

The Indian Law Reports

Before : J. V. Gupta, J.

GORA LAL PURI AND ANOTHER,—Petitioners.

versus

JUGAL KISHORE,—Respondent.

Civil Revision No. 416 of 1983

23rd February, 1989

East Punjab Urban Rent Restriction Act (3 of 1949)—Ss. 3 & 13(2)(ii)—Notification dated June 21, 1971 issued u/s 3—Change of user from commercial to residential—Change of user effected before commencement of Act and continued after 1974—Tenant liable to eviction.

Held, that the fact that the tenant has used the building for a purpose other than the one for which it was leased out even after the commencement of the Act renders the tenant liable to be ejected under section 13(2)(ii)(b). In these circumstances, the learned Appellate Authority rightly found that the change of user though effected before the commencement of the Act, continued even after the year 1974 and, therefore, the tenant had incurred liability for his ejection.

(Para 9)

Petition under Section 15(5) of Act III 1949 for revision of the order of the Court of Shri Mukhtar Singh Gill, Appellate Authority, Barnala, dated 24th December, 1982 affirming that of Shri Niranjan Singh, P.C.S. Rent Controller, Bhatinda, dated 12th January, 1979, ordering that the ejection of the respondents from the demised premises under section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949. The respondents will put the applicant into the vacant possession of the demised building within a period of two months. The respondents will also pay the costs of these proceedings to the applicant. The counsel fee is Rs. 75.

Claim :— Application u/s 13 of the East Punjab Urban Rent Restriction Act, 1949.

Claim in Revision :—For reversal of the order of the Court below.
M. L. Sarin, Sr. Advocate with Jai Shree Thakur, Advocate, for the petitioners.

R. K. Battas, Advocate and J. R. Mittal, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) This is tenant's revision petition against whom eviction order has been passed by both the authorities below.

(2) Jugal Kishore, landlord, filed the ejectment application, dated September 8, 1976, for the eviction of his tenant, Gora Lal Puri, from the two shops, in dispute, situated at Bhatinda, asserting that on the basis of the oral agreement on March 1, 1969, the tenant had taken the demised shops for commercial purposes on a monthly rent of Rs. 130 for one year and after the expiry of the said period, he was in occupation thereof as a statutory tenant. The ejectment was sought *inter alia* on the ground that the tenant, without the written consent of the landlord, had converted their user from business purposes into residential purposes and thereby changed their very nature and purpose. In the written statement, the stand taken by the tenant was that one of the shops was being used for residential purposes from the very inception of the tenancy. Since the said user was made prior to the commencement of the East Punjab Urban Rent Restriction Act (hereinafter called the Act), the tenant was not liable to ejectment on the ground of change of user in view of the provisions of section 13(2)(ii) of the Act. The learned Rent Controller found that it amply stood proved from the evidence that one of the shops was being utilised for residential purposes and the other for trade purposes and thus the tenant was liable to be ejected as he had used the premises for a purpose other than the one for which the same were let out. Consequently, the eviction order was passed on January 12, 1979. The other grounds for ejectment taken by the landlord were rejected. In appeal, the Appellate Authority affirmed the said findings of the Rent Controller and thus maintained the eviction order.

(3) Admittedly, the building, in question, was constructed in the year 1969 and was exempted for five years from the applicability of the Act, till the year 1974,—*vide* notification issued under section 3 of the Act, dated June 21, 1971, which reads as under:

“In exercise of the powers conferred by section 3 of the East Punjab Urban Rent Restriction Act (East Punjab Act No. 3 of 1949) the President of India is pleased to exempt every building constructed during the years 1968, 1969 and 1970 from the provisions of the said Act for a period of five years from the date of its completion.”

According to the Appellate Authority though the change of user was incurred before the commencement of the Act, yet it continued even after 1974 and, therefore, the tenant had incurred the liability for ejectment.

Gora Lal Puri and another v. Jugal Kishore (J. V. Gupta, J.)

(3-A.) The learned counsel for the petitioner submitted that since the change of user, if any, was prior to the commencement of the Act, the tenant was not liable to be ejected under section 13(2) (ii) of the Act. In support of the contention, the learned counsel relied upon *Gurcharan Singh v. V. K. Kaushal* (1) and *Tirath Ram Gupta v. Gurbachan Singh* (2). The learned counsel further submitted that converting one shop into residence did not amount to a change of user because the dominant purpose was still the business which was being carried out by the tenant in the other shop and in any case, it was not in a substantial part of the shop, in question, for which the tenant could be held liable for eviction. In support of this contention, the learned counsel relied upon *Mohan Lal v. Jai Bhagwan* (3), and *Dharam Chand v. Mathura Dass* (4).

(4) On the other hand, the learned counsel for the landlord submitted that the Act was in force when the building was constructed in the year 1969. According to the tenant, he had changed the user from the very inception of the tenancy. The said building was exempted from the operation of the Act,—*vide* notification dated June 21, 1971, though it was given retrospective effect. Thus, argued the learned counsel, in the year 1969-70, the Act was in force, but its operation was taken away subsequently,—*vide* abovesaid notification. He further argued that the question of exemption could only arise if the Act was there and it had commenced, otherwise the question of exemption under section 3 of the Act would not arise. Thus, according to the learned counsel, the Supreme Court authorities relied upon by the learned counsel, for the petitioner are clearly distinguishable and have no applicability to the facts of the present case. Those are the cases which relate to subletting which are distinguishable and separate from the cases of change of user of the building by the tenant. In any case, it was argued that since the change of user continued even after exemption from the operation of the Act, i.e., even after the year 1974, the tenant was liable to ejection.

(5) I have heard the learned counsel for the parties and have also gone through the case law cited at the bar.

(1) A.I.R. 1980 S.C. 1866.

(2) (1987)1 S.C. cases 712.

(3) A.I.R. 1988 S.C. 1034.

(4) 1982 P.L.R. 377.

(6) As stated earlier, it has been concurrently found by both the authorities below that one of the shops was being used by the tenant for residential purposes and that the tenant had converted the use of a substantial part of the shop, in question, from commercial to residential one. *Prima facie* both these are findings of fact and could not be interfered within the revisional jurisdiction. The main question to be determined in this revision petition is whether the tenant is liable to ejection or not because according to him, he used the building for the purpose other than the one for which it was leased, prior to the commencement of the Act.

(7) Section 13(2)(ii) of the Act, reads as under:

“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 applicant, is satisfied,—

(i)

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

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

(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

Gora Lal Puri and another v. Jugal Kishore (J. V. Gupta, J.)

land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

It is also not disputed that the building was exempted from the operation of the Act,—*vide* notification, dated June 21, 1971, noticed above, whereas it was let out in the year 1969 and immediately thereafter, the tenant changed its user. In a way, the tenant has used the building for a purpose other than the one for which it was leased out, after the commencement of the Act. In the year 1969, when it was leased out it was not exempted from the operation of the Act but it was done subsequently, after two years. In any case, the tenant is still continuing to use the same as was being used by him prior to the exemption from the operation of the Act. A case of subletting under clause (ii)(a) of sub-section (2) of section 13 of the Act, is a little different and distinguishable from clause (ii)(b) thereof. Thereunder, in the case of a sub-tenant, if a third person is inducted prior to the commencement of the Act, he could not be ejected after the Act was enforced, whereas the user of the premises could be changed by the tenant unilaterally as soon as the Act has commenced to operate. That being so, the Supreme Court judgments, referred to above, are clearly distinguishable.

8) Paragraphs 7 and 8 in the judgment of the Supreme Court in *Gurcharan Singh's case* (supra), are relevant. It may be mentioned here that it was a case where the Act itself was made applicable to the Ambala Cantonment by notification, dated November 21, 1969, and thus, it was not a case of an exempted building as such. It was, therefore, observed by the Supreme Court therein,—

"The tenant falls within the mischief of section 13(2)(ii)(a) only if he has effected the transfer or subletting after the commencement of the Act. The Act commenced to operate in the Ambala Cantonment on 21st November, 1969. In regard to that territory it was not law before that date, but only on and from that date. The subletting in the present case had been effected in 1967".

It was further observed,—

“Now, when section 13(2)(ii)(a) speaks of a tenant who “has sublet”, it refers to a tenant who has entered into a transaction of sub-letting. And the transaction of sub-letting is referable to a single point of time. It is the moment when the act effecting the subletting is completed. That transaction is located at a fixed point. What happens then is that a flowing stream of rights and obligations issues from the subletting. Those rights continue as long as the sub-lease subsists but they have their source in the definitive transaction of subletting located in a single fixed point of time. We may add that in the context of section 13(2)(ii)(a) of the Act, the words, “has sublet” imply that the subletting must subsist on the date when the Act comes into force. The reason is apparent from the object of the Act, which is to protect the personal occupation of the tenant.”

(9) *Tirath Ram Gupta's case* (supra), was also a case of sub-letting and not the case of a building exempted from the operation of the Act by virtue of a notification like the present case. The same principle, as enumerated in *Gurcharan Singh's case* (supra), was reiterated therein. The fact that the tenant has used the building for a purpose other than the one for which it was leased out even after the commencement of the Act, renders the tenant liable to be ejected under section 13(2)(ii)(b) of the Act. In these circumstances, the learned Appellate Authority rightly found that the change of user though effected before the commencement of the Act, continued even after the year 1974 and, therefore, the tenant had incurred liability for his ejection.

(10) In this view of the matter, this revision petition fails and is dismissed with costs. However, the tenant is allowed three months' time to vacate the premises; provided all the arrears of rent, if any, along with the advance rent for three months, are deposited with the Rent Controller within one month along with an undertaking, in writing, that after the expiry of the said period of three months, vacant possession will be handed over to the landlord.

R.N.R.