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*Before R.S. Mongia and T.H.B. Chalapathi, JJ.*

HUKAM CHAND,—*Appellant*

*versus*

OM CHAND AND OTHERS,—*Respondents*

LPA 74 of 1987

8th July, 1997

*East Punjab Urban Rent Restriction Act, 1949—S.2(f)—Rented land—Land not let out separately for the purpose of business or trade—Determination of nature of land—Terms of lease and not the actual user criteria.*

*Held*, that the definition of 'rented land' makes it abundantly clear that the letting out of the land has to be separately for the purpose of being used principally for business or trade. The Courts are to see the terms of the lease and not the actual user in case of a rented land. The lease deed stipulated that the lessees are entitled to use the land themselves or lease it out further to a sub-lessee and further they could raise any construction thereon after obtaining sanction from the Municipal Committee. The stipulation rather goes to show that the land could be used for any purpose. Even building could be constructed thereon, may be for purpose of residence or otherwise. It was not being let out principally for the purpose of business or trade. Nature of the property is to be determined as on the date when it was let out.

(Paras 7 and 8)

M.L. Sarin, Senior Advocate, with Hemant Sarin,  
Advocate, *for the appellant.*

S.C. Kapoor, Sr. Advocate with Ashish Kapoor,  
Advocate, *for the respondent.*

### JUDGMENT

*R.S. Mongia, J.*

(1) This is a Letters Patent Appeal against the judgment of the learned Single Judge dated November 25, 1986, dismissing the Regular First Appeal No. 481 of 1977 filed by the appellant.

(2) Brief facts leading to the filing of the present Letters Patent Appeal may be noticed:

(3) The land in dispute owned by one Abdul Hamid Khan was taken on 99 years' lease by Om Chand, son of Nanak Chand, respondent No. 1, who further leased it out by a registered lease deed (Ex. PW3/C) to Hukam Chand, appellant, and one Amar Nath, who was respondent No. 3 in the Regular First Appeal for a period of ten years with effect from March 1, 1957. The monthly rent was Rs. 40. The material terms of the lease deed were that the leasees were entitled to use the land in question themselves or may lease it out further to a sub-lessees. It was further stipulated that the lessees were entitled to raise any construction thereon and shall also be liable to obtain sanction from the Municipal Committee in respect of the same. Whatever tax was levied on the land or the construction was payable by the lessees. It was still further stipulated that after the completion of lease period, the lessees would not have any right to remain in possession of the land in question without the consent of the lessor. The lessees will settle the amount with the first party about the construction raised on the land but if the lessor did not want to purchase the building/construction so raised by the lessees then the lessees would be liable to remove the material/debris/construction at their own costs within the lease period and would hand over the possession of the land to the lessor. On the failure of the lessees to do so, the lessor shall have a right to take possession of the same and if the lessees failed to hand over the possession of the land to the lessor after the lease period, they would be liable to pay damages at the rate of Rs. 100 per mensem over and above the rent.

(4) It may be observed here that the ownership rights were sold by Abdul Hamin Khan in favour of Nanak Chand, respondent No. 2 (father of respondent No. 1 Om Chand), Respondent No. 1 Om Chand surrendered his lease rights in favour of Nanak Chand. The sub-lessee, Hukam Chand, failed to deliver back the possession of the land after the expiry of the lease period. Consequently, the present respondents Om Chand and Nanak Chand filed a suit for recovery of its possession together with Rs. 18,600 as the *mesne* profits at the rate of Rs. 600 per month from March 1, 1967 to September 30, 1969. Since, according to the plaintiffs, Hukam Chand had failed to level the land as per the terms of the lease, Rs. 668 were claimed as damages for non-filling of the low-lying area. A prayer for injunction was also made for directing the lessees

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either to settle the compensation for the structures mutually or to remove them and deliver vacant possession of the demised premises. The suit was contested by the lessees who admitted the initial lease and the terms of the same. It was, however, pleaded that after the expiry of the lease period, they continued to be statutory tenants by virtue of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act' and as such neither the suit for recovery of possession or compensation was maintainable nor were they liable to pay any damages. Ten issues were framed by the trial Court but the issues which were contested before the learned Single Judge are as follows:—

- (4) Whether the civil courts have got no jurisdiction to try the suit? OPD
- (5) Whether the terms about the compensation in the lease deed are penal and not enforceable? OPD
- (7) Whether the suit is hit by the provisions of East Punjab Urban Rent Restriction Act and the property is a rented land situated within the municipal limits of Patiala? OPD
- (8) Whether the plaintiff is estopped from denying that the Rent Controller has no jurisdiction in the matter?
- (9) Whether the defendant is a statutory tenant and no suit for eviction or injunction lies? OPD

Issues No. 4, 7, and 9 cover the same field, i.e., as to whether the land in dispute was 'rented land' within the meaning of the Act and as such no suit for recovery of its possession was competent in a Civil Court. The aforesaid issues as well as issues No. 5 and 8 were answered against the defendants-lessees. A decree for possession followed and the lessees were directed to settle the amount of the structure within three months or to remove the structure. Aggrieved by the decree of the trial Court, one of the lessees, Hukam Chand, filed Regular First Appeal No. 481 of 1977, which, as observed above, was dismissed by the learned Single Judge necessitating the filing of the present Letters Patent Appeal.

(5) Learned Counsel for the appellant argued that the land in question was 'rented land' as defined under Section 2(f) of the Act and consequently, the jurisdiction of the Civil Court to pass a decree for ejection was barred and the lessees had only remedy under the Act to eject the appellant by proving any of the grounds

mentioned under Section 13 of the Act, Before adverting to the arguments of the learned counsel for the appellant, the definition of the 'rented land' under Section 2(f) of the Act may be noticed:

2(f) "rented land" means any land let separately for the purpose of being used principally for business or trade".

The definition of the "rented land" makes it clear that the land would be rented land if the same is let *separately for the purpose of being used principally for business or trade* (emphasis supplied).

(6) Learned counsel for the appellant argued that no doubt in the lease deed, Ex. PW 3/C, the purpose for which the land had been let out is not mentioned, yet it can be gathered from the circumstances as existed some time after the taking of possession of the land on lease. Shops had been constructed on the land in question and had been let out to various tenants. This meant that the intention was to lease out the land principally for business or trade. Even the lessor had earlier filed a case before the Rent Controller under the Rent Act for ejection of the appellant on the ground of non-payment of rent, which further showed that even the lessor was taking the land to be 'rented land' having been let out principally for the purpose of business or trade. Learned counsel cited the same authorities before us which were cited by him before the learned Single Judge. The authorities relied upon are *Mohan Lal and others v. Amolak Singh and others* (1) and *Sowaran Singh and another v. Inderjit and another* (2).

(7) After hearing learned counsel for the parties and going through the record of the case, we do not find any merit in this appeal. The definition of 'rented land' makes is abundantly clear that the letting out of the land has to be separately for the purpose of being used principally for business or trade. Is it so in the present case? The lease deed, Ex. PW 3/C, stipulated that the lessees are entitled to use the land themselves or lease it out further to a sub-lessee and further they could raise any construction thereon after obtaining sanction from the Municipal Committee. Can it be inferred from these stipulations that the land was separately let out principally for being used for business or trade. The stipulation rather goes to show that the land could be used for any purpose. Even building could be constructed thereon, may be for purpose of residence or otherwise. It was not being let out principally for the

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1. 1977(2) RCJ 147  
2. 1977(2) RCJ 152

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purpose of business or trade. For purpose of bringing the land within the definition of 'rented land', it cannot be said that if the land can be used for purpose of business or trade, though not separately let out principally for that purpose it would still fall within the definition of 'rented land'. Nature of the property is to be determined as on the date when it was let out. In *Hazara Singh and others v. Dalip Singh and others* (3), it was held that the land over which the tenant could use it for cultivation through himself or through anybody else or could use for installation of some factory does not fall within the term rented land inasmuch as the land is not separately let out principally for business or trade. In Civil Revision No. 177 of 1966 *Prem Narain v. Smt. Rajo and others* (4), decided on October 31, 1967, a learned Single Judge of this Court took the view that it is apparent from the definition of "rented land" under Section 2(f) of the Act that even if the land has been let out for business or trade but not let out principally for business or trade, the definition would not be attracted. In *Gian Chand v. Parkash Chand and others* (5), it was held by this Court that where the land was let out with a discretion to the tenant that he could use it for any purpose and he constructed rooms and verandah on the land and started running a *Karyana* business in the same, the land could not be said to have been let out for being used principally for business or trade and would not fall within the definition of 'rented land'. The aforesaid authorities with which we concur are an answer to the argument of the learned counsel for the appellant. In *Bai Chanchal and others v. Syed Jalaluddin and others* (6), it was urged before the apex Court that pleadings indicated that the land had been let out for making structures and the structures could only be utilised by being let out on rent. Such purpose would constitute business or trade. The apex Court observed that it was unable to see any justification for such an inference. The mere fact that there was a mention that structures that may be erected would be removed could in no way lead to a conclusion that the principal purpose of the lease was to use the land for business or trade. In *Sowaran Singh's case* (supra), the land had been let out for purpose of trade and the only question involved was whether the construction raised thereon by the tenants would change the nature of the demised premises into a shop. This authority has no bearing and was rightly distinguished by the learned Single Judge.

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3. 1981(1) RLR 222
4. 1968 PLR 5
5. 1984(1) PLR 322
6. 1970(2) RCR 915

Similarly, in the other authority cited by the learned counsel for the appellant (1977 (2) R.C.J. 147) the tenant had been given a right to construct a factory on the lease land and also to construct buildings to sublet them. In these circumstances, it was held that the land had been let out principally for business or trade. As observed above, there is no such stipulation in the lease deed in question in this case. This authority has no applicability.

(8) The Courts are to see the terms of the lease and not the actual user in case of a rented land. As observed above, in the present case, the lease of the land was not separately for being used principally for business or trade.

(9) So far as the argument that the lessors had themselves filed a case under the Act describing the land to be 'rented land' and are, therefore, estopped from taking the stand that the suit land is not 'rented land', the same has no merit. There cannot be any estoppel against Statute or the interpretation of a document as to whether the same falls under a particular definition of a document under a Statute. The lessors might not have been properly advised whether the land was 'rented land' or not. Moreover, before the Rent Controller no issue was decided as to whether the land was 'rented land' or not. There is no estoppel against the lessors as a misinterpretation of a document on an advice is not binding. It may also be noticed here that in the statement of the appellant before the trial Court, we do not find that he had at any time stated that through the lease deed, the land was separately let out principally for the purpose of business or trade. The land was let out for a specific period and the lessors had no right to continue after the termination of the lease by efflux of time.

(10) For the foregoing reasons, we find no merit in this appeal, which is hereby dismissed with no order as to costs.

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S.C.K.

*Before Jawahar Lal Gupta & B. Raj. JJ*

STATE BANK OF PATIALA,—*Appellant*

*versus*

RAM GOPAL GUPTA & OTHERS,—*Respondents*

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