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institution like these removed with proper ceremony and respect to be placed elsewhere, the State would be willing to help the petitioner in that regard. But, he further said that should the institution abandon the aforesaid objects of worship and reverence, then the State would deal with them in a manner appropriate to the veneration they generate in the masses. We did not encourage him to elaborate the arrangement in that regard, for we would not like to be drawn in to lay down as to what is fit and proper to be done in the circumstances of the case. All what we can say is that a democratic Government functioning in a Welfare State must be sensitive to the sentiments of its people, which includes sections thereof. They would expect from the Government at least no highhandedness in matters like these and no disrespect to the objects afore-named under the misunderstood concept of secularism.

(12) Before parting with the judgment, we had it clarified from Mr. Palli that the Samadhs in the building of the institution are not burial grounds of the Mahants in the line of succession but are identifying places where the metal urns containing ashes of the side-lining Mahants lie buried. These too can be removed and given the same reverence as to the pictures and idols of Hindu deities. This clarification, we thought, was necessary to conclude.

(13) And concludingly, we dismiss these two petitions *in limine*.

R. N. R.

Before Naresh Chander Jain, J.

CHANDER KUMAR ANAND AND OTHERS,—*Petitioners.*

versus

DAROPADI DEVI,—*Respondent.*

Civil Revision No. 1861 of 1980

September 13, 1988.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(2) (ii)(b)—Change of user—Shop used for running a tea stall—Tenant starting manufacturing of Pens—Effect of such change of user—Tenant whether liable to eviction.

Held, that I am of the view that once the initial purpose of letting out of the premises is admitted by the petitioner which is one of running the tea-stall, the change of user of the demised premises from that of tea-stall to the manufacturing of the pens may be in a portion of the demised premises does amount to change of user. Even while applying the principle of law of convenient user of premises as has been observed by their Lordships of the Supreme Court, it cannot be said that the manufacturing of pens in a premises rented out for running of the tea-stall is a convenient user of the demised premises in the instant case. If the manufacturing of pens which is semi-industrial in a premises given for running the tea-stall cannot be said to be change of user, the landlord in that situation can under no circumstance take benefit of the provisions of the statute.

(Paras 4 and 6)

Petition Under Section 15(5) of Act III of 1949 and Section 115 C.P.C. for revision of the order of the Court of Shri P. C. Singal, Appellate Authority, Amritsar dated 4th August, 1980 affirming that of Shri P. S. Bajaj, PCS, Rent Controller Amritsar dated 1st September, 1977 allowing the application of the applicant and passing an order of ejectment from the demised premises forming part of building No. 432/13 situated at Sharispura, Amritsar, of the respondent, without any order as to costs and giving three months time to the respondent from that day on 1st September, 1977 to vacate the premises.

Ashok Bhan, Senior Advocate with Arun Jain, Advocate, for the petitioners.

V. P. Sarda, Advocate, for the respondent.

JUDGMENT

Naresh Chander Jain, J.

(1) This order of mine will dispose of two Revision Petition Nos. 1861 of 1980 and 2795 of 1980 as both of them arise out of the order of the Appellate Authority by which the tenant has been ordered to be evicted on the ground of change of user. In Civil Revision Petition No. 1861 of 1980 the tenant is petitioner whilst in Civil Revision No. 2795 of 1980 the landlord is the petitioner. The tenant has challenged the order of the Appellate Authority on the ground that the finding recorded by the Appellate Authority regarding the change of user is incorrect whereas the landlord in the other revision petition has challenged the finding of the Appellate Authority

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on the point of non-payment of rent. I would first like to determine the question as to whether the landlord has been able to prove the ground of change of user or not.

(2) The facts of the case lie in a very narrow compass. It is the case of the landlord in the ejectment petition that the shop in dispute was given to the tenant for the purpose of running the election office of Jan Sangh and that he started using it for a tea stall and then further changed the user to manufacturing of pens. The defence of the tenant is that the shop in dispute was not given to him for running the election office of the Jan Sangh but for running the tea-stall and that only a small table has been kept on the rear most part of the shop where he had been making pens not on industrial basis but on a small scale handicraft which too has been closed by him. Both the authorities below have discussed the point of change of user under issue No. 6-A and they have found that the shop was given to the tenant for running a tea-stall and that by starting the business of manufacturing of pens, he has used the premises for a purpose other than the one for which the premises were leased out to him and, therefore, he was liable to be evicted therefrom. For arriving at the aforesaid finding, reliance was placed by the authorities below on two major factors. Firstly, it was stated by the tenant's witness Piare Lal R.W. 3 that on the back portion of the disputed shop fountain pens machines are installed. The second major factor was that it has been admitted in the pleadings by the tenant that the shop was given for running the tea-stall and that he started using the same for manufacturing of pens—may be his case was that it was by way of hobby. After recording the aforementioned finding, the Appellate Authority placed reliance on two judicial pronouncements of this Hon'ble Court reported as *Telu Ram v. Om Parkash Garg* (1) and *Mehta Baldev Datt v. Puran Singh and others* (2).

(3) Shri Ashok Bhan, Senior Advocate, learned counsel for the tenant has vehemently argued that the landlord has not been able to prove that the demised premises were given to the tenant for running the Election Office of Jan Sangh and, therefore, the landlord cannot be legally said to have proved his case of change of user. I am afraid, I would not be able to agree with the contention raised by the learned counsel. Once it has been specifically pleaded by the

(1) 1971 P.L.R. 1.

(2) 1979(2) R.L.R. 193.

tenant himself that the shop was given to him for running the tea-stall this would be the initial purpose of letting out in the eye of law and, therefore, the non-proof on the part of the landlord regarding letting out of the demised premises for the election purposes is of no consequence. The position might well have been different if the tenant had not admitted in his written statement that the premises were given for running a tea-stall and that on the rear portion of the shop he had started manufacturing pens. The stand of the parties is now narrowed down to this much controversy as to whether by starting the manufacturing of pens, the tenant can be held guilty of change of user in the eye of law and within the meaning and ambit of section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act (for short the Act).

(4) Shri Ashok Bhan, learned counsel while dealing with the law point argued that it has been held by the Hon'ble Supreme Court in *Mohan Lal v. Jai Bhagwan* (3), that the tenant running the business of English Liquor Vend cannot be evicted if he has changed the user from the English Liquor Vend business to that of the general merchandise in the tenanted premises. The learned counsel further argued that the landlord has acquiesced the change of user and, therefore, he is not entitled to the order of eviction. This argument is not acceptable. In the case decided by the Apex Court the purpose of letting out the premises was the business of English Liquor Vend and the tenant switched over to the business of general merchandise. It was held by the Apex Court on those premises that in the expanding concept of business now-a-days and the growing concept of departmental stores it could not be said that there was any change of user on the facts of that case which would attract the mischief of the provisions of Section 13(2)(ii)(b) of the Act. It was further observed by their Lordships of the Supreme Court that the building in that case was rented out for purpose of carrying on business and that using it for another business, it will not in any way impair the utility or damage the building and that the business of general merchandise could be conveniently carried on in the tenanted premises without causing any nuisance. The facts of the instant case are altogether different and the ratio of law laid down by the Apex Court in *Mohan Lal's case* (supra) is not at all applicable. In the case before me, the business which has been started by the tenant is one of manufacturing pens and that too by installing machines. Even while applying the principle of law of convenient user of premises as has been observed by their Lordships of the

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

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Supreme Court it cannot be said that the manufacturing of pens in a premises rented out for running of the tea-stall is a convenient user of the demised premises in the instant case. The point of acquiescence does not arise in the instant case as according to the statute written consent of the landlord is necessary for the change of user.

(5) At this stage the case law cited by Mr. V. P. Sarda, learned counsel for the landlord may be noticed with advantage. In *Dhanpati and others v. Satish Kumar* (4), this court ordered the eviction of the tenant who was earlier using the shop for the sale of wood and timber and later on he started manufacturing grills etc. which amounted to change of user. In *Pratap Singh v. Ajmer Singh* (5), the shop was let out for doing the business of dry fruit and Soda-water. The tenant started preparing *Pakauras* after installing oven therein and it was held by this Court that the tenant was guilty of change of user of the premises. This Court while dealing with the matter was pleased to observe that the preparing of *Pakauras* with the help of an oven (*Angithi*) was certainly a material and substantial change in the user of the shop. In the present case also, the factum of manufacturing of pens with the help of machines installed in the premises would certainly amount to change of user. In *Sohan Lal Bhatia v. Bhagwan Dass Satija* (6), the tenant was doing the cane business and then started using the premises for doing hardware business. He admitted in the witness box that since 1980 he had started the business of hardware and prior thereto he was doing the cane business. He admitted that the shop was let out to him for the cane works only and on those premises the tenant was ordered to be evicted. The facts of the case in hand by and large are similar in as much as the tenant admitted in his written statement that the demised premises were given to him for running tea stall and that he started manufacturing pens in the back portion of the disputed shop. The above mentioned authority i.e. *Sohan Lal Bhatia* (supra) is relevant only for determining the initial purpose of letting out and not on the point of change of user.

(6) After considering the entire case law cited at the Bar, I am of the firm view that in the instant case the initial purpose of letting out the demised premises in law would be one of running the tea-stall and non-proof on the part of the landlord that the business premises were rented out for the purpose of running Election Office

(4) 1988(1) P.L.R. 77.

(5) 1984(1) RCJ 431.

(6) 1987(1) P.L.R. 462.

of Jan Sangh is of no consequence. I am further of the view that once the initial purpose of letting out of the premises is admitted by the tenant-petitioner which is one of running the tea-stall, the change of user of the demised premises from that of tea-stall to the manufacturing of the pens may be, in a portion of the demised premises does amount to change of user. If the manufacturing of pens which is semi-industrial in a premises given for running the tea-stall cannot be said to be change of user, the landlord in that situation can under no circumstance take benefit of the provisions of the statute and this cannot be the intention of the Legislature behind the enactment of Section 13(2)(ii)(b) of the Act.

(7) Now advertng to Civil Revision No. 2795 of 1980 filed by the landlord, the same has got no life. The Appellate Authority on examination of the rent receipts held that the tenant was not in arrears of rent and that the rent had been fully paid up. It may be noticed that the case of the landlord was that the tenant has failed to pay the arrears of rent from 1st August, 1967 till 29th March, 1975 the date when ejection application was filed whereas the tenant asserted that he has paid the rent with effect from 1st August, 1966 to 31st July, 1974,—*vide* receipts Exhibits RW. 2/1, RW5/A and RW. 1/1 and has tendered the rent for the remaining period in court from 1st August, 1974 to 30th April, 1975. Apart from the firm reliance having been placed by the Appellate Authority on the various rent receipts Exhibits RW. 2/1, RW 5/A and RW. 1/1 ranging from the period 1st August, 1966 to 31st July, 1974, it is apparently unbelievable that the landlord would not bother to move his little finger by way of filing an application for the eviction of the tenant on the ground of non-payment of rent. Had the amount been due for such a long period, he (landlord) would have bothered the tenant like anything. His long drawn silence for a long period of eight years is a pointer towards the correctness of the stand of the tenant-petitioner that he had been making payment of the rent to the landlord. On examination of the entire evidence and the rent receipts, I have arrived at the conclusion that the tenant-petitioner cannot be held guilty of non-payment of rent and the landlord has not been able to prove this ground. In view thereof, the revision petition of the landlord that is Civil Revision No. 2795 of 1980 is also without force.

(8) For the foregoing reasons, both the Revision Petitions filed by the tenant and the landlord fail and are hereby dismissed with no order as to costs. The tenant is allowed three months' time to hand over the vacant possession of the demised premises.

S.C.K.