Petition under Section 15 of the East Punjab Urban Rent Restriction Act for revision of the order of the court of Shri Mohinder Singh Luna, Appellate Authority. (Additional District Judge), dated the 18th May, 1978 affirming that of Shri Beant Singh Bedi, Rent Controller, Rappura, dated the 9th August, 1977 passing an order of ejectment with costs in respect of the disputed premises in favour of the applicant and against the respondent and also directing to deliver the vacant possession of the disputed premises to the applicant on or before 8th November, 1977.*

C. D. Dewan with S. P. Jain, S. K. Sharma and Sarita Gupta, Advocates, for the *Petitioner.*

D. S. Bali, Ashok Sharma, S. K. Singla and R. A. Yadav, Advocates, for the *Respondents.*

## JUDGMENT

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

The landlord-respondent sought the ejection of the tenant-petitioner from the shop in dispute *inter alia* on the ground that the shop was let out for the purpose of running a hotel but the tenant has changed the user and started the business of sale and repair of cycles and secondly the tenant has demolished the chambers which the landlord got constructed in the shop before leasing out and thus he has damaged the floor of the shop resulting in the impairment of the value and utility of the shop materially. These allegations were seriously contested by the tenant. It was denied that the original letting was for the purpose of Hotel or that he has changed the user of the demised premises and that the value and utility of the disputed shop were materially impaired. On trial, the learned Rent Controller found under issue No. 5 that the tenant had used the disputed building for the purpose other than for which it was leased out because the premises were let out for running a Hotel whereas admittedly the tenant was carrying on the business of sale and repair of cycles. Under issue No. 6 it was further found that the cabins did exist in the disputed premises when it was leased out to the tenant and since the cabins no longer exists in the shop the obvious conclusion was that they had been demolished by the tenant. Thus it was observed that it did not require great erudition to say that the demolition of cabins in the shop materially impaired the value and utility. As a result of these findings, the order of eviction against the tenant was passed. In appeal, the learned appellate authority affirmed the said findings of the Rent Controller and thus maintained the order of eviction. Dissatisfied with the same, the tenant has filed this petition in this Court.

(3) Learned counsel for the petitioner contended that admittedly the shop in dispute was rented out,—*vide* rent note Exhibit A. 8, dated 22nd September, 1964. According to the learned counsel, the shop was let out for not any particular business. It was only let out as a shop and therefore it could not be held that there was any change of user because the petitioner was still using the premises as a shop. In any case, argued the learned counsel, no

oral evidence could be led in variance to the terms of the said lease deed and therefore any finding given by the authorities below in this behalf is wrong and illegal. In support of his contentions, he referred to *Brij Kishore v. Lakhan Tewari*, (1) *Des Raj v. Sham Lal*, (2) (Full Bench decision of this Court) *Santosh Kumar v. Pawan Kumar*, (3) and *Niranjan Kumar v. Dhyan Singh*, (4). It was further contended that from the evidence on the record, it has not been proved at all that the value and utility of the building in dispute was materially impaired by the tenant even if it be assumed that the alleged cabins existed in the shop at the time of lease. According to the learned counsel, the landlord must prove that in what manner value and utility of the demised premises has been impaired, which according to the learned counsel, the landlord has failed to do. In support of this contention, he referred to *Parkash Chand Harnam Singh v. Shri Gian Chand*, (5) *Mohinder Singh v. Om Parkash etc.* (6), *Krishan Dev v. Jhabu Ram*, (7) and *Devi Chand Kakar v. Amar Nath* (8).

(4) On the other hand, learned counsel for the landlord respondent submitted that on the appreciation of the entire evidence, it had been found that the shop in dispute was rented out for the purpose of running a Hotel and since now the tenant is doing the business of cycles this has amounted to change of user and he was thus liable for ejection. It was further contended that it has been found as a fact that the utility and value of the demised premises had been materially impaired and this being a finding of fact could not be interfered with in revisional jurisdiction. In support of his contention, he referred to *Som Nath v. Gian Chand and ors* *Gurdev Singh v. Om Parkash and others*, (10).

(5) I have heard the learned counsel for the parties at a great length and have also gone through the case law cited at the Bar.

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- (1) A.I.R. 1978 Allahabad 314.
  - (2) A.I.R. 1980 Pb. & Hary. 229.
  - (3) 1982(1) R.C.R. 726.
  - (4) 1977 P.L.R. 57 (S.C.)
  - (5) 1979 P.L.R. 196.
  - (6) 1978 C.L.J. 179.
  - (7) 1969 P.L.R. 39.
  - (8) 1983(1) R.C.R. 672.
  - (9) 1977(2) R.C.R. 365.
  - (10) 1977(2) R.L.R. 142.

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(6) For proper appreciation of the controversy between the parties, it will be relevant to reproduce the necessary allegation made in the ejection application in this behalf. Para Nos. (iii) and (iv) reads as under:—

“(iii) That the respondent had taken the premises in question for running a hotel. Previously also the shop in question was being used by its previous tenants for hotel business. the applicant and other owners of the disputed shop had constructed chambers in the shop for the same being used for hotel business.

(iv) That the respondent demolished the chambers in April, 1975 to convert its user for running cycle shop and after demolishing the chambers started the business of selling cycles and the parts thereof and also for repairing the same. The respondent in this way not only converted the user of the shop for a purpose other than that for which the same was leased, he also damaged the floors etc. and has committed acts which have impaired materially the value and utility of the building.”

(7) The reply given thereto in the written statement is in the following terms:

“It is absolutely wrong that shop in question was taken by respondent for running hotel. It is absolutely wrong that any chambers were constructed by applicant and other co-owners of shop in question. It is absolutely wrong that the respondent demolished chambers in question with a view to start business in dealing cycles. The respondent did not change user of the shop. The shop was never taken for doing business of hotel. It was taken by respondent for doing any business in it. It is also incorrect that respondent has damaged floor of the shop. It is also incorrect that respondent has committed such acts which have impaired value and utility of the shop materially.”

(8) As observed earlier, admittedly the demised premises were let out,—vide rent note Exhibit A.8 dated 22nd September, 1964. There is no mention in the said rent note that the shop was let out for any particular business. The only mention therein is that only one storeyed shop is being rented out. Once it is so found that the

demised premises were let out as a shop and not for doing any particular business then the question of change of user will only arise if the demised premises are not used as a shop, and not otherwise. In this behalf, the observation of the Full Bench in *Des Raj's case* (supra) in para 13 thereof are very relevant which are to the following effect:

"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 the 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 a Halwai or of a hardware merchant, 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 limit 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."

(9) No case as such has been cited at the bar on behalf of the landlord that if the premises were let out as a shop then on oral

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evidence, it could be held that it was let out for a particular business only. Of course it may be that in the absence of any rent note or lease deed, oral evidence may be admissible to prove the purpose for which the premises were let out but if the premises were let out as a shop only without specifying in the rent note any particular business or trade to be carried therein then it could not be successfully argued on behalf of the landlord that there is a change of user even if the premises are being used as a shop. In that situation, it becomes immaterial that in the beginning of the tenancy the premises were used as a tea shop or hotel and later on the tenant started his business of selling and repairing cycles. Simply because the tenant admitted that he started a tea shop at the time of letting out the premises to him did not debar him to plead and prove that was not the only business for which the premises were let out to him. Thus there being a rent note, on the basis of which the premises were let out as a shop without mentioning any particular business or trade to be carried therein, it could not be held that there was a change of user because in the beginning the tenant was running a tea shop or hotel whereas at present he was carrying on the business of selling and repairing cycles. The approach of the Courts below in this behalf is obviously wrong and illegal. Thus the findings under issue No. 5 is liable to be set aside.

(10) As regards the question as to whether the tenant has materially impaired the value or utility of the demised premises it may be noticed that the only allegation in the ejection application was that the tenant demolished the chambers which existed at the time of letting out. Even if it be assumed that any such chamber as alleged existed and the tenant removed the same, there is absolutely no evidence to prove that because of the said removal or demolition the value and utility of the demised premises has been impaired in any manner. The only manner in which the premises were alleged to have been damaged was the damage to the floor but no evidence has been led to that effect to prove that any such damage to the floors has been caused by the tenant. The approach of the authorities below in this behalf was absolutely unwarranted because no finding has been given by the authorities below that in what manner the value and utility of the demised premises was materially impaired by the tenant. Even from the evidence it is not clear as to what type of cabins existed. If it were only of wooden structure then in that situation the question of demolition as such would not arise. Thus the whole approach of the authorities below in this behalf being wrong, the finding arrived at is vitiated.

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(11) As a matter of fact, it will be question of fact in each case as to whether by the alleged conduct of the tenant the value or utility of the demised premises has been materially impaired or not, and such a finding would only be interfered if it is based on no evidence. In the present case the landlord has failed to prove by any cogent evidence on the record that the value or utility has been impaired in any manner much less materially.

(12) As a result of the above discussion, this petition succeeds, the orders of the authorities below are set aside and the application for ejection is dismissed with no order as to costs.

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N.K.S.