

Before; P. C. Jain, C.J. & Tandon J.

M. P. BANSAL AND ANOTHER,—*Petitioners.*

versus

THE DISTRICT EMPLOYMENT OFFICER,—*Respondent.*

Civil Revision No. 2262 of 1981.

March 16, 1985.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(a), (d) and 11—Building constructed for residential purposes, rented out as office to a Government Department—No order under section 11 made by Rent Controller allowing conversion of said building from residential to non-residential—Ejectment of tenant on grounds of personal requirement—Whether can be ordered—User of building as an office—Whether can be termed as 'business' in terms of section 2(a).

Held, that the expression 'building' as defined in section 2(a) of the East Punjab Urban Rent Restriction Act 1949 means any building or part of building let out for any purpose whether being actually used for that purpose or not. Consequently unless the building is let out it will not be governed by the provisions of the Act. The provisions of section 11 of the Act do not debar the owner of a building to let out the building for non-residential purposes though it may initially have been constructed for residential purpose. Therefore a building though residential, is let out for commercial purpose, namely the running of an office, would be non-residential after it is let out and the landlord would not be entitled to seek eviction of the tenant on the grounds of personal requirement.

(Para 2)

Held, that a reading of sections 2(g) and (d) of the Act would show that the term 'business' as used therein need not be profitable and the said term does not admit of a narrow interpretation and has a wider connotation. It shall therefore be reasonable to infer that the building indispute is not residential in terms of section 2(d) of the Act inasmuch as it has been let out and is being used solely for the purpose of running an office and such purpose is covered in the term 'business' as defined in section 2(a) of the Act.

(Paras 11 and 14)

Janak Kundra v. Central Board of Workers Education I.L.R. 1981(2) Punjab and Haryana 90.

Overruled.

Case referred by Hon'ble Mr. Justice J. M. Tandon, dated 4th September, 1984 to a larger Bench, as important question of law involved in this case. The larger Bench consisting of the Hon'ble the Acting Chief Justice Mr. Prem Chand Jain and Hon'ble Mr. Justice J. M. Tandon, decided the case on 16th March, 1985.

Petition Under Section 15(5) of Act III of 1949 for revision of the order of the Court of Sardar T. S. Cheema, Appellate Authority, Gurdaspur, dated 21st April, 1981 setting aside the order to eviction recorded by Shri P. S. Bajaj, Rent Controller, Pathankot, dated 16th January, 1979 and leaving the parties to bear their own costs.

R. L. Sarin Advocate with D. Khanna, Advocate for the Petitioner.
A. S. Sandhu, Add. A. G. Punjab for the Respondent.

JUDGMENT

J. M. Tandon, J.

(1) The District Employment Officer (respondent) is in occupation of the premises in dispute in Pathankot since before its purchase by the petitioners in August, 1975. The petitioners filed ejectment application in January, 1978, seeking ejectment of the respondent on the ground of personal requirement. The Rent Controller upheld the plea of the petitioners and directed the ejectment of the respondent. The order of the Rent Controller was assailed in appeal which was allowed by the appellate Authority, Gurdaspur. The plea of personal requirement of the petitioners was negatived, order of the Rent Controller set aside and the ejectment application dismissed. The petitioners have challenged the order of the appellate Authority in the present revision.

2. The revision was listed for hearing before me for arguments. The learned counsel for the petitioners contended that the premises can be treated non-residential if used solely for the purpose of business or trade. The office of the District Employment Officer is neither business nor trade. The premises shall, therefore, be treated residential while being used as office of the District Employment Officer. Another point argued was that the premises in dispute having been constructed for residential purposes, the same shall continue to be residential for purposes of the East Punjab Urban Rent Restriction Act (hereinafter 'the Act') in the absence of an order of the Rent Controller under section 11 thereof. Reliance was placed on *Janak Kundra v. Central Board of Workers Education* (1).

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A contrary view has been taken on this point in *Jagan Nath v. Sangrur Central Co-operative Bank Ltd.* (2), wherein it has been held that the expression 'building' as defined in section 2(a) of the Act means any building or part of building let out for any purpose whether being actually used for that purpose or not. Consequently, unless the building is let out, it will not be governed by the provisions of the Act. The provisions of section 11 of the Act do not debar the owner of a building to let out the building for non-residential purposes though it may initially have been constructed for residential purpose. Therefore, a building which, though residential, is let out for commercial purpose, namely, for running banking business, would be non-residential after it is let out.

3. Keeping in view the conflict in the two Single Bench judgments referred to above, the case was sought to be referred to a larger Bench. It is how this case has come up before us.

4. The points that have arisen for consideration in this case are :

- (a) Whether a building which is constructed or used as residential on being rented either in whole or in part will remain residential or not if let out for non-residential purpose in the wake of section 11 of the Act.
- (b) Whether the running of the office of District Employment Officer is a business or trade in terms of section 2(d) of the Act.

5. The terms "non-residential building" and "residential building" are defined under section 2(d) and (g) of the Act which read :

"2(d). "Non-residential building" means a building 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".

(g) "Residential building" means any building which is not a non-residential building;"

6. Section 11 of the Act deals with the conversion of a residential building into a non-residential building and it reads:

“No person shall convert a residential building into a non-residential building except with the permission in writing of the Controller.”

7. The first point formulated above came up for consideration in *Kamal Arora v. Amar Singh and another* (3). The learned Single Judge made the following observations:—

“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 defeated the provisions of the law. Moreover, no such permission as contemplated by Section 11 of the Act was even 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 the other statutes dealing with the matter and an effort will always 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 ejectionment 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 ejectionment on the ground that he has used 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

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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 use 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 : _____”

8. A similar view has again been expressed by the learned Single Judge in *Tara Chand v. Shri Sashi Bhushan Gupta* (4), *Jagan Nath v. Sangrur Central Co-operative Bank Ltd.* (5) and may be in a few other cases as well.

9. A contrary view has been expressed on this very point in *Rattan Lal v. Mst. Laxmi Devi* (6) wherein it was held that “building” as defined in the Act, includes part of a building as well and in order to determine whether the building is a residential or non-residential one the fact that the portion let out forms part of a residential building or that the main building is situate in a residential locality, will be irrelevant if there is evidence to show that the portion leased out is being used solely for the purposes of business or trade. It has again been held in *Jagan Nath's case* (supra) that the expression ‘building’ as defined in Section 2(a) of the East Punjab Urban Rent Restriction Act, 1949 means any building or part of building let out for any purpose whether being actually used for that purpose or not. Consequently, unless the building is let out it would not be governed by the provisions of the Act. The provisions of Section 11 of the Act do not debar the owner of a building to let out the same for non-residential purpose though it may initially have been constructed for residential purpose. Therefore, a building which, though residential, is let out for commercial purpose, namely, running a banking business, would be non-residential after it is let out. A similar view has been expressed in *Chattar Sain v. M/s Jamboo Parshad* (7) wherein

(4) 1980(1) R.C.R. 718.

(5) 1980(2) R.C.J. 672.

(6) 1971 P.L.R. 86.

(7) 1965 C.L.J. (Pb.) 143.

it has been held that the expression 'building', non-residential building' or residential building', used in the Act, applies to a building which is let. The Act does not concern itself with property residential or otherwise which is occupied by an owner himself, and which is not in possession of tenants. No provision of the Act appears to apply to such a property. In the case of such property no question of fixation of rent or eviction can, obviously, arise. Various other provisions of the Act like cutting or withholding of any amenities or failure to repair a building etc. etc. cannot also possibly apply to property which is occupied by the landlord himself. If this is the correct reading of the Act, then it follows that section 11 cannot apply to any property, which is not occupied by a tenant, and an owner of such property can convert it to any use that he likes without the permission of the Rent Controller. It has been further held that the language of section 11 can only mean, that where the tenants are in possession of a 'residential building', it cannot be converted into a non-residential building without the permission in writing of the Controller. The ratio of *Chattar Sain's case* (supra) was followed in *Faqir Chand v. Smt. Ram Kali* (8).

10. In view of two Division Bench authorities in *Chattar Sain's case* and *Faqir Chand's case* (supra) referred to above, it is obvious that the view taken by the learned Single Judge in *Janak Kundra's case* (supra) and a few other cases detailed above, that a residential building shall continue to be so in the absence of an order of the Rent Controller under Section 11 of the Act irrespective that it has been let out for non-residential purpose, cannot prevail. The provisions of the Act apply to a building which has been let out. A building or part thereof which has been let out is to be treated as a unit for the purpose of the Act. If such a unit is let out and used solely for the purpose of business or trade, it will be non-residential building. A unit let out and used for any other purpose, shall be treated as 'residential building'. A building or a part thereof initially constructed for residential purpose shall be non-residential building in terms of section 2(d) of the Act if the same is let out and used solely for business or trade. With great respect for the learned Single Judge, the contrary view expressed in *Janak Kundra's case* (supra) and a few other cases is over-ruled.

11. The learned counsel for the petitioners has argued that the running of office of District Employment Officer is neither

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business nor trade in terms of Section 2(d) of the Act with the result that the petitioners can get the premises in dispute vacated on the ground of their personal requirement. The learned Counsel for the State has argued that the running of office of the District Employment Officer is covered by the term business as used in Section 2(d) of the Act with the result that the petitioners cannot invoke the plea of their personal requirement to get the premises in dispute vacated.

12. In *Sarla Devi v. Union of India and others* (9) the building was in occupation of the Income-tax Department which was sought to be vacated by the landlady on the ground of personal requirement. The learned Single Judge holding that the building is non-residential, made the following observations:

“The only other argument urged by the learned counsel for the petitioner is that the activity of the Income Tax Department in maintaining an office in the demised premises is not ‘business’ as that word is used in section 2(d) of East Punjab Act 3 of 1949. In this respect he refers to, as was done before the Appellate Authority also *Badrinarayan v. Excise Commissioner Hyderabad* (10), in which the learned Judges held that the Government in obtaining the *abadkari* revenue or in collecting revenues from other sources cannot be said to be carrying on business within the meaning of section 20(b) of the Code of Civil Procedure, but the language used in Section 2(d) of East Punjab Act 3 of 1949 is not exactly the same. What is to be seen under section 2(d) of that Act is whether the demised premises are being used solely for the purposes of business. It depends then upon the meaning of the word ‘business’. In the Shorter Oxford Dictionary the word business is given, among others, these meanings—“The state of being busily engaged in anything that about which one is busy; function; occupation. That with which one is concerned at the time. State, occupation, profession or trade”. Now it cannot be said that the Income tax Department maintaining its office in the demised premises is not

(9) 1967 P.L.R. 769.

(10) A.I.R. 1962 A.P. 382.

using it as an occupation or for purposes of its occupation as Income Tax Department. A profit motive need not necessarily enter into every such occupation to make it a business. So that the demised premises are being used by the Department for purposes of its business as a Department and the same are being used solely by the Department for that purpose and thus are, as stated, a non-residential building within the meaning and scope of that expression in section 2(d) of East Punjab Act 3 of 1949."

13. The view on the second point, as detailed above was taken by Chief Justice (as his Lordship then was) Mehar Singh in *Sarla Devi's case* (supra). His Lordship had, however, expressed different view on the same point in (*Punjab State v. Bhagat Singh*) (11). The premises in that case were occupied by Election Office of the State Government. The landlord sought the ejectment of the State on the ground of personal requirement. The learned Judge made the following observations:—

"Whatever may be the scope of the meaning of the word 'business' I do not think that Government office can be described as a business particularly when this particular word 'business' is used in juxtaposition with the word 'trade' in section 2(d). So the conclusion of the Appellate Authority is correct that the premises is not being used solely for the purpose of business. On this finding, the premises is 'residential building' within the scope of section 2(g)."

In *Shri Arjan Singh Chopra v. Sewa Singh and others* 12 same point again came up for consideration and the learned Judge held that the activity which the tenant society carries on in running and maintaining the school, by engaging teachers, as also some of the ministerial staff, to carry on the school, and by carrying on teaching activity, it is doing a business, though it may not be making a profit. Its activity would also come within the scope of the word 'trade.' However, the word business is obviously of much wider connotation and so the activity definitely fails within the scope of that word as used in section 2(d) of the Act.

(11) C.R. 339 of 1963 decided on 20th December, 1963.

(12) 1967. C.L.J. 408.

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14. The activity to be covered by the term "business" as used in section 2(d) of the Act, need not be profit oriented. The term "business" as used in the Act does not admit of narrow interpretation. It has a wider connotation. The activity of the District Employment Officer is an occupation, though not with a motive to make profit. It shall, therefore, be reasonable to infer that the building in dispute is not residential in terms of Section 2(d) of the Act inasmuch as it had been let out and is being used solely for the purpose of running the office of the District Employment Officer.

15. In the result, the revision fails and is dismissed with no order as to costs.

PREM CHAND JAIN, A.C.J.—I agree.

H.S.B.

Before M. M. Punchhi, J.
RAM PHAL,—Petitioner.

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents.

Criminal Writ Petition No. 394 of 1985

May 23, 1985

Constitution of India 1950—Article 161—Orders promulgated thereunder by the Government of Haryana regarding remission of sentence—Punjab Jail Manual—Paragraphs 631 to 650—Prisons Act (9 of 1894)—Section 2—Prisoners convicted before the date of the visit of the Minister but subsequently released on bail entitled to remission under orders of the State Government if they surrender in jail for undergoing the unexpired portion of their sentence—Accused convicted by Trial court but released on bail the same day—Bail continuing during pendency of appeal and revision petition in High Court—Revision petition dismissed—Convict taken in custody long after the dismissal of the revision petition in pursuance of a warrant of arrest—Minister for Jails visiting the jail when the convict was on bail—Such convict—Whether entitled to remission—Surrender—Meaning of.

Held, that before the Chief Judicial Magistrate, on the receipt of intimation from the High Court ventures to issue re-arrest warrants