

Partap Singh v. Ajmer Singh (J. V. Gupta, J.)

N.K.S.

Before J. V. Gupta, J.

PARTAP SINGH,—Petitioner.

versus

AJMER SINGH,— Respondent.

Civil Revision No. 1479 of 1975.

December 13, 1983.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) (b)—Shop rented out to a tenant for sale of dry fruits and Soda-water—Pakauras prepared in the shop after installing an oven—Such preparation—Whether amounts to change of user—Tenant—Whether liable to be ejected.

Held, that the preparing of Pakauras after installing an oven (Angithhi) in the shop in dispute is certainly a material and substantial change in the user of the shop in question which was let out to the tenant for the sale of dry fruits and Soda-water only. It

could not be said that the preparation of the *Pakauras* in the shop in dispute was ancillary to the original purpose for which the same was rented out. The specified original purpose cannot be extended by adding to it any and every allied purpose thereto and the same must be confined within the limitation of being either a part and parcel of, or ancillary to, the original purpose.

(Para 6).

Petition Under section 15 of the East Punjab Urban Rent Restriction Act and Article 227 of the Constitution of India for revision of the order of Shri Raghbir Singh, Appellate Authority, Ludhiana, dated 18th October, 1975 affirming that of Shri S. S. Sohal, Rent Controller, Ludhiana, dated 12th April, 1974 accepting the application and passing an order of ejectment of the respondent from the premises in dispute in favour of applicant and allowing one month's time to the tenant to vacate the shop in dispute and put the Land Lord in possession of same and leaving the parties to bear their own costs.

Gurbachan Singh, Advocate, for the Petitioner.

(Petitioner is also present in person)

Yash Pal Gandhi, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

This is a tenant's revision petition against whom the order of ejectment has been passed by both the authorities below.

The landlord sought the ejectment of his tenant from the premises in dispute which consists of a shop. It was rented out by Dr. Ajmer Singh (now deceased),—vide rent note dated 10th March, 1967, Exhibit A4, at a monthly rent of Rs. 20. According to the terms of the rent note, the shop was leased out for doing the business of dry fruit and Soda-water, but now the tenant is using the premises for selling *Pakauras* therein and has thus, changed the user and was liable to eviction.

In the written statement filed on behalf of the tenant, it was denied that he was using the shop in dispute for a purpose other than for which he had taken it on rent. He also denied that he had installed an oven (*Angithhi*) therein. According to him, the business carried on by him in the demised shop did not tantamount to nuisance, nor did it interfere with the profession of the landlord. It was also pleaded that the oven was placed outside the shop, where *Pakauras* were prepared.

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(4) The Rent Controller found that the tenant was using the shop in dispute for a purpose other than for which it was let out to him. It was on this account that the order of ejection was passed against the tenant. In appeal, the learned Appellate Authority affirmed the said findings of the Rent Controller and thus, maintained the order of ejection. Dissatisfied with the same, the tenant has come up in revision in this Court.

(5) The learned counsel for the petitioner vehemently contended that the rent note Exhibit A4, being unregistered was inadmissible in evidence and therefore, could not be relied upon even for a collateral purpose. According to the learned counsel, the terms in the said rent note, as to the purpose for which the premises were let out, could not be said to be a collateral purpose. Thus argued the learned counsel, the rent note Exhibit A4, being inadmissible in evidence there was no other evidence to prove that the premises were let out only for doing the business of dry fruit and Soda-water. Thus, there being no specific purpose for which the premises were let out, it could not be held that there was a change of user by the tenant as to eject him from the premises in question. In support of his contention, he referred to *Choeth Ram v. Deep Chand*, (1) and *Des Raj v. Sham Lal*, (2).

(6) I have heard the learned counsel for the parties and have gone through the relevant evidence on the record.

On the appreciation of the entire evidence, it has been held by both the authorities below that the rent note Exhibit A4 is admissible in evidence and it can be looked into for finding the terms of the lease between the parties. It has been further found that the shop in dispute was rented out by the landlord, to the tenant for selling dry-fruit and Soda-water only. There was ample evidence on the record to show that the tenant was preparing *Pakauras* in the shop in dispute after installing an oven (*Angithhi*) therein. The case set up by the tenant that he installed the said *Angithhi* for frying *Pakauras* outside the said shop was negatived. Thus, from the evidence it was concluded that the tenant did prepare *Pakauras* inside the demised shop. According to the findings of both the authorities below, the preparing of *Pakauras* with the help of *Angithhi* in the shop in dispute, is certainly a material and substantial change in the user of the shop in question which was let

(1) 1977 R.C.R. 499.

(2) I.L.R. 1980(2) Pb. & Hary. 278.

out to the tenant for the sale of dry fruit and Soda-water only. It could not be successfully argued that the preparation of *Pakauras* in the shop in dispute was ancillary to the original purpose for which the same was rented out, i.e. for the sale of dry fruit and Soda-water. In the Full Bench judgment of this Court, rendered in *Sikandar Lal v. Amrit Lal*, (3) it has been observed:—

“What deserves highlighting negatively is that the concept of being a part or being ancillary to the specific original purpose, cannot be extended to all and every allied purpose thereto. This is easily highlighted by adverting to cases where leases have been given for a particular business or trade named in the deed. Whilst some leverage is given to the tenant to use the said premises for purposes which may be deemed as a part of or ancillary to the specified business, it would not give them a licence to set up all businesses connected or allied to the original one. The rationale for this is that the chain of causation for saying that a business or trade is allied or connected can be so extendable as to virtually swamp or override the original business or trade for which the premises may have been specifically leased.”

Thus, it was concluded therein that both on principle and on binding precedent it emerges that the specified original purpose cannot be extended by adding to any and every allied purpose thereto and the same must be confined within the limitation of being either a part and parcel of, or ancillary to, the original purpose. In the light of the foregoing observations of the Full Bench, it cannot be held that the preparing of *Pakauras* by placing an *Angithhi* in the demised premises, is an ancillary purpose to the original purpose of selling dry fruit and Soda-water. Under these circumstances, I do not find any infirmity or illegality in the concurrent findings of the two authorities below, as to be interfered with in the revisional jurisdiction of this Court. Consequently, the revision petition fails and the same is dismissed with costs. However, the petitioner-tenant who is present in Court undertakes to vacate the premises after one month and hand over vacant possession thereof, to the landlord-respondent. In view of this undertaking, the petitioner is allowed one month's time to vacate the tenancy premises.

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(3) C.R. 1671/79 decided on 9-8-83.