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in terms of that section, the Rent Controller is bound to decide the case expeditiously as contemplated in that section.

9. For the aforesaid reasons I accept the revision petition, set aside the order of the Rent Controller and direct him to decide the matter in accordance with section 32 of the Act. The parties are directed to appear before the Rent Controller on April 10, 1980. The costs in the revision petition shall be the costs in the cause.

H.S.B.

Before J. V. Gupta, J.

TARA CHAND CHANDANI,—Petitioner.

versus

SHASHI BHUSHAN GUPTA,—Respondent.

Civil Revision No. 946 of 1978.

April 9, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(d) (g) & (h)—Chartered Accountants Act (XXXVIII of 1949)—Sections 2(e) and 2(2)—Chartered Accountant Regulations, 1964—Regulations 166 to 168—Residential building rented out to a Chartered Accountant for use as an office—Such building—Whether ceases to be residential in terms of section 2(d) of the Rent Act—Chartered Accountancy—Whether a ‘profession’—The term ‘profession’—Whether included in the term ‘business’ or ‘trade’.

Held, that from a perusal of the Scheme of the East Punjab Urban Rent Restriction Act, 1949 and from the terms used therein, it is quite apparent that the words ‘business’ or ‘trade’ and the word ‘profession’ have been used purposely having different connotation. It may be that sometimes the word ‘business’ may include ‘the profession’ because ‘business’ is a wider term but whether the word ‘business’ as used in section 2(d) of the Act will include ‘profession’ thereir or not would depend on the scheme of the Act. A reading of sections 2(e) and 2(2) of the Chartered Accountants Act, 1949, as also Regulations 166 to 168 of the Chartered Accountant Regulations, 1964, would go to show that the Chartered Accountant is a profession as distinguished from ‘business’ and ‘trade’. Section 2(d) of the Act defines a non-residential building, section 2(g) defines

residential building and section 2(h) defines 'scheduled building'. If the word 'business' occurring in section 2(d) of the Act included 'profession' as well there was no necessity for creating a third category of buildings known as "scheduled buildings". In that case any building being used solely for the purpose of business including professions therein would have been a non-residential building according to the definition. It appears that the Legislature was aware of the distinction between 'business' and 'profession' and therefore, it wanted to exclude certain buildings from the definition of non-residential buildings and thus the third category of scheduled buildings was created under the Rent Act. Chartered Accountant is not one of the professions included therein. Under these circumstances if a building is being used solely for the purpose of profession, it cannot be said to be a non-residential building as it is not being used solely for the purpose of business or trade as the word 'profession' has been used in the Act as distinct from the word 'business'. Therefore, if a residential building is rented out for the running of an office of Chartered Accountants, the said building would continue to be residential. (Paras 4 and 7).

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, for revision of the order of the Court of Shri Trilok Nath Gupta, Appellate Authority, Ludhiana, dated the 26th November, 1977, affirming that of Shri Mohinder Singh Luna, Rent Controller, Ludhiana, dated the 7th April, 1975 dismissing the petition for ejection.

Vijay Jhanji, Advocate.

H. L. Sarin, Senior Advocate (R. L. Sarin and M. L. Sarin, Advocates, with him).

JUDGMENT

J. V. Gupta, J.

The landlord petitioner has filed this revision against the order of Appellate Authority, Ludhiana, dated November 26, 1977, whereby the order of the Rent Controller, dismissing his application for ejection, has been maintained.

2. The premises in dispute is a portion of a residential building known as 'Lakshmi Vishnu Bhawan' situated on Kailash Cinema Road, Civil Lines, Ludhiana,—*vide* rent note dated 26th July, 1962 (Exhibit A-1) the premises in dispute, consisting of three rooms, i.e., one office room on the first floor and two rooms on the second floor with bath, latrine, kitchen and store etc., was given on rent on a

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monthly rent of Rs. 138. The application for ejectment has been filed by the landlord-petitioner on the ground that he *bona-fide* requires the premises for his own use and occupation. In the written statement filed on behalf of the tenant a plea was taken that the premises in dispute are not a residential building as it is being solely used for business and, therefore, the landlord is not entitled to get the premises vacated on the ground of his personal occupation. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the petitioner *bona fide* requires the building in dispute for his residence ?
- (2) Whether the premises are residential ?
- (3) Whether the notice served upon the respondent is invalid?

On issue No. 1 the learned Rent Controller came to the conclusion that from the evidence of the landlord the plea of *bona fide* necessity for his own occupation is not established. On issue No. 2, he came to the conclusion that the premises are non-residential building as the same have never been occupied by the tenant for his residence and he is using the same solely for the purpose of his business i.e., for running his office as a Chartered Accountant. On appeal, the learned Appellate Authority has confirmed the finding of the Rent Controller on issue No. 2 and in view of that finding, he did not record any finding on the question of *bona fide* requirement of the premises by the landlord. Feeling aggrieved against this order of the Appellate Authority, the landlord has come up in revision to this Court.

3. I have heard the learned counsel for the parties at great length. The main question which requires determination in this case is whether the premises which were let out to the tenant to run his office as Chartered Accountant become non-residential building as contemplated under section 2(d) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'). In order to determine this question certain provisions of the Act are necessary to be reproduced here. Section 2(d) of the Act defines "non-residential building" and reads thus:—

"non-residential building" means a building 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".

Section 2(g) defines "residential building" which is to the following effect:—

"residential building" means any building which is not a non-residential building."

Section 2(h) of the Act defines "scheduled building" and it reads thus:—

"scheduled building" means a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to this Act, partly for his business and partly for his residence."

Here reference to sections 11 and 19 of the Act is also relevant and they read as under:—

"11. *Conversion of a residential building into a non-residential building.*—No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller."

"19. *Penalties.*—(1) If any person contravenes any of the provisions of sub-section (2) of section 9, sub-section (1) of section 10, section 11 or section 18, he shall be punishable with fine which may extend to one thousand rupees.

(2) If any person contravenes any of the provisions of clause (a) of sub-section (1) of section 6 or sub-section (1) of section 7, he shall be punishable with imprisonment which may extend to two years and with fine.

(3) No court shall take cognizance of an offence under this section except upon—

(a) a complaint of facts which constitute such offence filed with the sanction of the Controller in writing; or

(b) a report in writing of such facts made by the Controller."

4. From the perusal of the scheme of the Act and the various terms used therein, it is quite apparent that the words 'business' or 'trade' and the word 'profession' have been used purposely, having different connotation. It may be that sometimes the word 'business' may include the profession because 'business' is a wider term but

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whether the word 'business' as used in section 2(d) of the Act will include 'profession' therein or not is the matter which requires determination in this case. 'Chartered Accountant' as defined in section 2(d) of the Chartered Accountants Act, 1949 means a person who is a member of the Institute, which has been further defined in Section 2(e) to mean the Institute of Chartered Accountants of India constituted under this Act. Sub-section (2) of section 2 thereof further provides:—

“(2) A member of the Institute shall be deemed “to be in practice”, when individually or in partnership with chartered accountants (in practice), he, in consideration of remuneration received or to be received:—

- (i) engages himself in the practice of accountancy; or
- (ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts, or records or the preparation, verification or certification of financial accounting and related statements or hold himself out to the public as an accountant; or
- (iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or
- (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant in practice and the words “to be in practice” with their grammatical variations and cognate expressions shall be construed accordingly.”

Section 21 of this very Act further provides the procedure for enquiries relating to professional misconduct of the members of the *Institute*.

5. Under section 30 of the Chartered Accountants Act, 1949, regulations have been made which are known as the Chartered Accountants Regulations, 1964. Regulation 166 thereof provides:—

“A chartered accountant in practice shall not engage in any business or occupation other than the profession of

accountancy, except with the permission granted in accordance with a resolution of the Council.”

Regulation 167 provides:—

“Notwithstanding anything contained in regulation 166, but subject to the control of the Council, a chartered accountant in practice may act as a liquidator, trustee, executor, administrator, arbitrator, receiver, adviser, or representative for costing, financial or taxation matter, or may take up an appointment that may be made by the Central Government or a State Government or a Court of law or any other legal authority or may not as a secretary in his professional capacity, provided his employment is not on a salary-cum-full-time basis”.

Regulation 168 thereof puts certain restrictions on the fees to be charged by the Chartered Accountant, which provides as under:—

“No chartered accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings, or results of such work:

Provided that—

- (a) in the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement or of the assets;
- (b) in the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profit; and
- (c) in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.”

6. From the perusal of these provisions of the Chartered Accountants Act, 1949, and the regulations framed thereunder, it is quite clear that the work of a Chartered Accountant is a profession as distinguished from business as generally understood in common parlance.

7. Reverting back to the provisions of the East Punjab Urban Rent Restriction Act it has to be seen that if the premises are rented out to a Chartered Accountant for running his office, whether such a building will be said to be a non-residential building or it continues to be a residential building as provided under the Act? As observed earlier, Section 2(h) of the Act defines the words "scheduled building". The word 'profession' as well as the word 'business' have been used in the said definition. If the word 'business' occurring in Section 2(d) of the Act included 'professions' as well, there was no necessity for creating a third category of buildings known as "scheduled buildings". In that case any building being used solely for the purpose of business including professions therein, would have been a non-residential building, according to the definition. It appears that the legislature was aware of the distinction between 'business' and 'profession' and, therefore, it wanted to exclude certain buildings from the definition of non-residential buildings and thus the third category of scheduled buildings was created under the Act. Admittedly in the schedule provided to this Act, Chartered Accountant is not one of the professions included therein. Under these circumstances if a building is being used solely for the purpose of profession, it cannot be said to be a non-residential building as it is not being used solely for the purpose of business or trade. As observed earlier, the word 'profession' has been used in the Act as distinguished from the 'business'. In *M. P. Sethurama Menon v. Thaiparambath Kumbukutty Amma's daughter, Meenakshi Amma and others*, (1), where the question arose that whether the profession of an Advocate can be said to be business under the Kerala Buildings (Lease and Rent Control) Act, 1965, came up for consideration, it was observed in para 7 as under:—

"What is important in deciding whether a person is carrying on a profession or not is whether he is a member of an organised body with a recognised standard of ability enforced before he can enter it and a recognised standard of conduct enforced while he is practising it (Iyengar on Income-tax, 5th Edition, Volume 2, page 832). This is certainly not the test in deciding whether a person is carrying on a trade or business".

(1) A.I.R. 1967, Kerala 88.

Applying this test as well, a person who is a Chartered Accountant, will be said to be carrying on a profession. He is a member of an organised body with a recognised standard of ability enforced before he can enter it and a recognised standard of conduct is enforced while he is practising it. Moreover this aspect of the case is not being disputed on behalf of the tenant. What has been argued is that the profession of the Chartered Accountant is included in the term 'business' as used in Section 2(d) of the Act and, therefore, the building becomes a non-residential building. However, I do not find any force in this contention raised on behalf of the tenant. The learned counsel for the tenant relied upon a Supreme Court judgment reported as *S. Mohan Lal v. R. K. Kondiah*, (2). In that case the expression 'business' was being interpreted as it occurred in section 10(3)(a)(iii) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. In the context in which this expression has been used under that Act it was observed:—

“The expression business has not been defined in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. It is a common expression which is sometimes used by itself and sometimes in a collection of words as in “business, trade or profession”. It is a word of large and wide import, capable of a variety of meanings. It is needless to refer to the meanings given to that term in the various Dictionaries except to say that everyone of them noticed a large number of meanings of the word. In a broad sense it is taken to mean ‘everything that occupies the time, attention and labour of men for the purpose of livelihood or profit’. In a narrow sense it is confined to commercial activity. It is obvious that the meaning of the word must be gleaned from the context in which it is used. Reference to the provisions of the Constitution or other statutes where the expression is used cannot be of any assistance in determining its meaning in section 10(3)(a)(iii) of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960. It is not a sound principle of construction to interpret expression used in one Act with reference to their use in another Act; more so if the two Acts in which the same word is used are not congate Acts. Neither the meaning, nor the definition of the

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

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term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand it is a sound, and, in-deed, a well-known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear. Dr. Chitale very frankly and fairly conceded as much."

In para 5 thereof the Supreme Court has made it quite clear that the word 'business' must be interpreted in the context of the statute in which it occurs and not in the context of other statutes or in a manner alien to the context of the statute concerned. This authority on the face of it is of no help for the proposition as contended on behalf of the learned counsel for the tenant.

8. There is another aspect of the matter as well. Section 11 of the Act, as reproduced earlier, says that no person shall convert a residential building into a non-residential building except with the permission in writing of the Controller. In the present case admittedly the rented premises are a part or a portion of a residential building known as 'Lakshmi Vishnu Bhawan'. The portion other than the rented one is being used by the landlord for his own residence. Under these circumstances, could the landlord convert a part of the residential building into a non-residential one without the permission in writing of the Rent Controller? Since there is a bar provided under the Act itself and under section 19 of the Act penalty for the breach of the same has been provided, it is quite clear that a residential building as such could not be converted into a non-residential building by letting it out to a Chartered Accountant for running his office therein. Anything done in contravention of the provisions of the Act cannot bind the landlord or the tenant. In this view of the matter also it cannot be held that the premises have become non-residential building because it is being used solely for the purpose of running the office by the tenant as Chartered Accountant. This also indicates that the Legislature used the expression 'profession' as distinguished from the expression 'business' or 'trade' under the Act.

9. Consequently, the finding of the Appellate Authority on issue No. 2 that the premises in dispute are non-residential building is

set aside and it is held that the building is a residential building as contemplated under the Act and thus the landlord is capable to eject the tenant if he proves that he *bona fide* requires the premises for his own use and occupation. Since in the present case the Appellate Authority has not given any finding on issue No. 1, the case will have to be sent back for decision on that issue.

10. For the reasons recorded above, this petition succeeds and the order of the Appellate Authority is set aside and the appeal is sent back for decision in accordance with the law. The parties are directed to appear before the Appellate Authority, Ludhiana, on 24th April, 1980. The records of the case be sent back to the Court immediately.

H. S. B.

Before G. C. Mital, J.

STATE OF PUNJAB,—Appellant.

versus

DR. PARTAP SINGH,—Respondent.

Regular First Appeal No. 56 of 1972 and

Cross-objection No. 13-C of 72.

April 11, 1980.

Constitution of India 1950—Article 300(1)—Government—Whether liable for tortious acts committed by its employees—Suit for damages by Government servant against Government in matters arising out of service conditions—Whether maintainable—Order regarding such conditions—Whether qualifies as a sovereign function of the State—Government—Whether liable for payment of general damages to plaintiff in such cases.

Held, that under Article 300(1) of the Constitution of India 1950 the Union of India and the States have the same liability for being sued for torts committed by their employees as was that of the East India Company. As such a suit for damages is maintainable.

(Para 5).

Held, that sovereign functions of a State have nowhere been exhaustively enumerated nor is there any authoritative definition of what constitutes the sovereign functions. However, the passing of