FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and J. M. Tandon, JJ.

SIKANDAR LAL,—*Petitioner.*

versus

AMRIT LAL,—*Respondent.*

Civil Revision No. 1671 *of* 1979

August 9, 1983.

East Punjab Urban Rent Restriction Act (III of 1949)—*Section* 13(2) *(ii) (b)—Premises leased out for a specific purpose—Subsequent use thereof for purposes ancillary to or part of the said purpose—Whether amounts to change of user within the meaning of section* 13(2) *(ii) (b)—Premises leased out for carrying on the trade of Khaddis (handlooms)—Tenant carrying on the trade and subsequently adding a carding machine—Tenant—Whether could be evicted on the ground of change of user.*

Held, that where the subsequent use of the premises is merely ancillary to the specific original purpose then it would imply no change of user within the meaning of the East Punjab Urban Rent Restriction Act, 1949. If by custom or convention or on the finding of the Court it can be held that the added use of the premises is ancillary to the main original purpose then in the eye of law it would be deemed to have been within the terms of the original lease. The corollary to the main test of being a part of the original purpose would thus be that if it is ancillary thereto, it would not come within the mischief of the statute. It would follow that where the added user is an adjunct or ancillary to the specific original purpose, then it would not amount to conversion. However, 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. It, therefore, emerges that 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.

(Paras 13 and 14).

Held, that where the premises were originally leased for the business of handlooms (khaddis) and in pursuance of the original

lease the tenant did set up the said business and subsequently added a small carding machine, it cannot be said that carding of thread would not be part of the business of handlooms. The carding machine merely converts old cloth into thread which again is the basic wherewithal for running the handlooms. Thus, the making of thread by a carding machine is part and parcel of the handloom business and it cannot possibly amount to a change of user nor can it be said to be a purpose other than that for which the premises were originally leased. There is, thus, no infraction of section 13(2) (ii) (b) of the Act.

(Para 17).

Case referred by a learned Single Judge Hon'ble Mr. Justice S. P. Goyal to the Division Bench on April 14, 1980 *for an important question of law involved in this case. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice J. M. Tandon decided point No.* 1 *and again referred to the larger Bench for the decision of point No.* 2 *and* 3. *The larger Bench consisting the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice J. M. Tandon. Finally decided the case on August* 9, 1983.

Petition Under Section 15(5) *of Act III of* 1949 *read with Haryana Urban (Control of Rent and Eviction) Act,* 1973 *for the revision of the order of Shri Surinder Sarup Appellate Authority, Ambala* 28*th April,* 1979 *reversing that of Shri A. S. Garg, Rent Controller Ambala dated* 27*th October,* 1978, *allowing the eviction application of the landlord-appellant and passing an order of ejectment against the tenant-respondent directing him to put the landlord in possession of the disputed premises within three months from today i.e.,* 28*th April,* 1979. *Leaving the parties to bear their own costs.*

M. L. Sarin, Advocate with R. L. Sarin, Advocate, *for the Petitioner.*

B. S. Gupta, Advocate with Satish Kumar Mittal and Arun Bansal Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

In this reference to the Full Bench, the significant question that now survives for adjudication may be formulated in the terms following:—

> "Where the premises have been originally leased for a specific purpose, then would any subsequent use thereof, which is

a part of, or ancillary to, the said specified purpose amount to a change of user within the meaning of Section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act, 1949 ?

2. The facts relevant to the aforesaid issue may be noticed with relative brevity. Amrit Lal landlord-respondent had preferred the application for ejectment of the tenant from the premises on the ground that he had taken the same on lease for the specific purpose of carrying on the trade of *Khaddis* (handlooms) for a period of 11 months after which he was in occupation as a statutory tenant. It was alleged *inter alia* that the tenant had now changed the user of the premises without the consent of the landlord in writing or otherwise, and further that he had made certain constructions without the consent in writing or otherwise of the landlord and thereby impaired the value and utility thereof materially.

3. In contesting the aforesaid petition, the tenant controverted the allegations and took up the plea that as originally he had installed and continued to carry on the business of handlooms and had merely added a small carding machine by which the thread is extracted from the old cloth which is a part of the business of handloom industry. It was further denied that any construction had been made so as to impair the value and utility of the premises.

4. On the pleadings of the parties, the following issues were framed :—

1. Whether the respondent is liable to ejectment from the premises in dispute on the grounds mentioned in para No. 2 of the application other than non-payment of arrears of rent ?

2. Whether the premises in dispute are rented land within the meaning of Act III of 1949 ?

3. Whether the notice served on the respondent under Section 106 of the Transfer of Property Act is invalid ?

4. Relief ?

5. On consideration of the evidence, the Rent Controller, decided the material issues Nos. 1 and 2 against the landlord with the result that the eviction application was dismissed.

6. Aggrieved by the order of the Rent Controller, the landlord preferred an appeal and the Appellate Authority reversed the finding of the Rent Controller and held that the tenant had changed the user of premises from the specific purpose for which it was originally leased without the consent of the landlord. Consequently, the ejectment application was allowed and the order of eviction of the tenant was passed.

7. Dissatisfied from the order of the Appellate Authority, the present petition was preferred by the tenant. This originally came up before a learned Single Judge who on examining the matter in the light of various judicial decisions, opined that the case required to be considered by a larger Bench. When the matter came up before the Division Bench, the learned counsel for the petitioner Mr. M. L. Sarin, raised the following points before it :—

(i) That the ground of change of user under the Act would be available only if the user of the building or the rented land is changed, i.e., a residential building is used as non-residential or scheduled building ;

(ii) That once a building has been rented out for a particular business or trade then all acts done which are ancillary or necessary to the carrying out of that business or trade would not amount to change of user and

(iii) That where the dominant purpose for which the property was leased out is being carried out and it is only that a small portion of the demised premises has been put to a different use, then the tenant would not be guilty of change of user.

As regards question (i) aforesaid, the learned counsel for the petitioner-tenant had fairly conceded that in view of the Full Bench judgment in *Des Raj* v. *Sham Lal,* (1) as also that of a Division Bench in *Telu Ram* v. *Om Parkash Garg,* (2), he could not press the said issue.

8. On the remaining questions, the Division Bench opined that point (ii) presented no difficulty but observed that as regards

(1) A.I.A. 1980 Pb. & Hary. 229.
(2) 1971 R.C.J. 1.

question No. (iii) the Division Bench judgment in *Telu Ram's* case (supra), deserves to be reconsidered. Consequently, the case was referred to a Larger Bench for decision on the remaining two points.

9. At the very outset, we may mention that the aforementioned question (i) having been given up before the Division Bench and reference being now expressly confined to the remaining ones, no arguments whatsoever were advanced on this question. Learned counsel for the petitioner-tenant was further categoric that question (iii) would arise only in the alternative if the answer to question (ii) was rendered against him. As would appear hereinafter, we are inclined to answer question (ii) both on law and facts in favour of the petitioner-tenant. Consequently, we are not at all called upon to pronounce on question (iii).

10. Now focusing oneself entirely on the primary question formulated at the out-set, it seems inevitable that the answer thereto would turn on the language of the statute. It is, therefore, apt to read the relevant provision at the very threshold:—

"13. (1) * * * *

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied:—

* * * *

* * * *

(ii) that the tenant has after the commencement of this Act without the written consent of fhe landlord—

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b) *used the building or rented land for a purpose other than that for which it was leased, or,*

(iii) * * * *

(*iv*) * * * *

(v) * * * *

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controlier is not so satisfied he shall make an order rejecting the application ;

Provided * * * *."

11. Now on analysing clause (b) aforesaid, it seems plain that the pride of place for its interpretation must first obviously go to "the purpose for which the building or rented land was leased". For precision of terminology this may be labelled as the specific original purpose. This indeed is the sheet-anchor or the anvil on which either the immediate or the subsequent change of user is to be tested. Consequently herein the basic premise is to first determine with precision as to what was the original purpose of the lease of the premises. For this, one has to examine closely the language of the lease deed if there is a written document to this effect. Failing that the Controller must determine the terms of the oral or the documentary evidence established on the record regarding the specific original purpose of the lease. The lease deed or the established contract on the point of the specific original purpose has then to be precisely construed with regard to its scope and what can reasonably come within its terms. Once this is settled then alone can one proceed to the next stage of the enquiry.

12. Have the promises been used for a purpose 'other' than that for which they were leased is next, the question. To put it in well-known pharseology the issue is—has there been a change of user or not ? The Controller has to be satisfied that the subsequent user is 'other' or different from the specific original purpose. Though on principle and the language of the statute, the intent seems to be clear yet there is no gainsaying the fact that in its practical application this somewhat ambivalent issue has posed serious problem. However, to my mind it seems unnecessary to overly elaborate the same on principle because the limited question before us seems to be well-covered by binding precedent. The question directly arose before their Lordships of the Supreme Court in *Maharaj Kishan Kesar* v. *Milkha Singh and others,* (3). Therein the tenant had originally taken on lease the vacant site *inter alia* for use as an automobile

(3) 1966 Current Law Journal 273.

workshop. In pursuance thereto he started running a motor workshop in one of the buildings constructed by him on the site in accordance with the lease deed. Later he entered into an agreement with Messrs Standard Vacuum Oil Co., Ltd. and set up a petrol pump on the premises of his workshop. The landlord sought the eviction of the tenant *inter alia* on the specific plea of a change of user and the violation of Section 13(2)(ii)(b) on the ground of his operating a petrol pump on the premises in question. Reversing the Courts below and holding that the setting up a petrol pump was part of the business of an automobile workshop, their Lordships categorically observed as follows:—

> "While we would not call the business of selling petrol as an allied business of the workshop we have little doubt that it can well be regarded as part of the business. There is no evidence to show that in the trade a petrol pump is not regarded as a part of a motor workshop business. Upon this view we allow the appeal with costs throughout. There will be only one set of hearing fees."

From the aforesaid ratio (and a host of subservient authority following the same), the crucial authoritative test which emerges is that where the alleged subsequent use can be held to be a part of the specific original purpose then it would not amount to a change of user within clause (b) aforesaid.

13. Equally it seems to emerge from a long line of authority that where the subsequent use of the premises is merely ancillary to the specific original purpose then also it would imply no change of user within the meaning of the statute. If by custom or convention or on the finding of the Court it can be held that the added use of the premises is ancillary to the main original purpose then in the eye of law it would be deemed to have been within the terms of the original lease. The corollary to the main test of being a part of the original purpose would thus be that if it is ancillary thereto, it would still not come within the mischief of the statute. Apart from sound rationale this view also seems to have the support of authority in *Maharaj Kishan Kesar's case* (supra). In this context also it was observed therein as follows:—

> "* * * The expression 'workshop' as understood in the trade has a very wide connotation. Admittedly here it is a motor workshop and by installing a petrol pump as an adjunct to

the workshop it cannot be said that any diversion of the original purpose of the lease was effected."

It would follow from the above that where the added user is an adjunct or ancillary to the specific original purpose, then it would not amount to conversion.

14. However, a strong note of caution must be sounded in the aforesaid context. As is inevitable and indeed evidenced by the mass of authority on the point it is not possible always to draw a clear-cut razor sharp line betwixt what is a part or ancillary to the specific original purpose and what is not so. Cases have, and inevitably could continue to arise which would slightly overlap and trespass from one field into another which would call for close judicial expertise for determining whether they primarily fall in one category or the other. 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 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. Apart from this being patently sound on principle, it appears to me that their Lordships in *Maharaj Kishan Kesar's* case (supra) frowned on any further extension of the rule to all allied businesses. The Rent Contorller therein had, in terms, opined that the setting up of the petrol pump on the motor workshop premises was an allied business and, therefore, could not be said to be a business different from the original one. Apparently, disapproving any such extension, their Lordships, after quoting the finding of the Controller, observed that they would not call the business of sale of petrol as an allied business and, in terms,, held it to be a part of the motor workshop business and, therefore, held that it involved no infraction of the statute. Therefore, both on principle and on binding precedent it emerges that 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.

15. In fairness to Mr B. S. Gupta, the learned counsel for the respondent, one must notice his somewhat tenuous reliance on *Bakhshi Singh and another* v. *Naubat Rai*, (4). Therein, the specified purpose for renting the premises was for sale of chaff-cutters. However, the tenant later set up machinery for the manufacture of spare parts for the said chaff-cutters. I am unable to see how this judgment can, in any way,, aid the respondent. Plainly enough, the industrial activity of manufacture is, in no way, a part and parcel of the commercial activity of a mere sale of the commodity. Similarly, in *Both Ram* v. *Shri Mathra Dass*, (5) the orginai purpose of the lease was the running of a fuel-wood shop, but the tenant changed the user to that of a dairy business and keeping of milch animals at the premises. No great erudition is needed to hold that this would not even remotely be a part and parcel of or, in any way, ancillary to, the original specified purpose of running a shop of fuel-wood. Again in *Mehta Baldev Dutt* v. *Puran Singh and others*, (6) it was held that the setting up of an embroidery business was an obvious change of user from the original purpose of tailoring business for which the premises had been leased. Consequently, I am of the view that the aforesaid authorities are plainly distinguishable and do not, in any way, aid or advance the case of the respondent.

16. To conclude, the answer to the question posed at the very outset has to be rendered in the negative and it is held that where premises have been originally leased for a specific purpose, then any subsequent use thereof, which is a part, or ancillary to, the said specified purpose, would not amount to a change of user within the meaning of Sec. 13(2)(ii)(b) of the Act.

17. Now applying the above in the present case, it is common ground that the premises were originally leased for the business of handlooms (*brai karobar khaddie*). It deserves notice that this original purpose was not even in terms specified as handlooms alone, but a somewhat larger connotation, generally of the business of handlooms. It is inescapable that this would be somewhat wider and broader. It is not in dispute that, in pursuance of the original lease, the petitioner did set up handlooms (*khaddis*) on the premises and equally it is common ground that these handlooms continue on

(4) 1969 Rent Control Journal 117.
(5) 1976 Rent Control Reporter 65
(6) 1980(1) R.C.R. 130.

the spot and the original purpose thus also subsists. The straw upon which the respondent-landlord wished to clutch was the mere addition of a small carding machine not occupying a space of more than 4 feet×4 feet on the premises. It is the concurrent finding of the Courts below that this carding machine merely converts old cloth into thread which again is the basic wherewithal for running the handlooms. Can it, therefore, be said that carding of thread here would not be part of the business of handlooms ? To my mind, the answer seems to be clearly in the affirmative. In this context, one has to recall afresh the observations in the *Maharaj Kishan Kessar's case* (supra). If it could be authoritatively held therein that the setting up of a petrol pump was a part of the business of an automobile workshop, it would follow inexorably that the making of thread by a carding machine is equally a part and parcel of the handloom business. Nok once that is so, it is plain that what is part and parcel of the original specified purpose cannot possibly amount to a change of user or being a purpose other than that for which it was originally leased. There is thus no infraction of section 13(2)(ii)(b) of the Act and the reasoning of the lower Appellate Authority cannot be sustained. The revision petition. therefore, is hereby allowed and the appellate order is set aside and that of the Rent Controller restored. There would, however, be no order as to costs.

Prem Chand Jain, J.—I agree.

J. M. Tandon, J.—I also agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital and S. S. Kang JJ.

SOM DUTT,—*Petitioner.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 2231 *of* 1983

November 25, 1983.

Constitution of India 1950—*Article* 16—*Qualifications prescribed for a post—Applicants seeking employment possessing higher qualifications but not the prescribed minimum—Higher or superior*