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Pandit, J.

Punjab Government, amending the earlier notification No. 10665-LB-58/957, dated 19th January, 1957, had not been brought to the notice of the learned District Judge and the effect of that omission was that the operation of the five years' exemption had to be computed from the date of the completion of the buildings and not from the date of the enforcement of the first notification dated 19th January, 1957. The result of the subsequent notification, therefore, was that the exemption of the shops in dispute from the provisions of the Act came to an end in December, 1959 and not 19th January, 1962 as held by him in his order dated 5th December, 1961. According to the learned District Judge, this was a mistake of law patent on the face of the record and he thus reviewed his previous orders dated 5th December, 1961. This was a valid ground for review under the provisions of Order 47, rule 1, Civil Procedure Code (see in this connection a Bench decision of the Lahore High Court consisting of Harries, C.J., and Din Mohammad, J., in *Kehar Singh* v. *Attar Singh and others* (7), and the decision of the Federal Court in *Sir Hari Shankar Pal and another* v. *Anath Nath Mitter and others* (8).

In view of what I have said above, these revision petitions and the execution second appeals fail and are dismissed. In the peculiar circumstances of these cases, however, I will leave the parties to bear their own costs in this Court.

B. R. T.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

RAMZANI,—*Petitioner*

versus

DHANU RAM,—*Respondent*

Civil Revision No. 483 of 1963.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 2(d) and (g)—Residential building —Whether can be held to have been converted into 'non-residential building' when the tenant, in addition to his residence, starts some business therein.

(7) A.I.R. 1944 Lahore 442.
(8) A.I.R. 1949 F.C. 106.

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April, 30th.

Held, that the definitions of "residential building" and "non-residential building" in section 2 of the East Punjab Urban Rent Restriction Act, 1949 clearly show that whereas a "non-residential building" may be converted into a "residential building" by taking up residence in it which is not merely for the purpose of guarding it, a "residential building" cannot be held to cease to be one merely by doing something on it in addition to using it for a residential purpose. The Act contemplates three distinct categories of buildings, namely "non-residential building", "residential building" and "scheduled building". Merely because in a residential building, in addition to residence, some business is also done, may not, for that reason alone, convert it either into a "non-residential building" or a "scheduled building", unless the other requisites of "scheduled building" are also satisfied. It is, therefore, obvious that unless the tenant is proved to have stopped using the house as a residential building, it canot be deemed to have been converted into a non-residential building.

Petition under section 15(5) *of Punjab Act III of* 1949 *as amended by Act* 29 *of* 1956, *for revision of the order of Shri Manmohan Singh Gujral, District Judge, Rohtak, Camp Gurgaon, dated the* 1*st May,* 1963, *reversing that of the Rent Controller, Palwal, dated the* 25*th May,* 1962, *and dismissing the landlord's application for eviction.*

H. L. SARIN, ADVOCATE, for the Petitioner.

ROOP CHAND CHAUDHRY, ADVOCATE, for the Respondent.

JUDGMENT.

Dua, J.

DUA, J.—This is a landlord's revision under section 15(5) of the East Punjab Urban Rent Restriction Act from an order of the learned District Judge, Rohtak, Camp Gurgaon, allowing the tenant's appeal from the order of the Rent Controller, Palwal, and rejecting the landlord's application for eviction.

The application for ejectment contained a number of grounds which gave rise to the following issues:—

(1) Is the tenant liable to eviction on account of his personal requirement ?

(2) Has the tenant sublet the building as alleged ?

(3) Has he impaired the value or utility of the building ?

(4) Has he caused change in user as alleged ?

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(4-A) Is the application barred by the principles of *res judicata* ?

The Rent Controller decided all the issues against the landlord except issue No. 4 under which he held that the respondent had started a business on the premises and as such was liable to be evicted from the premises.

On appeal, the learned District Judge acting as Appellate Authority held the learned Rent Controller's approach to be erroneous because before the tenant could be evicted it had to be established that originally the premises had been given for residential purposes alone and that the tenant had brought about the change in user. After considering the pleadings as a whole the learned District Judge felt the necessity of taking further evidence to clarify the position. On a consideration of the entire evidence including additional evidence led before him, he expressed his opinion thus:—

> "Any way the fact remains that no evidence could be produced to show as to on what terms originally the premises were allotted to the appellant. As the evidence stands, there is no evidence to show that in fact the premises had been allotted to the tenant by the Custodian for residence alone. No doubt the tenant did not specifically deny this, but as it was never put to him when he appeared in the witness box and as in the written statement he had also stated that no ground existed for his eviction, the absence of specific denial to paragraph 3(vi) would not be enough to hold that the landlord had succeeded in proving that the premises were originally leased out to the tenant for residence alone. The burden of proving this lay on the landlord and as he has failed to prove it, this issue will have to be found against the landlord".

Before the Appellate Authority, the landlord also assailed the finding on issue No. 4-A and disagreed with the Rent Controller that the ground of personal necessity was not available to the landlord. However, after going through

the evidence, he concluded that the accommodation available with the landlord could not be held to be insufficient for his residence.

On revision, the learned counsel for the landlord has very eloquently submitted that the learned District Judge is wholly wrong in holding that there has been no change in the user of the premises as alleged. It having not been held that there was no factory started in the building in question, the order of ejectment deserved to be passed because initially the premises had been given for residential purposes. In my opinion, the submission is not well-founded. I have, as desired by the learned counsel for the petitioner, looked at the application for ejectment, in which several grounds have been taken in paragraph 3. Sub-paragraph (vi) to which pointed reference has been made states that the house had been given to the respondent for residence but he has put up a factory in it. In the reply, it has been repeated that the respondent along with his family is living in the house and has also improved it by spending money out of his own pocket. I have also perused the other parts of the record to which reference has been made. Now section 2(g) of the East Punjab Urban Rent Restriction Act defines "residential building" to mean any building which is not a non-residential building. "Non-residential building" has in section 2(d) been defined to mean a building which is 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" into a "residential building". These two definitions appear clearly to show that whereas a "non-residential building" may be converted into a "residential building" by taking up residence in it which is not merely for the purpose of guarding it, a "residential building" cannot be held to cease to be one merely by doing something on it in addition to using it for a residential purpose. My attention has not been drawn at the bar to any decided case in which a residential building was ever treated to have been converted into a non-residential building merely by doing some business in it so long as it is also used as a residential building. The Act apparently contemplates three distinct categories, namely "non-residential building", "residential building" and "scheduled building". Merely because in a

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residential building in addition to residence, some business is also done may not, for that reason alone, convert it either into a "non-residential building" or a "scheduled building," unless the other requisites of "scheduled building" are also satisfied. Before me, no attempt has been made to bring the premises in dispute within the category of "scheduled building". Indeed, if the tenant also resides in the building, it would necessarily exclude it from the purview of "non-residential building". From this point of view, it is obvious that unless the tenant is proved to have stopped using the house as a residential building, it cannot be deemed to be converted into a non-residential building. The decision of the learned District Judge, therefore, seems to be not liable to challenge on this ground. It has been complained that the learned District Judge has not given any positive finding that the tenant is still residing there. It appears to me that this was not disputed and has perhaps been the case of the parties throughout. In any event, I have not been shown any convincing evidence for the purpose of coming to a conclusion that the tenant has stopped living in the house in question, and the onus being on the landlord to prove these ingredients, I have no option but to uphold the conclusion of the learned District Judge on this point.

Nothing has been said in regard to the personal requirement. The result, therefore, is that this revision fails and is hereby dismissed but without costs.

R.S.

FULL BENCH

Before D. Falshaw, C.J., Inder Dev Dua and Harbans Singh, JJ.

BACHAN SINGH AND OTHERS,—*Appellants*

versus

BHOPAL SINGH AND OTHERS,—*Respondents*

1965

May, 4th.

Regular Second Appeal No. 1726 of 1961.

Punjab Pre-emption Act (I *of* 1913)—*Pre-emptor joining with him a stranger having no right of pre-emption as co-plaintiff in the suit—Whether forfeits his right to decree—Pre-emptor executing an*