

M/s New India Motors Private Ltd.. v. Megh Raj, etc.

REVISIONAL CIVIL

Before Prem Chand Pandit, J.

M/S NEW INDIA MOTORS PRIVATE LTD.—*Petitioner*

versus

MEGH RAJ AND ANOTHER.—*Respondents*

Civil Revision No. 83 of 1968

August 14, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 2(d) and 2(g)—Residential building taken on rent by a company doing business—Building used for residence of its employees—Such building—Whether becomes non-residential.

Held, that a residential building cannot become non-residential, because some Company has taken it on rent and was using it for the residence of its employees. The fact remains that the building was being used for residential purpose. It is not being used for the purpose of business or trade, as no business or trade is being carried on therein. A residential building cannot be converted into a non-residential building, simply because a company doing some business has taken it on rent. One has to see the use to which it is put to by the tenant. If it is used solely for the purpose of business or trade, then it is a non-residential building, otherwise it does not cease to be a residential building.

(Para 7)

Petition under Section 15 of the East Punjab Urban Rent Restriction Act 1949 for revision of the order of Shri Banwari Lal Singh, District Judge, (Appellate Authority), Gurgaon, dated 11th January, 1968, affirming that of Shri S. C. Jain, Rent Controller, Ballabgarh, dated 28th February, passing an order of eviction of the suit premises.

R. N. MITTAL, ADVOCATE, for the Petitioner.

S. K. AGGARWAL, ADVOCATE, for Respondent No. 1.

JUDGMENT

PANDIT, J.—Megh Raj filed an application under section 13 of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter called

the Act), against M/s New India Motors Private Ltd., Faridabad, and Subodh Chand Jain, for their eviction from the premises in dispute. His allegations were that he was the owner of the premises and M/s New India Motors Private Ltd., was his tenant on a monthly rent of Rs. 11.25 Paise. The tenant had not paid the rent since 1st of January, 1966, and had sub-let the premises to Subodh Chand Jain without his consent in writing. It was also claimed by him that the premises were required by him for his own use, as he did not possess any other residential house in Faridabad.

(2) The application was contested by the tenant who admitted the relationship of landlord and tenant between the parties and the rate of rent fixed between them. It was further pleaded that the premises had been taken on rent for the purpose of work connected with the business of the company. The premises were being used for their business, e.g., storing of goods or other raw-material, whenever there was need for that and also for the residence of their employees. The premises were non-residential and, consequently, the landlord could not get the tenant evicted therefrom on the ground of personal requirement. It was denied that the tenant had sub-let the premises to Subodh Chand Jain who was the employee of the tenant and was using the premises for the business of the company. The tenant was not charging any rent from him. It was further averred that the landlord did not require the premises for his own occupation.

(3) As the tenant tendered the arrears of rent alongwith costs and interest, therefore, the ground of non-payment of rent did not remain available to the landlord, for the tenant's eviction. Two issues were framed, viz., (1) whether the suit premises are required bona fide for the personal use of the petitioner as alleged? If so, to what effect? and (2) whether the respondent No. 1 has sublet the suit properly to respondent No. 2 as alleged? The Rent Controller came to the conclusion that it had not been established that the suit premises were taken on rent by the tenant for business purposes. The plea of the tenant that the same were being used for storing the goods of the Company had also, according to the learned Rent Controller, not been substantiated. It was held that the premises were not 'non-residential building', as alleged by the tenant. It was further found that the claim of the landlord that he required the premises for his personal occupation was genuine. Under issue No. 2, his finding was that Subodh Chand Jain was the employee of the

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tenant and no rent was being charged from him by the tenant, even though he was occupying the premises in dispute. The landlord had failed to establish that the premises were sub-let to him by the tenant. In view of the finding on issue No. 1, the Rent Controller passed an order of eviction against the tenant.

(4) Aggrieved by this decision, the tenant went in appeal before the Appellate Authority who dismissed the same, having confirmed the findings of the Rent Controller. Against this order, the present revision petition has been filed by M/s. New India Motors Private Ltd.

The only contention raised by the learned counsel for the petitioner was that both the Rent Controller and the Appellate Authority had erred in law in holding that the premises were 'residential building' within the meaning of section 2(g) of the Act. The said building was taken on rent by the Company for business and was being used as such. If the workmen of the Company were using the premises for residential purposes, the purpose for which it was being used would still be business. That being so, the building would be termed as 'non-residential building'.

(5) In section 2(d) of the Act, "non-residential building" has been defined as a building which is being used solely for the purpose of business or trade, provided that residence in a building only for the purpose of guarding it shall not be deemed to convert a non-residential building to a "residential building". 'Residential building', according to section 2(g) of the Act, means by building which is not a non-residential building. It would, thus, be apparent that a building would be a non-residential building only if it was being used solely for the purpose of business or trade. The case of the tenant, according to the evidence given by their Manager, R. P. Tandon, was that the premises had been taken on lease from the Ministry of Rehabilitation for the purpose of the factory. The finding of the Appellate Authority and the Rent Controller on this point was that the tenant could not substantiate from any evidence on the record that the disputed premises were taken on rent for business purposes. The tenant had not called the record from the Ministry of Rehabilitation to support their allegation. Besides, the tenant could not show that the lease in their favour was for the purpose of factory work. It was further found by the Rent Controller that the tenant could not prove by evidence that the premises were being used for the storing of the goods belonging to the factory.

(6) It has been found that Subodh Chand Jain, an employee of the Company, was residing in the building in dispute. It is, therefore, obvious that the said building was not being used solely for the purpose of business or trade. It was argued by the learned counsel for the petitioner that even though Subodh Chand Jain was using the premises for his residence, still it would be said that the building was used for the purpose of the business, because he was the employee of the Company and if he was given residential accommodation without charging any rent from him, that was given in connection with the business of the Company. The workers have to be given accommodation and without them, the work of the Company could not go on and the business would have come to a standstill if that was not done. Under these circumstances, according to the learned counsel, even providing accommodation by the Company to its own employees was for the purpose of the business.

(7) There is no merit in this contention. A residential building cannot become non-residential, because some Company has taken it on rent and was using it for the residence of its employees. The fact remains that the building was being used for residential purpose. It was not being used for the purpose of business or trade, as no business or trade was being carried on therein. The Company's employee was residing therein and that was the use to which this building was being put to. A residential building cannot be converted into a non-residential building, simply because a Company, which is doing some business, has taken it on rent. One has to see the use to which it is put to by the tenant. If it is used solely for the purpose of business or trade, then it is a non-residential building, otherwise it does not cease to be a residential building.

(8) I would, therefore, hold that both the Rent Controller and the Appellate Authority had rightly held that the premises in dispute were 'residential building'. It has been found by both the authorities that the landlord bona fide required these premises for his personal use. That finding was not challenged before me. That being so, the petition fails and is dismissed, but with no order as to costs. The tenant is, however, given one month's time to vacate the premises in question.