

Before : J. V. Gupta, J.

GULATI TEA COMPANY,—Petitioner.

versus

AJAY KUMAR and others,—Respondents.

Civil Revision No. 1748 of 1985.

February 6, 1986.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) (b)—Chandigarh (Sale of Sites and Buildings) Rules, 1960—Rules 9 Schedule, Parts 'A' and 'C'—Commercial premises let out for purposes of general trade—Tenants using the premises for special trade as a Halwai shop—Premises—Whether could be said to have been used for a purpose other than the one for which they were let out.*

*Held*, that where the premises are let out for commercial purpose and the tenant uses them as a Halwai shop, it could not be said that there was no change of user. Even if the premises were let out for commercial purpose, the tenant could not use them for a purpose which was not provided in part 'A' to the schedule framed under rule 9 to the Chandigarh (Sale of Sites and Buildings) Rules, 1960. Part 'C' of the said schedule enumerates items which include 'special trade'. The business of Halwai is included under the head 'special trade' and not under the 'general trade'. If the premises were let out for commercial purpose of general trade and not for special trade, it is amply proved that the tenant had changed the user of the premises. (Para 4).

*Petition under Section 15 of the East Punjab Rent Restriction Act for revision of the order of the court of Shri B. S. Nehra, Appellate Authority, Chandigarh, dated the 1st March, 1985 reversing that of Shri B. R. Gupta, Rent Controller, Chandigarh, dated the 22nd November, 1983 setting aside the impugned order and allowing the landlords' petition for the eviction of the tenant and leaving the parties to bear their own costs and allowing a period of three months to vacate the demised premises and deliver its possession to the landlords.*

N. C. Jain, Sr. Advocate with Sanjay Vij, Advocate, for the Petitioner.

A. K. Chopra, Advocate and G. R. Majithia, Advocate with Arun Sanghi, Advocate, for the Respondent.

## JUDGMENT

*J. V. Gupta, J.*

This is tenant's revision petition against whom the ejection application was dismissed by the Rent Controller, but was allowed in appeal by the Appellate Authority.

2. The ground floor of the premises, in dispute, that is, S.C.O. No. 2466, Sector 22-C, Chandigarh, was rented out to the tenant through its partner Shri Rakesh Kumar, in August, 1979. The premises were rented out for running the business of selling tea leaves. Later on, the tenant started using them for a purpose other than the one for which they were let out, i.e., the tenant had started using the same for Halwai's shop in the name and style of City Sweets and Restaurant. The other ground taken in the ejection application was that the tenant had sublet a part of the premises to one *Kabari* who had been running the business of selling tins, waste-papers, empty bottles etc. from whom he was getting consideration for the portion occupied by him. According to the landlord, the tenant had committed breaches of the terms and conditions and, therefore, he was liable to be ejected. In the written statement, it was pleaded by the tenant that the premises were taken on rent by Rakesh Kumar and not by the firm M/s Gulati Tea Co. It was then pleaded that no specific agreement was executed between the parties and no specific business was to be carried out in the demised premises. The premises being of commercial nature were to be used for a commercial purpose only. M/s. Gulati Tea Company came into existence after some time of the taking of the premises on rent by Rakesh Kumar. The business is being run by Rakesh Kumar proprietor of M/s. Gulati Tea Company with the help of the said *Kabari* who is alleged to be the sub-tenant whereas he is not in exclusive possession of the premises. The learned Rent Controller found that the premises were let out to M/s. Gulati Tea Company who was the tenant and not to Rakesh Kumar. As regards the change of user, the learned Rent Controller, came to the conclusion that the same had not been proved on the record. The ground of subletting was also negatived. With these findings, the ejection application was dismissed. In appeal, the learned Appellate Authority reversed the finding of the Rent Controller on the question of change of user on the basis of the judgment, Exhibit 35/A, dated February 25, 1983, between the parties whereby the suit for the

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grant of the permanent injunction restraining the defendant M/s. Gulati Tea Company from using the premises, in dispute, for running the business of sweets and restaurant was decreed. According to the Appellate Authority, the finding in that behalf clearly operated as *res judicata* between the parties and that the tenant could not be allowed to urge that it had not changed the user of the premises. However, the finding of the Rent Controller on the question of sub-letting was maintained. Ultimately, the eviction order was passed. Dissatisfied with the same, the tenant has filed this revision petition in this Court.

(3) The learned counsel for the petitioner contended that the judgment. Exhibit P. 35/A has been wrongly relied upon by the Appellate Authority and, thus, the finding arrived at is vitiated. According to the learned counsel in that suit, the question involved was about the misuse of the premises and not the change of user thereof as contemplated under the East Punjab Rent Restriction Act (hereinafter called the Act). According to the learned counsel it is the domain of the Rent Controller to go into the matter of change of user and the misuse, if any, as held by the Civil Court, will not determine the controversy between the parties, in the proceedings under the Act. It was also argued that mis-user does not mean the change of user. The learned counsel also cited judgments to the effect that when the premises are let out for trade, i.e., *karobar*, etc., then the tenant is entitled to carry on any business therein and the change from one business to another did not amount to change of user. Reference was made to *Ram Lal v. Parshotam Lal* (1), *Santosh Kumar v. Pawan Kumar* (2), *Sha Nirobayala Bahadurmali v. Krishna Rao*, *Pitamber Lal v. Ram Lal* (4), and *Smt. Sanjiv Kumar v. M/s. Selection Furniture & Co.* (5), and *Ram Dayal v. Ram Charan Dass* (6). On the other hand, the learned counsel for the respondent submitted that the judgment of the Civil Court between the parties, Exhibit P. 35/A, operated as an estoppel between them wherein it has been held that the premises were let out

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(1) 1977 (2) R.L.R. 686.

(2) 1982 (1) R.C.R. 726.

(3) 1982 (2) R.C.R. 147.

(4) 1984 (2) R.L.R. 491.

(5) 1984 (1) I.L.R. 388.

(6) 1984 (1) R.L.R. 606.

to the defendant for running the business of tea leaves. The tenant had started the sweets and restaurant business therein which amounted to the misuse of the premises and contravened the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules framed thereunder. Thus, according to the learned counsel, the finding of the Appellate Authority was unassailable. In support of this contention, reliance was placed on *Sailendra Narayan v. State of Orissa* (7), and *Lal Chand v. Radha Kishan* (8).

(4) I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record. It is not disputed that the site on which the building, in dispute, was raised was allotted to the landlord under the Chandigarh (Sale of Sites and Buildings) Rules, 1960, as is evident from the document, Exhibit P. 18. It was allotted as a commercial site. According to clause 16 thereof, the site and the building erected thereon shall be used only for the purpose of general trade for which it had been leased. Under Part A to the Schedule framed under rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960, the items which include "general trade" are enumerated. In Part C to the said Schedule, items which include "special trade" are enumerated. Item No. 7 thereof is 'Halwai shops' and item No. 9 is the 'kabari' business. Thus, from a perusal of the said Schedule, it is evident that the business of 'Halwai shops' is not included under the "general trade" while it comes under the "special trade". When the tenant started using the premises for doing Halwai business, he was served with the notice by the Estate Office as to why the premises may not be resumed because the terms of the lease thereof were violated. Immediately thereafter, the landlord filed the writ,—*vide* plaint, Exhibit P. 34, dated April 16, 1982. It was the suit for the grant of the mandatory injunction restraining the defendant from using the premises, in dispute, for running the business of sweets and restaurant. In paragraph 4 of the plaint, it was specifically pleaded that the premises were let out for the purpose of selling tea leaves only and that the same were not to be used for any other purpose. In paragraph 6 thereof, it was pleaded that the suit, according to the rules and regulations was meant for the purpose of general trade only and the business of sweets and restaurant could not be done in the premises, in question. The site was liable

(7) 1956 S. C. 346.

(8) A.I.R. 1977 S.C. 789.

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to be resumed under the provisions of law. In the written statement filed on behalf of the defendant—tenant, copy, Exhibit P. 35, paragraph 6 of the plaint was admitted in the following terms,—

“Para No. 6 of the plaint as alleged is not correct. The defendant is using the premises according to the rules and regulations made under the Capital of Punjab (Development and Regulation) Act, 1952 therefore, the question of resumption of the site does not arise.”

During the trial when the case was fixed for the evidence of the defendant, he disappeared and allowed the *ex parte* decree to be passed against him. In the judgment, Exhibit P. 35/A, the trial court found that the evidence on record proves that the premises in dispute were leased out to the defendant for running the business of tea leaves but the defendant has started running sweet shop and restaurant therein which amounts to misuser of the premises and contravention of the provisions of Capital of Punjab (Development and Regulation) Act, 1952 and the rules framed thereunder. Thus, ultimately, the plaintiff's suit was decreed to the extent that the plaintiff was entitled to the decree for the grant of the permanent injunction restraining the defendant from using the demised premises for the purposes of running the business of sweets and restaurant. Admittedly, that is a judgment between the parties. In view of the said judgment, it could not be successfully argued by the learned counsel for the tenant that there was no change of user. Even if it be assumed that the premises were let out for commercial purposes, even then the plaintiff could not use them for a purpose which was not provided under Part A to the Schedule framed under rule 9 of the Chandigarh (Sale of Site and Buildings) Rules, 1960. As already observed in the earlier part of his judgment, in Part C to the said Schedule, items which include “special trade” are enumerated. The business of ‘Halwai’ is included under the head “special trade” and not under the “general trade”. Admittedly, the site was allotted for commercial purposes of general trade and not for special trade. It was on that ground that the suit of the plaintiff was decreed. Therein, the defendant was found to be misusing the premises. In view of the above, it could not be successfully argued that the parties agreed to any terms which violated the said rules. Thus, the commercial purposes for which the premises were let out will be the ones which are enumerated in Part A to the Schedule framed under rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. No party could enter into an

agreement in violation of the said rules. It was on that account that the defendant voluntarily suffered the decree against himself in the civil suit filed by the plaintiff restraining him from using the premises, in dispute for running the business of sweets and restaurant. In case the defendant-tenant was of the view that it was no violation of the rules, nor it was a misuse of the premises, then, he should have contested the suit and got a finding in his favour in that behalf. Having suffered a decree against himself, the judgment therein clearly operates as an estoppel as held by the Supreme Court in *Sailendra Narayan's case* (supra). It was held therein,—

“A judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case.”

Not only that, the principle was again reiterated in *Lal Chand's case* (supra). In the said case in paragraph 19 of the Judgment the Supreme Court *inter alia* observed,—

“Section 11 (Code of Civil Procedure), it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.”

Thus, taking into consideration all the facts and circumstances of the case and the proceedings in the earlier suit, it is amply proved on the record that the tenant has changed the user of the premises. Primarily, the premises were let out to M/s. Gulati Tea Co., for running the tea leaves business and in case it be assumed that in the absence of any rent note, the premises were let out for commercial purposes, even then, the premises, could be used only for the purposes

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enumerated in Part A to the Schedule framed under rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. As observed earlier, the running of the sweets shop is not included thereunder. It is specifically included under "special trade" enumerated under Part C to the said Schedule. Thus, the tenant has used the premises for a purpose for which they could not be utilised by him. In the written statement filed by him in the civil suit, he admitted in paragraph 6 of the written statement, reproduced above, that he was using the premises according to the rules and regulations made under the Capital of Punjab (Development and Regulation) Act, 1952. This plea raised by him, was negatived by the civil Court and it was held that he was using the premises, in contravention of the said rules and, therefore, the decree for the grant of the permanent injunction was passed against him. The judgments relied upon by the learned counsel for the petitioner are clearly distinguishable and have no relevancy to the facts of the present case.

5. The learned counsel for the respondents also challenged the findings of the authorities below on the question of subletting. However, in view of the finding on the question of change of user, it need not be gone into.

6. Consequently, 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, and the advance rent for three months, are deposited with the Rent Controller within fifteen days along with an undertaking, in writing, that after the expiry of the said period of three months, it will vacate the premises and hand over their vacant possession to the landlords.

N.K.S.

Before : I. S. Tiwana, J.

GRAM PANCHAYAT,—Petitioner.

versus

ADDITIONAL COMMISSIONER, FEROZEPUR and others,—Respondents.

Civil Writ Petition No. 3622 of 1981.

February 25, 1986.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 10-A—Landowners voluntarily agreeing to exchange their land with that of the panchayat—All formalities regarding exchange completed—Such landowners subsequently applying under*