

Dharam Vir v. Dr. Vinod Mahajan and others, J. V. Gupta, J.

(4) Without burdening the Judgment, it would be appropriate to refer here that on the death of Dr. Madan Mohan Rattan on 9th June, 1984, the question of the custody of the minor and her guardianship came to be settled by me in the *parens patriae* jurisdiction in (**Udham Devi v. Tripa Devi**) (1). I had appointed Smt. Kamlesh, the natural mother of the minor, to be her *de jure* guardian and the present *de facto* guardian to be Mrs. S. Roy, Principal, M.C.M. D.A.V. College for Women, Chandigarh. The respondent was not considered to be appointed the guardian of the minor on account of the present conviction and the stigma attached despite the mollifying factor of section 12 of the Probation of Offenders Act. The acquittal of the respondent is likely to breathe air of peace between him and his minor daughter, who rather is his only offspring.

(5) Lastly, it must be commented that the learned Additional Sessions Judge after concluding and signing the judgment could not append any note thereto. That course was not permissible to him under the law. He could not order the conviction of the respondent to be not affecting his service. That was outside the domain of the Additional Sessions Judge as an appellate criminal Court. Further, while releasing the respondent under section 4 of the Probation of Offenders Act, he could not leave the sentence of fine maintained. The fine in that event had to be remitted to the respondent. Since now he is being acquitted, the fine, if paid by him, would be remitted to him.

(6) For what has been said above, the order of the Additional Sessions Judge is reversed and the accused respondent is acquitted of the charge.

H.S.B.

Before J. V. Gupta, J.

DHARAM VIR,--*Petitioner.*

versus

Dr. VINOD MAHAJAN AND OTHERS,--*Respondents*

Civil Revision No. 1448 of 1984

November 19, 1984.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3)(a)(ii)—Landlord doctor by profession—Such landlord seeking

(1) *Cr. W. 264/84* decided on 10th August, 1984.

ejection of tenant from rented land for purposes of his profession—Section 13(3)(a) (ii)—Whether envisages eviction in only those cases where premises are required for the business of the landlord—The term 'business' in aforesaid section—Whether includes within its ambit 'profession' as well.

Held, that the word 'business' used in section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 would show that the said word by itself is not a word of art and is capable of being construed both in the wider sense as well as in the narrower sense depending on the context in which it occurs. The word includes within its scope a charitable business or a dealing in the interest of the public or a section of the public. The expression 'business' is, therefore, to be interpreted in a wider context keeping in view the context in which the same is used and as such the word 'business' used covers within its range purposes of any profession trade or calling and the landlord is, therefore, competent to secure the eviction of the tenant on the ground that the landlord needs the rented land for the purposes of his profession.

(Paras 4 and 5)

Petition under Section 15(v) of the East Punjab Urban Rent Restriction Act, 1949 from the order of the Court of Shri M. L. Singal, Additional District Judge, Gurdaspur, (Appellate Authority), Gurdaspur, dated 16th March, 1984, affirming that of Shri S. S. Hundal Rent Controller, Gurdaspur, dated 31st January, 1983, accepting the ejection application with costs the appellate authority has given three months time from today, i.e., 16th March, 1984 to vacate and put Dr. Vinod Kumar in possession. Dharam Vir, etc., shall leave lock, stock and barrel after expiry of three months period. In execution of this ejection order Dr. Vinod Kumar will not take possession of any part of the property belonging to Sardar Gurbux Singh, Advocate while starting from point D to A or C to B.

R. L. Sarin, and Satyen Sethi, Advocate, for the Petitioner.

D. V. Sehgal, with R. K. Mabaian, B. R. Mahajan, and P. S. Rana, Advocates, for the Respondent.

JUDGMENT

J. V. Gupta, J.—

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

(2) The premises in dispute is a rented land. Originally it belonged to Mohan Lal Handa, Advocate, who inducted the tenant

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Nand Lal therein. The same was sold,—vide registered sale deed dated 22nd December, 1981 for a consideration of Rs. 25,000, to the present landlord Dr. Vinod Mahajan. Nand Lal died some where in the month of November or December, 1981 and therefore, the tenancy devolved on his heirs including Dharamvir, petitioner who alone is in actual occupation of the rented land running the business of the fuel wood. The landlord is a Medical Practitioner registered under the Punjab Medical Registration Act. He purchased that rented land for his own use and business. After obtaining his M.B.B.S. degree in the year 1972, he started practice as a Medical Practitioner in the year 1975. He had to start the practice in a rented shop because of non-availability of any accommodation being available at Gurdaspur. Accommodation in the rented shop was quite insufficient and also the same was not fit and suitable for his growing business as a Medical Practitioner. In these circumstances, he sought the ejection of his tenant from the demised premises for his own use in order to expand his business by constructing and setting up a nursing home in the said rented land. It was also pleaded that he was not occupying in the urban area concerned for the purposes of his business any other rented land nor he has vacated any such land without any sufficient cause. In the written statement the tenants controverted the allegations made in the ejection application. It was denied that the landlord required the land *bona fide* for his own use. The learned Rent Controller found that the landlord *bona fide* required the rented land for his own use as he purchased, the same for the expansion of his business. Consequently, eviction order was passed. In appeal the learned appellate authority affirmed the said findings of the Rent Controller and thus maintained the eviction order. Dissatisfied with the same, the tenant has filed this petition in this Court.

(3) The sole argument raised on behalf of the tenant-petitioner is that since the landlord is a Medical Practitioner and has sought the ejection of his tenant from the rented land for constructing the nursing home no ejection order could be passed because the rented land could be got vacated only if the landlord required the same for his business. According to the learned counsel, Medical Practice is a profession and not business as contemplated under the East Punjab Urban Rent Restriction Act (hereinafter referred to as the 'Act'). It was further contended that under section 13(3) (ii), the landlord could eject the tenant from the rented land only for the purpose of business and not for the purpose of profession. In support

of his contention strong reliance was placed on a judgment rendered by me reported as *Tara Chand Chandani v. Shashi Bhushan Gupta* (1). Reference was made to *Kolapur Traders v. Supramavia Mudaliar* (2). On the other hand, learned counsel for the landlord submitted that the word 'business' used in section 13(3)(ii) (b) is to be interpreted in a wider sense and it includes the profession as well. In support of this contention reference was made to *Mohan Lal v. R. Kondia* (3) and Full Bench judgment of this Court in *Model Town Welfare Council v. Bhupinder* (4). Reference was also made to *Dr. Bashir Uddin v. District Judge, Bulandshahr and others* (5).

(4) I have heard the learned counsel for the parties at a great length and have gone through the case law cited at the Bar. It may be stated at the outset that the judgment in *Tara Chand Chandani's* case (supra), has no applicability as regards the facts of the present case. In that case, the main question to be determined was whether the premises which were let out to the tenant to run his office as Chartered Accountant became non-residential building as contemplated under section 2(d) of the East Punjab Urban Rent Restriction Act since in section 2 three types of buildings are defined, i.e., residential building, non-residential building and scheduled building. In that context it was held that if the building is let out to the tenant to run his office as Chartered Accountant, it cannot be classified as non-residential building because this was not a business as such but was profession. The main consideration in that case was that the definition of the scheduled building in section 2(h) provides that it means a residential building which is being used by a person engaged in one or more profession specified in the schedule to this Act partly for his business and partly for his residence. It was common case of the parties in that case that the building was a residential one and a portion thereof was let out to the tenant for running his office as Chartered Accountant. Thus it had become necessary to find out as to what was the nature of the building. If the building was held to be non-residential building, then the landlord was not entitled to seek ejectment of his tenant on the ground that he *bona fide* required the same of his own use and occupation. It was under

(1) 1980 (2) R.C.J. 181.

(2) 1979 (2) R.C.R. 129.

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

(4) A.I.R. 1973 Pb. & Hary. 76.

(5) 1978 (1) R.C.J. 199.

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these circumstances, it was determined there that the building continued to be residential building because it could not be held to be non-residential building which means a building being used solely for the purpose of business and trade. Perhaps, it would not have been necessary to go into the matter if the third category of the building, i.e., scheduled building was not defined in section 2(h). That being the context it could not be successfully argued on behalf of the petitioner-tenant that the word 'business' used in section 13(3) (ii) (b) of the Act does not include profession therein and it only means business as such. There the business has been used in a wider sense and it includes the profession as well. Under the Act, the landlord is not entitled to eject his tenant from the non-residential building on the ground that he *bona fide* required the same for his own use and occupation. It is only a residential building which can be got vacated on that ground. Therefore, the landlord is entitled to seek ejectment of his tenant from the rented land if he requires it for his own use and he has not occupied in the urban area concerned for the purpose of his business any other such rented land. The term 'profession as well. In this context the use of the words 'for his own use' is also significant. Of course, the words 'for his own use' are to be read with clause (b) which provides that the landlord was not occupying any other such land for the purpose of his business. But, as observed earlier, there the term 'business' is to be interpreted in a wider sense. As regards the judgment of the Madras High Court in *Kolapur Traders' case* (supra) the same, cannot be said to be good law in view of the Supreme Court judgment reported in *Mohan Lal's case* (supra). In this case the Supreme Court was required to consider whether the practice of the legal profession is 'business' within the meaning of section 10(3) (3) (a) (iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Therein the landlord who was an Advocate sought the ejectment of his tenant from the premises in question on the ground that he required the same for the purpose of his carrying on his profession as an Advocate. The plea taken by the tenant was that the practice of the profession of an Advocate was not 'business' within the meaning of section 10(3) (a) (iii), therefore, the landlord could not seek the eviction of the tenant on the ground that he required the premises for the purpose of carrying on his profession as an Advocate. In that context it was held by the Supreme Court that the expression 'business' occurring therein is used in a wider sense so as to include the profession of an Advocate. However, the Supreme Court has also cautioned therein that it is a sound, and

indeed, a well known principle of construction that meaning of words and expression used in an Act must take their colour from the context in which they occur. Thus the said observations of the Supreme Court and the interpretation made of the expression 'business' there is applicable to the facts of the present case. The expression 'business' used in section 13(3) (ii) (b) has been used in a wider sense to include the practice of the profession as well as an Advocate or a Medical Practitioner. Similar matter was also considered by the Full Bench of this Court reported in *Bhupinder's case* (supra). Therein the question referred to the Full Bench was, "Whether in view of the facts and circumstances of this case, the requirement of rented land by the Society for the construction of a library building is covered by section 19(3)(a) (ii) of the East Punjab Urban Rent Restriction Act?" While giving the answer to this question, it was held that the word 'business' is by itself not a word of art and is capable of being construed both in the wider sense as well as the narrower sense depending on the context in which it occurs. Then it was further held that the word 'business' in section 2(f) and section 13(3) (a) (ii) need not be necessarily commercial business carried on with a profit motive. The word includes within its scope a charitable business or a dealing in the interest of the public or a section of the public. Thus, in view of these authorities the expression 'business or trade' used in section 13(3) (ii) (b) cannot be given the same meaning as to the expression 'business or trade' given in section 2(d) or section 2(f) while defining the non-residential building or the rented land. There the expression 'business' in the said two clauses is to be interpreted along with the definition of the scheduled building given in section 2(h). It will also be pertinent to note that in the definition of 'scheduled building' (section 2(h) the expression 'profession' and business has been used therein. Admittedly, the expression 'business' therein did include the 'profession' and thus the expression 'business' there is to be used in the wider sense. In this view of the matter the expression 'business' used in section 13(3) (ii) (b) is also to be interpreted accordingly keeping in view the context in which the said expression has been used therein.

(5) Similarly Allahabad High Court in *Dr. Bashir Uddin's case* (supra) while considering the expression 'business' used in section 21 Third proviso clause (ii) of the U. P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972, came to the conclusion that the words 'business purposes' used therein covers within its range purposes of any profession trade or calling.

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(6) In any case, as observed earlier, the expression business in section 13(3)(ii) is to be interpreted in a wider sense keeping in view the context in which the same has been used.

(7) An argument was also raised on behalf of the petitioner that before the Supreme Court the question was considered under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, and therefore, that interpretation could not be made applicable while interpreting the Punjab Act. of course, it is not disputed that the expression 'business' has to be interpreted under each Act in the context in which it is used.

(8) No other point arises nor has been argued. Consequently, the petition fails and is dismissed with costs. However, the tenant is allowed three months period to vacate the premises provided all the arrears of rent, if any, and advance rent for three months is deposited with the Rent Controller within one month along with the written undertaking that the premises will be vacated after the expiry period and the vacant possession will be handed over to the landlord.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, C.J., D. S. Tewatia and S. S. Kang, JJ.

BIRU RAM AND OTHERS,—Petitioners

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents

Civil Writ Petition No. 4462 of 1978

October 4, 1982.

Demobilised Armed Forces Personnel (Reservation of Vacancies in the Punjab State Non-Technical Services) Rules 1968 as amended in 1977—Rules 2(a)(c) and 2(d)(ii)(b)—Rule 2(d)(ii)(b) declared ultra vires in Dr. Jagmohan Singh's case—Rule 2(a)(c), however,