

Banwari Lal v. Iqbal Singh (R. N. Mittal, J.)

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determining the quantum of value of the building resumed; and

- (iii) that since the petitioners had not been afforded an opportunity of hearing in regard to the quantum of compensation for the resumed building, we direct the respondents to afford an opportunity of hearing to the petitioners in regard to the assessment of the quantum of compensation for the resumed building and thereafter qualify the compensation for the said building."

The petition stands disposed of accordingly with no order as to costs.

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*Before Rajendra Nath Mittal, J.*

BANWARI LAL,—Petitioner.

*versus*

IQBAL SINGH,—Respondent.

Civil Revision No. 2274 of 1979.

April 23, 1980.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (ii) (b)—Landlord letting out building for use as 'general and provision stores'—Tenant using the same for hardware goods—Such tenant—Whether liable to be ejected—Change of user—Whether should be such so as to change the nature of the building.*

*Held*, that the words 'general and provision stores' show that the tenant could carry on the business of provisions and other things of daily house-hold use and by no stretch of imagination it will include the business of hardware goods. Section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act 1949 provides that if the Controller after giving the tenant a reasonable opportunity against the application of ejection, is satisfied that the tenant has without the written consent of the landlord used the building for a purpose other than that for which it was leased, he may make an order directing the tenant to put the landlord in possession of the building. It is clear that if the building has been given by the landlord to the tenant for one purpose and it is used by the latter for another, the

Controller can order his ejection. It is not necessary that the change in user of the building should be such as to change the nature of the building. If the nature of the building remains the same, but it is put to a different use by the tenant than the one for which it was taken on lease an order of ejection can be passed on that ground. (Paras 5 and 6).

*Petition under section 15 (5) of the East Punjab Rent Restriction Act, 1949, for revision of the order of the Court of Shri A. L. Bahri, District Judge, Appellate Authority Under the Act No. III of 1949, Chandigarh, dated the 4th August, 1979, accepting the appeal and setting aside the order of the Court of Shri N. K. Bansal, Rent Controller, Chandigarh, dated 18th October, 1978, and ordering the ejection of the tenant-respondent from the premises in dispute within two months.*

H. L. Sibal, Sr. Advocate, with S. C. Sibal, and R. K. Mittal, Advocates, for the Petitioner.

B. S. Basu, Advocate, for J. S. Wasu, Advocate, for the Respondent.

#### JUDGMENT

(1) This revision petition has been filed under Section 15 of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act) by Banwari Lal, tenant, against the order of the Appellate Authority, Chandigarh, dated August 4, 1979.

(2) Briefly, the facts are that Iqbal Singh is the owner of shop-cum-flat No. 19, Sector 9-D, Chandigarh. He gave it on lease to the tenant on the monthly rent of Rs. 300,—*vide* rent deed dated November 8, 1963, Exhibit A, 1, wherein one of the conditions was that the lessee would use the shop-portion of the building for general and provision stores and not for any other business. He filed an application for ejection of the tenant *inter-alia* on the ground that the latter had changed the user of the shop-portion and had started the business of marble, marble chips, stone etc. The other grounds taken by the landlord do not survive. The application for ejection was contested by the respondent who admitted that the shop-portion was being used by him for the aforesaid business. He, however, denied that it was a change of user of the shop-portion.

(3) The learned Rent Controller held that there was no change of user by the tenant. The other issues were also decided by him

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against the landlord. Consequently, he dismissed the application for ejectment. The landlord went up in appeal before the appellate Authority who held that the tenant had changed the user of the shop-portion. Consequently, he accepted the appeal and ordered ejectment of the tenant. He has come up in revision against that order to this Court.

(4) It is contended by the learned counsel for the petitioner that the shop-portion of the building was taken by the petitioner for carrying on business of general and provision stores in it and the other portion for residence. He argues that as the building was not solely used for non-residential purposes, therefore, it was to be considered as a residential building. He further argues that in case some other business is started by the petitioner in the shop-portion the building remains a non-residential building. He urges that in the aforesaid situation, the Appellate Authority could not order ejectment of the petitioner. He also urges that admittedly the petitioner could use the shop-portion for general and provision stores. According to him, the word 'general' is wide enough to include the business of stone, marble, marble chips etc.

(5) I have heard the learned counsel at a considerable length. It is not disputed that the building taken on lease by the petitioner is a shop-cum-flat which is partly used for residence and partly for business. It is admitted that the shop-cum-flat was taken by the petitioner on lease,—*vide* rent note dated November 8, 1963 (Exhibit A. 1. Clause 9 of the rent note provided that the shop-portion of the building shall be used by the tenant for general and provision stores. The said clause reads as follows:—

“The lessee shall use the shop portion of the said building for general and Provision Stores and they shall not use the same for any other business except that mentioned above.”

From a reading of the aforesaid clause it is apparent that the shop-portion of the demised premises was to be used for general and provision stores. When it was taken on lease by the petitioner, he opened a general and provision store in it but later he changed the business and started dealing in marble stone, marble chips,

*etcetera*. It is, therefore, to be seen what the words 'General & Provision Stores' mean. The word 'Provision' has been defined in Webster's Third New International Dictionary as—

"a stock of needed materials or supplies, esp: a stock of food." and in Shorter Oxford English Dictionary, as—

"A supply of food; now chiefly pl. supplies of food, victuals, eatables and drinkable."

The 'Store' means, a place where merchandise is kept for sale. Therefore, a 'Provision Store' is a place where a stock of eatables and drinkables are kept for sale. The word 'General' is not to be used in isolation to the words 'Provision Stores'. Rather, the former will take its colour from the latter. It also appears that the intention of the parties was the same. Otherwise, they could use the words 'General Stores' instead of 'General & Provision Stores'. This conclusion is also evident from the statement of Sham Lal, son and attorney of the petitioner. He stated that they gave up the General & Provision Store and started business of Marble. I am, therefore, of the view that the words, 'General & Provision Stores' show that the petitioner could carry on the business of provisions and other things of daily house-hold use. By no stretch of imagination it will include business of Hardware goods.

(6) Section 13(2)(ii)(b) of the Act provides that if the Controller after giving the tenant a reasonable opportunity of showing cause against the application of ejection, is satisfied that the tenant has without the written consent of the landlord used the building for a purpose other than that for which it was leased, he may make an order directing the tenant to put the landlord in possession of the building. From a reading of the aforesaid section it is clear that if the building has been given by the landlord to the tenant for one purpose and it is used by the latter for another, the Controller can order his ejection. It is not necessary that the change in user of the building should be such as to change the nature of the building. If the nature of the building remains the same, but it is put to a different use by the tenant, than the one for which it was taken on lease, an order of ejection can be passed on that ground. I, therefore, do not find any substance in the contention of Mr Sibal that the building in spite of change of user

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of the shop-portion remains a non-residential one and therefore, order of ejectment can not be passed against the petitioner.

(7) The learned counsel has made reference to Ramshwar Dass v. Rishi Parkash and another (1), Dwarka Das Saraf and another v. Dwarka Prasad (2), and Sant Ram v. Rajinder Lal and others (3), It is not necessary to deal with the aforesaid cases in detail. Suffice it to observe that all these cases are distinguishable and the learned counsel for the petitioner cannot derive any benefit from the observations therein.

(8) After taking into consideration all the aforesaid reasons, I am of the view that there is no merit in the revision petition. Consequently, it is dismissed with no order as to costs. The petitioner is, however, given three months' time to vacate the premises, subject to his paying all arrears of rent within a period of three weeks. He shall also be liable to pay future rent of each month in advance by 15th of that month. In case he fails to pay the rent as ordered above, he shall be liable to ejectment forthwith.

S.C.K.

*Before B. S. Dhillon and G. C. Mital, JJ.*

PARADISE PRINTERS and others,—*Petitioners.*

*versus*

UNION TERRITORY, CHANDIGARH and others,—*Respondents.*

*Civil Writ No. 3512 of 1979*

April 25, 1980.

*Constitution of India 1950—Article 14—Proposal of the Administration to allot plots advertised in the press—Applications invited—Applicants depositing part-payment of purchase price as required—Number of applicants in excess of the number of plots available—Lots drawn for allotment but no allotment made—Policy of allotment revised to carve out smaller plots for allotment—Price of the new*

- (1) 1964 Current Law Journal (Pb.) 513.
- (2) 1973 Rent Control Journal 36.
- (3) A.I.R. 1978 S.C. 1601.