

cause no prejudice to the accused in defending himself without producing any social hazard.

So far as the late supply of a copy of the report is concerned, the delay may consist of a day or a year. Therefore, no hard and fast rule can be laid down in a matter of this type. Delay of a day is not likely to cause prejudice whereas the delay of a year may cause an accused some prejudice in defending himself. However, in a given case probability cannot be ruled out that whereas delay of a year may not be fatal, delay of a day may produce fatality for the prosecution case. Therefore, it all depends upon the fact of each case."

4. I thus take this view that in the present case non-compliance of rule 9(j) having caused no prejudice to the petitioner his conviction and sentence are not liable to be set aside. The revision is consequently dismissed.

N.K.S.

Before J. V. Gupta, J.

KAMAL ARORA,—Petitioner.

versus

AMAR SINGH and another,—Respondents.

Civil Revision No. 1161 of 1979.

February 28, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(a), (d), (g) & 11 and 13(2) (ii) (b)—Premises let out initially for residence—Landlord acquiescing in the subsequent change of user as a non-residential building—Such change in user—Whether converts the premises into a non-residential building—Ground of personal necessity—Whether available to the landlord to seek ejectment.

Held, that if the definition of the words "building" and "non-residential building" and the provisions of section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949 are read together, it is quite clear that the nature of the building cannot be determined

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by its use at the time of the application of ejectment. Its user at that time will be relevant for a limited purpose. The tenant may not be liable to ejectment on the ground that he has used the building for a purpose other than that for which it was leased if the landlord has consented to the same in writing. Under any circumstances, it cannot change the nature of the building from residential to non-residential without the prior permission of the Rent Controller under section 11 of the Act. Moreover, under section 11 of the Act permission is required to convert a residential building into non-residential one and not *vice-versa*. From this the intention of the Legislature appears to be that if the premises are admittedly residential one, for all intents and purposes the same cannot be converted into non-residential building without the prior permission of the Rent Controller and if this provision is violated, the penalty is provided under section 19 of the Act. Thus, where the premises are initially let out for residence and the landlord subsequently acquiesces in the change of the user as a non-residential building, such change in user by itself does not convert the premises into non-residential building so as to deprive the landlord of the ground of personal necessity to seek ejectment of his tenant. (Para 9).

Petition under section 15(6) of the Rent Act, for revision of the order of Shri Amrit Lal Bahri, Appellate Authority. Under the East Punjab Urban Rent Restriction Act, Chandigarh, dated 25th April, 1979, reversing that of Shri N. K. Bansal, Rent Controller, Chandigarh, dated 26th September, 1978, accepting the appeal with costs, and ordering that the ejectment of the tenant-respondent from the premises in dispute is passed. The tenant is allowed two months time to vacate and deliver the possession of the house in dispute to the landlords....

H. L. Sibal, Senior Advocate with G. C. Garg, and Arun Jain, Advocates, for the Petitioner.

Maluk Singh & Gurdial Singh, Advocates, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) The tenant-petitioner has filed this revision against the order of the Appellate Authority, Chandigarh, dated 25th April, 1979, whereby the order of the Rent Controller, dismissing the application for ejectment has been set aside and the tenant has been directed to vacate the premises.

(2) Sarvshri Amar Singh and Jagdish Singh claimed to be owners and landlords of House No. 193, Sector 19-A, situated in

Chandigarh. This house was let out to Kamal Arora at monthly rent of Rs. 550/- exclusive of water and electricity charges. Earlier, the house was given to Avinash Arora, brother of Kamal Arora, tenant-petitioner for residential purposes. The ejection is being claimed on the ground that the house was required by the landlords for their own use and occupation and secondly that the house was let out only for residential purposes but the tenant was running school and college in the tenanted premises and therefore, the building has been used for a purpose other than that for which it was leased. The application was contested by the tenant. In the written statement it was denied for want of knowledge that the landlords were the owners of the house. However, it was admitted that they had let out the premises at a monthly rental rate of Rs. 550/- exclusive of water and electricity charges but it was rented for non-residential purposes i.e. for running of school and college. It was further pleaded that he had been using the same for such non-residential purpose by running an institution known as Tagore Niketan College from the very beginning. It was further pleaded that since the building was let out for non-residential purposes and the same was being used for such purposes, the ground of personal necessity was not available to the landlords for eviction of the tenant. However, on the pleadings of the parties, the Rent Controller framed the following issues :—

1. Whether the premises are bona fide required for the personal use and occupation of the petitioner ? OPA
2. Whether the premises are being used for a purpose other than for which they were leased out ? OPA
3. Whether the tenancy has been determined by a valid notice ? OPA
4. Relief.

(3) It was held by the Rent Controller that the premises were let out for a non-residential purpose and therefore, the tenant did not change its use. On the ground of bona fide requirements for personal occupation the finding was against the landlords and consequently the application was dismissed. In appeal filed on behalf of the landlords, the learned Appellate Authority came to the conclusion that the house in dispute was let out to Shri Kamal Arora, for residence initially. This finding has been arrived at by

the Appellate Authority after discussing the evidence on the record but it has been further held that from the receipts produced on the record by the tenant it is clear that the premises were being used for non-residential purposes with the consent of the landlords. Thus, it has been observed that "It can safely be said that they had acquiesced in the user of premises as such. These receipts would amount to consent in writing on the part of the landlord for such a user. **On this ground the tenant will not be liable to be ejected under S. 13(2)(ii)(b) of the Act.**" Since the premises were held to be **rented out initially for residence**, the same was held to be a residential building and not a non-residential building and consequently the landlords were entitled to seek ejection on the bona fide requirement for their personal use and occupation. After discussing the evidence on the record, on this point, the learned Appellate Authority came to the conclusion that "Obviously three rooms for a family of 11 members would be highly insufficient. I hold accordingly. The landlords have thus succeeded in establishing the ground of personal necessity. The landlords bona fide require the premises for their own use and occupation." Feeling aggrieved against this order, the tenant has come up in revision.

(4) Learned counsel for the tenant vehemently argued that (i) Earlier tenancy in favour of Avinash Arora from 1970 to September 1973, is not at all relevant for the purposes of the present dispute and therefore, no inference could be drawn against the petitioner from the fact that it was given for residential purposes to Avinash Arora; (ii) from the very beginning of the tenancy, the premises in dispute were rented for non-residential purposes and therefore, the premises cannot be termed as residential building; (iii) in any case, even if it was given for residence to Kamal Arora in October 1973, the rented premises are being used for a non-residential purpose with the consent of the landlord and since then it has ceased to be a residential building; and (iv) that whole evidence on the record has not been considered by the Appellate Authority in order to come to the conclusion whether it was let out for residential purposes or not.

(5) I have gone through the evidence on the file with the help of the learned counsel for the parties and I am of the view that this finding of the Appellate Authority that the house in dispute was let out to Shri Kamal Arora for residence initially is

based on evidence and thus is not liable to be interfered within the exercise of revisional jurisdiction.

(6) The main controversy between the parties in this case is that if the landlords allowed the tenant to use the rented premises for running a school, whether the building still continues to remain a residential building or its nature is changed from the residential building to a non-residential building. Of course, if it is held that the house in dispute was initially let out to Shri Kamal Arora for residence, it may be said that the change of user has been made subsequently and therefore, the tenant by his own conduct cannot change the nature of the building. However, the finding of the Appellate Authority that the landlords had acquiesced in the user of the premises as such appears to be correct. If this finding of the Appellate Authority is accepted, the question that still remains to be answered is whether the premises which are admittedly now being used for running a school continues to remain a residential building or will be deemed to be a non-residential building for the purposes of the Act, i.e., of the East Punjab Urban Rent Restriction Act. Learned counsel for the tenant has referred to the definition of the term 'non-residential building' as given in Section 2 (d) of the Act which reads thus :—

“Non-residential building” means a building 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” to a “residential building.”

The word 'building' has also been defined in section 2(a) of the Act, which is to the following effect:—

“'building' means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith but does not include a room in a hotel, hostel or boarding house;”

(7) From this definition of the word “building”, the learned counsel vehemently contended that in order to determine

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the nature of the building, we are to see the same at the time when the application for ejectment is filed and according to him, admittedly from the time when the application was filed the building is being used for running a school. Therefore, submission is that it clearly falls within the definition of non-residential building. However, the term residential building as defined in section 2(g) of the Act means any building which is not a non-residential building. Thus, if a building is being used solely for the purpose of business or trade, it falls within the definition of non-residential building.

(8) After going through the various provisions of the Act, I am unable to agree with the contention of the learned counsel for the petitioner. Section 11 of the Act provides that "No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller." Moreover, there is an application on the file of the Rent Controller filed on behalf of the tenant under Order 6, Rule 17, CPC, for amendment of the written statement in which it has been stated that the building in dispute has been resumed by the Estate Officer, Chandigarh, under the Capital of Punjab (Development and Regulation) Act, 1952 and thus the landlords have ceased to be the owners and landlords of the property in dispute and the tenant wants to add these facts in his written statement. Though, this application was dismissed by the Rent Controller,—*vide* his order dated 7th December, 1977, on the ground that premises in dispute has not been resumed so far by the Estate Office and only a notice has been issued to the landlords regarding the misuse of the premises in dispute but it is quite clear that because of the misuser of the premises, action under the Capital of Punjab (Development and Regulation) Act, 1952, is under contemplation and in any case because of the misuser of the residential premises the owners of the property have rendered themselves liable to action under the said Act. Under these circumstances, can it be held that the premises have become non-residential for the purpose of Rent Act and thus the landlords are not entitled to get it vacated on the ground of their bona fide requirement? Whereas on the other hand, the landlord-owners of the premises are being threatened with legal action under the Capital of Punjab (Development and Regulation) Act, 1952, because of the misuse of the residential premises by its occupiers.

In this way, if it is so held, the landlord may lose both the premises as well as the right to receive the rent. This can never be the intention of the Legislature under the Rent Act. At this stage reference to Section 11 of the Act becomes very relevant wherein it has been provided that no person shall convert a residential building into a non-residential building except with the permission in writing of the Controller. Even if the landlords have consented to the use of the premises for running a school, the nature of residential building will not change. At the most, the landlords because of their own conduct will not be entitled to evict their tenant on the ground of misuse or using the building for a purpose other than that for which it was leased.

(9) Any agreement will be unlawful under section 23 of the Indian Contract Act, 1872, if it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law. Admittedly, the use of residential premises for running a school etc. in the Union Territory of Chandigarh is forbidden by law and is of such a nature that, if permitted, it would defeat the provisions of the law. Moreover, no such permission as contemplated by Section 11 of the Act was ever taken by the landlords from the Rent Controller as to convert a residential building into a non-residential building. In these circumstances, in law, the residential premises will remain the same though the same are being used by the occupier for non-residential purposes. The provisions of the Rent Act are to be interpreted keeping in view the provisions of other statute dealing with matters of general applicability and an effort will always have to be made to give a harmonious construction without doing any violence to the language used therein. If the definition of the word 'building' and the word 'non-residential building' and the provisions of Section 13(2)(ii) (b) are read together, it is quite clear that the nature of the building cannot be determined by its use at the time of the application of ejection as contended by the learned counsel for the petitioner. Its user at that time will be relevant for a limited purpose. The tenant may not be liable to ejection on the ground that he has used the building for a purpose other than that for which it was leased if the landlord has consented to the same in writing. Under any circumstances, it cannot change the nature of the building from residential to non-residential without the prior permission of the Rent Controller under section

11 of the Act. Moreover, under section 11 of the Act, permission is required to convert a residential building into non-residential one and not vice-versa. From this the intention of the Legislature appears to be that if the premises are admittedly residential one, for all intents and purposes, the same cannot be converted into non-residential building without the prior permission of the Rent Controller and if this provision is violated, the penalty is provided under section 19 of the Act which reads :

“If any person contravenes any of the provisions of sub-section (2) of section 9, sub-section (1) of section 10, section 11 or section 18, he shall be punishable with fine which may extend to one thousand rupees.”

(10) In the Act the definition of the residential building is a negative one because it means any building which is not a non-residential building. It may also be noted here that for the purposes of the Act, the word ‘building’ also means any building or part of a building let for any purpose whether being actually used for that purpose or not. Thus, in a given case if a part of the building situated in the Union Territory of Chandigarh, which is meant both for residence as well as for business i.e., shop-cum-flat is rented out for the purposes of business alone, the landlord may not be able to evict his tenant on the ground of *bona fide* requirement for his own use and occupation treating the whole building as a residential building because in view of the definition given in section 2(g), the whole building will not be said to be a residential one. In that situation, a part of the building let out for business purposes and being used solely for that purpose will be treated as non-residential building and it will be so because of the provisions of the Act itself and at the same time it will not violate any of the provisions of any other statute as well. Thus, viewing the case from any angle, it is quite clear that the premises in dispute though being used for running a school will still remain residential premises under the Rent Act and the landlords are entitled to seek ejectment on that basis.

(11) On the *bona fide* requirement of the premises for their own use and occupation by the landlords, the finding of the Appellate Authority has not been challenged. Otherwise also, this is amply proved on the record and thus the landlords are entitled to evict their tenant on this ground.

(12) For the reasons recorded above, this petition fails and is dismissed with costs. However, the tenant-petitioner is allowed two months time to vacate the premises provided the arrears, if any, and the advance rent for two months is paid or deposited within a fortnight.

Sd./- J. V. Gupta, Judge.

28th February, 1980.

N. K. S.

Before S. S. Sandhawalia, C.J. and G. C. Mital, J.

BISHNA ALIAS BISHAN SINGH,—Appellant.

versus

STATE OF PUNJAB and another,—Respondents.

Civil Writ Petition No. 6560 of 1975

February 29, 1950.

Land Acquisition Act (I of 1894)—Sections 4, 5-A and 6—Publication of the substance of notification under section 4 in the locality delayed—Objections by affected parties, however, filed within time and disposed of on merits—Validity of the notification—Whether could be challenged by such objection on the ground of delay in publication.

Held. that the purpose of the publication of the notification in the locality was to provide an opportunity to the land-owners to file objection under section 5-A of the Land Acquisition Act 1894. Therefore, it clearly goes to show that if in spite of delay a land-owner is able to file objections within the prescribed period of 30 days and those objections are heard on merits, the land-owner would not be entitled to challenge the notification under section 4 of the Act merely on the ground of delay and such a notification under section 4 would not be liable to be quashed. (Para 6).

Akhara Brahm Buta, Amritsar v. State of Punjab and others. 1978 P.L.R. 425 **OVERRULED.**

Appeal Under Section 10 of the Letters Patent against the judgment dated 30th January, 1976 passed by Hon'ble Mr. Justice A. S. Bains, in Civil Writ Petition No. 6560 of 1975 praying that the appeal be accepted and the judgment be set aside and also praying