

Before V.S. Aggarwal, J

NARINDER KAUR SAHI AND ANOTHER,—*Petitioners*

versus

MEHNGA RAM,—*Respondent*

C.R. No. 1763 of 1981
& C.M. No. 5651 of 1999

2nd November, 1999

Code of Civil Procedure, 1908—S. 115—East Punjab Urban Rent Restriction Act, 1949—S. 13(2) (ii) (b)—Change of user—Eviction of tenant sought on grounds of change of user—Premises rented for running of business connected with general trade but tenant running a restaurant & halwai shop therein—Property rented out in 1973—Right from inception of tenancy halwai sweet shop in existence—Would not amount to change of user.

Held that it is admitted that Piara Singh had gone to the Estate Office before renting the premises to enquire as to what is the general trade. Right from the first date, sweet shop is being run there. He was told that running of the sweet shop is a general trade business. Therefore, it is clear that it was an agreement between the parties that when they use the expression general trade it included running of the sweet shop. It cannot, therefore, be termed that there is any change of user after the commencement of this Act. The findings, therefore, in this regard recorded requires no interference.

(Para 20)

East Punjab Urban Rent Restriction Act, 1949—S. 13(2)(ii)(b)—Expression “for a purpose other than that for which it was leased”—Explained.

Held that for proper development of the city the laws and by-laws have to be enforced strictly. The law must take its own course. If the ground of eviction is not available, then it will not be made available by any Act which does not touch the contract between the parties. The expression “for a purpose other than that for which it was leased” obviously contemplate a contract between the parties. It would be appropriate that the Legislature intervenes and amends the Rent Act as applicable to Chandigarh and make available the ground of eviction

when the property is used contrary to the purpose of lease or conditions of the allotment letter imposed on the landlord. But so long as it is not done, if the contract between the parties which must prevail.

(Para 17)

Hemant Kumar, Advocate, and Madan Thakur, Advocate, *for the petitioners.*

M.L. Sarin, Senior Advocate with Ms. Hemani Sarin, Advocate, *for the respondent.*

JUDGMENT

V.S. Aggarwal, J.

(1) The present revision petition has been filed by Smt. Narinder Kaur Sahi and another, hereinafter described as "the petitioners" directed against the judgment of the learned Appellate Authority, Chandigarh, dated 1st May, 1981. By virtue of the impugned judgment, the learned Appellate Authority had set aside the order of eviction passed by the learned Rent Controller, Chandigarh and instead dismissed the application for eviction.

(2) The relevant facts are that the petitioner had filed an eviction petition against the respondent with respect to the property in dispute. It is stated to be a ground floor portion of SCO. No. 1022 Sector 22-B, Chandigarh. The same had been let to the respondent. The ground of eviction which survives and requires consideration has been asserted to be that the respondent in violation of the terms of the lease and also by contravention of rules under the Capital of Punjab (Development and Regulation) Act, 1952 had committed breach of the conditions. The respondent is using the building for a purpose other than it was let. The building was let for running of the business connected with general trade but the respondent had put the building for different use and has converted it into restaurant and a Halwai shop. This change of user was stated to have been effected after the commencement of the East Punjab Urban Rent Restriction Act, 1949 as applicable to Chandigarh, (for short "the Act").

(3) The respondent contested the petition for eviction. Preliminary objection was taken that the suit premises has since been resumed under the Capital of Punjab (Development & Regulation) Act, 1952. As a sequel to its resumption, it has become public premises in terms of the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It falls outside the provisions of the East Punjab Urban Rent Restriction Act, 1949. On the same fact, it was asserted that the

petitioner, thus, have ceased to be the landlords of the property and therefore, have no locus standi to file the present petition.

(4) On merits, it was admitted that the respondent is a tenant in the suit premises. It had been denied that the property has been resumed as a result of any act of the respondents. The suit premises were stated to be used for the purpose of running a sweet shop under the name and style of M/s Nirankari Sweets and Restaurant from the date of the creation of the tenancy. The same was the purpose of letting. It is, therefore, denied that the purpose of letting has since been changed.

(5) The learned Rent Controller framed the issues and recorded the evidence. With respect to the controversy as to whether the respondent had changed the user of the property, the learned Rent Controller held that, as per terms of lease, the property could only be used for a general business but the property, admittedly, was being used for a sweet shop. It was contrary to the terms of the lease and accordingly on the said ground an order of eviction was passed.

(6) The respondent preferred an appeal. The learned Appellate Authority concluded that it had been conceded before him that there is no prohibition under the rules to use the premises in dispute for a halwai shop (sweet shop). It had also been conceded that doing the business of Halwai has been recently excluded from the definition of general trade. But that would not change the purpose of letting. It was held that the property is being used for the purpose for which it was let. The appeal was allowed and the impugned order of the learned Rent Controller was set aside. Hence, the present revision petition.

(7) During the pendency of the present revision petition, an application has been filed for placing on record the allotment letter dated 9th April, 1970 and copy of the order dated 6th July, 1977 passed by the Chief Commissioner, Chandigarh. It has been pleaded that the petitioner is claiming eviction of the respondent on the ground of change of user for the reason that the shop was allotted to the petitioner for use of as general trade and was let out to the respondent for the said purpose alone but the respondent is using it for a sweet shop. As per terms of the allotment, the petitioner could only use the shop for a general trade. It was resumed on the ground that it was being used as a restaurant. The petitioner wanted to produce the allotment letter and the copy of the order passed by the Chief Commissioner, Chandigarh. Needless to state that the application had been opposed.

(8) It is a well settled principle of law that additional evidence can be allowed in terms of Order 41 Rule 27 of the Code of Civil Procedure

(for short "the Code") if the concerned party was prevented from producing the same by just and sufficient ground and secondly, if the Court requires it for pronouncement of the judgment. It is also not in controversy that strictly speaking Order 41 Rule 27 of the Code is not applicable but basic principle can still be attracted. All the same, the Court is aware of the fact that the basic duty of the Court is to adjudicate the rights of the parties effectively and if there is material evidence, the same can always be allowed provided there is no just ground for refusing the production of the same.

(9) Reliance on behalf of the petitioners was placed on the decision of this Court in the case of *Ravi Chand Mangla and others vs. Laxmi Narain* (1). It was held that when evidence to be produced is material to determine the real controversy between the parties, additional evidence can well be allowed. Delhi High Court in the case of *Smt. Dharma and others vs. Roop Ram* (2) also took the same view and concluded that additional evidence at revisional stage even can be allowed if the Court requires it for pronouncement of the judgment.

(10) In the present case, allotment letter is certainly a material piece of evidence which reflects on the merits of the case. Therefore, it is in the fitness of the things that it is allowed to be taken on the record because it helps in the pronouncement of the judgment. So would be the Order dated 6th July, 1977 passed by the Chief Commissioner, Chandigarh. To that extent, Civil Misc. No. 5651-CII of 1999 is allowed.

(11) It was urged on behalf of the respondent that the property has since been resumed and the petitioners had lost their right to be the landlord/owners of the property. Consequently, the eviction petition is not maintainable. It becomes unnecessary to go into the said controversy. The order dated 6th July, 1977 passed by the Chief Commissioner, Chandigarh, in this regard clinches the issue in favour of the petitioners. It clearly shows that the property has been restored to the petitioners to permit him to pursue his remedy before the Courts. As the position stands today, resumption order has been set aside, may be for a particular period. Once it is so, the very basis of the argument falls to the ground.

(12) Before proceeding further, some of the admitted facts can well be relisted. A rent note had been executed between the parties on 4th May, 1974. The same is Exhibit P—1. Besides settling the rent, it was agreed upon that the respondent shall strictly abide by the provisions of the Capital of Punjab (Development and Regulation) Act,

(1) 1985 Haryana Rent Reporter, 566

(2) 1985 (2) R.C.R. 525

1952 and shall not use the premises for the purposes other than the general trade. Clauses (12) and (13) of the Rent Note read as under :—

“12 That the tenant shall strictly abide by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder.

13. That the premises under tenancy shall not be used for the purpose other than the *general* trade.”

(13) A copy of the allotment letter dated 9th April, 1970 pertaining to the shop in question has also been placed on the record. It indicates that, as per condition No. 17, the suit property could only be used for general trade. The said clause reads as under :—

“17. The site and the building erected thereon shall be used only for the purposes for which it is actually sold i.e. *General*”.

(14) The Capital of Punjab (Development and Regulation) Act, 1952 was enacted in the year 1952. The same was enacted because a new Capital for Punjab was being built in Chandigarh. It was felt necessary to vest the State Government with legal authority to regulate the sale of building sites and to promulgate building rules on the lines of Municipal Bye-laws. It was so done for proper development of the capital of Punjab. The Punjab Capital (Development and Regulation) Building Rules, 1952, were framed. These were amended in the year 1975 whereby the business of sweets was excluded from the definition of general trade. But the said amendment in the rules came much after the property in question had been let.

(15) At this stage, it would appropriate to notice the relevant provisions under the East Punjab Urban Rent Restriction Act, 1949, as applicable to Union Territory, Chandigarh. The relevant ground of eviction is contemplated under section 13(2) (ii) (b) of the Act and reads as under :—

“13(2) 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) xx xx xx xx

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

(a) xx xx xx xx

(b) used the building or rented land for a purpose other than for which it was leased, or

xx

xx

xx

xx

(16) It is abundantly clear from the relevant provisions pertaining to the ground of eviction referred to above that it would only be applicable if after the commencement of the Act the building is used for a purpose other than it was leased. In other words, if the same is being used as per the original purpose of letting, in that event it will not be a ground of eviction if there is subsequent change of law and the rules in other enactments referred to above.

(17) It is true that for proper development of the city the laws and bye-laws have to be enforced strictly. The law must take its own course. If the ground of eviction is not available, then it will not be made available by any Act which does not touch the contract between the parties. The expression "for a purpose other than that for which it was leased" obviously contemplate a contract between the parties. It would be appropriate that the Legislature intervenes and amends the Rent Act as applicable to Chandigarh and make available the ground of eviction when the property is used contrary to the purpose of lease or conditions of the allotment letter imposed on the landlord. But so long as it is not done, it the contract between the parties which must prevail.

(18) Reliance was placed on the decision of the Supreme Court in the case of *Mohan Lal vs. Jai Bhagwan*(3). In the cited case, the property was let for running of a English Liquor Vend. The tenant stopped using the same and he started using it for general merchandise. Supreme Court held that this was not a change of user which affects the rights of the landlord. In the present case, as would be noticed hereinafter, the cited decision has no application. This is for the reason that the purpose of letting herein has not been changed.

(19) The attention of the Court was further drawn towards the decision of the Supreme Court in the case of *Durga Seed Farms vs. Raj Kumari Chadha*(4). Herein, the facts were that the Chandigarh Administration had leased the land to the respondent who constructed a building for use as a showroom. A tenant was inducted for the purpose of running a showroom-cum-office. He made unauthorised construction and put up some machines. It was held that it would expose the landlord to the peril of resumption. The changes so made had materially

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

(4) (1996) 11 S.C.C. 715

impaired the value and utility of the building. The facts clearly indicate that this was confined to a different ground of eviction and, therefore, it is totally distinguishable because it is not a case of change of user. For the same reason, Full Bench decision of this Court in the case of *Brij Mohan vs. The Chief Administrator, Union Territory, Chandigarh and others* (5) must be held to be distinguishable. The Full Bench was concerned with the question as to whether the tenant had a right of being heard before an order of resumption is passed and other co-related facts. The present ground of eviction was not the subject matter of controversy before the Full Bench. In that event, attention of the Court was drawn towards another decision of this Court in the case of *Raj Rani and others vs. Santosh Awasthi* (6) Herein also, eviction petition had been filed. One of the grounds of eviction was that the property was let to the tenant for being used as a residence. The tenant had started using it for commercial purpose. It was held that the tenant had changed the user of the property. But herein the position is totally different. Landlord Piara Singh appeared as PW-1. He stated that the property is being misused. During cross-examination, he made a statement which reads as under :—

“.....I had too seen the board of Nirankari Sweets and Restaurant as displayed by the respondent. Voluntarily, I had objected. It is correct that before Ex. P.1 was executed other rent notes were also executed, wherein the purpose of user was shown as general trade. The premises was let out in June, 1973. It is correct that Nirankari Sweets and Restaurant was working at the rented premises but I was told it is general business. I do not remember as to when did I check from the Estate Officer about general trade. I do not remember even the name of the officer whom I had met.”

(20) A perusal of the abovesaid statement clearly reveals that it is admitted that Piara Singh had gone to the Estate Office before renting the premises to enquire as to what is the general trade. Right from the first date, sweet shop is being run there. He was told that running of the Sweet Shop is a general trade business. Therefore, it is clear that it was an agreement between the parties that when they use the expression general trade it included running of the sweet shop. It cannot, therefore, be termed that there is any change of user after the commencement of this Act. The findings, therefore, in this regard recorded requires no interference.

(5) A.I.R. 1980 P & H. 236

(6) 1996(1) R.C.R. 467

(21) For these reasons, the revision petition being without merit must fail and accordingly dismissed.

J.S.T.

Before N.K. Sodhi, Swatanter Kumar & N. K. Sud, JJ

PRITAM DASS NAGPAL,—*Petitioner*

versus

STATE OF HARYANA,—*Respondent*

C.W.P. No. 6266 of 1997

14th July, 2000

Constitution of India, 1950—Art. 226—Punjab Civil Service Rules, Vol. I, Part I—Rl. 3.19(1)—Govt. passing order of promotion of the petitioner with effect from the date he takes over as such—Order could not reach the petitioner till he retired from service on attaining the age of superannuation—Since the petitioner could not assume charge of promotional post before retirement the orders did not become effective or operative—Petitioner not entitled to retiral benefits of the promotional post—Writ dismissed.

Held that the petitioner was promoted as Senior Accounts officer with effect from the date he was to take over as such. Thus, his appointment was to become effective with effect from the date when he was to assume charge of the promoted post. Since he did not assume charge of that post he was never appointed to the promotional post and the order of promotion qua him did not become effective or operative and he must, therefore, be held to have retired as an Accounts officer and consequently he is entitled to the retiral benefits attached to the post from which he retired. He cannot claim benefits attached to the promotional post. Thus, there is no merit in the writ petition and the same stands dismissed.

(Para 4)

S.D. Sharma, Senior Advocate with Surinder Sharma, Advocate
for the petitioner

N.K. Joshi, AAG Haryana *for the respondent*