

No other point was urged before us.

The result is that this appeal fails and is dismissed with costs.

A. N. GROVER, J.—I agree.

B. R. T.

REVISIONAL CIVIL

*Before Mehar Singh, C. J.*

SARLA DEVI,—*Petitioner.*

*versus*

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Revision No. 302 of 1965.

March 21, 1967.

*East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(d) and 13(2) (ii)—Building let out to Income-Tax Department—Main building occupied by offices and out-houses occupied by employees of the Department—Building—Whether a residential building—Activity of Income-Tax Department—Whether a business activity—Employees permitted to reside in out-houses even on payment of rent—Whether amounts to sub-letting.*

*Held*, that the building in which the Income-Tax Department maintains its offices is a non-residential building and merely because some of its employees are permitted to reside in the out-houses, even on payment of rent, will not create a sub-lease in favour of those employees nor will it convert the building into a residential building. No interest is created in the out-houses in so far as the employees are concerned.

*Held* that the activity for which the demised premises are used by the Income-Tax Department is a business activity within the meaning and scope of that word in section 2(d) of the East Punjab Urban Rent Restriction Act, 1949 and the building is, therefore, a non-residential building.

*Petition under Section 15(4) of the East Punjab Urban Rent Restriction Act, for revision of the order of Shri Manmohan Singh Gujral, District and Sessions Judge, Appellate Authority under the Act, Ambala, dated 30th November, 1964, affirming that of Shri H. S. Ahluwalia, Rent Controller, Ambala City, dated 4th April, 1963, and dismissing the appeal of the petitioner and leaving the parties to bear their own costs.*

J. K. SHARMA, ADVOCATE, for the Petitioner.

D. N. AWASTHY, ADVOCATE, for the Respondents.

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JUDGMENT

MEHAR SINGH, C.J.—The premises in dispute is bungalow No. 170 on Bank Road in Ambala Cantt., it being the property of the petitioner, Smt. Sarla Devi, and having been let to respondent 1, Union of India through its Income-Tax Department, sometime in 1936. It has been stated that initially it was let partly for the office of the Income-Tax Department and partly for residential purposes, but it is an accepted fact that since August, 1954, it has been solely used by the Income-Tax Department; for its offices except this that since about 1946, the out-houses have been used by its employees. One Chowkidar, one Gardner, one Peon and two Process-servers, all employees of the Income-Tax Department, have been living in the out-houses. In the beginning they were not charged anything by the Department, but it is now agreed that the Department is making a small charge from each one of them for occupying a particular out-house with him.

The petitioner sought ejection of respondent 1 from the demised premises on various grounds and, at present, only two grounds survive, that is to say, (a) that a part of the demised premises has been sublet by the tenant without the written consent of the landlord, and (b) that the landlord requires the premises in good faith for his personal occupation. This second ground can only arise if the demised premises are a residential building, and not if the same are a non-residential building. There was a ground of non-payment of arrears of rent but the same having been paid, it no longer was a ground for argument before the Appellate Authority and, although the learned counsel for the petitioner has attempted to raise this matter again here, he has not been permitted to do so because it was not a matter that was subject-matter of argument before the Appellate Authority.

The Rent Controller as also the Appellate Authority have found on the two grounds, as stated above, in favour of respondent 1, that is to say, the Income-Tax Department.

The First argument that is urged by the learned counsel for the petitioner is that the demised premises are not a non-residential building because according to section 2(d) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), a non-residential building is a building which is solely used for purposes of

business or trade, and the learned counsel contends that since five employees of the Income-Tax Department occupy out-houses in the demised premises for residential purposes, it cannot be said that the demised premises are being used solely for the purposes of business. He points out that while the Chaukidar and the Gardner may be said to be occupying the out-houses for the purposes of protection and maintenance of the property, the same cannot be said with regard to the Peon and the Process-servers. The argument to my mind is misconceived for the simple reason that even the Peon and the Process-servers are mere employees of the Department and their residence in the out-houses has been necessitated because the Department is keeping its office in the building where any number of important cases and documents must remain when the office is closed. So the property is solely used for non-residential purposes and the employees are only permitted to remain there because it is necessary that they should be there for the protection and safety of the office. What the learned counsel presses is that the Department has never stated so, but that seems to me to be so obvious that it was not necessary for the Department to go into this detail, though the learned counsel for the Department points out that the evidence of the Income-tax Officer is in support of this. So it is not a fact that the demised premises are being used partly for residential purposes and hence the same cease to be a non-residential building. So the question of the requirement of the landlord for personal occupation in the case of a non-residential building does not arise in this case.

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* (1), in which the learned Judge 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

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(1) A.I.R. 1962 Andh. Prad. 382.

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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. Stated occupation, profession or trade". Now, it cannot be said that the Income-Tax Department maintaining its office in the demised premises is not 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. It has been contended that because a part of the premises has been let on payment to four or five employees of the Department that is not itself a user for the purposes of its business, but this is an argument which has already been considered above and is stated here in a slightly different form. What has to be seen in a case like this is not how the out-houses of the demised premises are occupied by some of the employees, who occupy the same because they are employees while the real control of the out-houses remains with the Department. The purpose of their residence has already been given and that is not apart from the maintenance or running of the office of the Income-Tax Department in the demised premises.

So the result is that the demised premises are not a residential building but are a non-residential building and the ground of *bona fide* personal requirement, therefore, does not succeed so far as the landlord is concerned, and as the activity for which the demised premises are used is business activity within the meaning and scope of that word in section 2(d) of East Punjab Act 3 of 1949, so the demised premises are solely used for that purpose; and the second ground of subletting does not succeed either because there is no interest created in the out-houses in so far as the employees of the Department are concerned and mere permission to reside there, even on payment, would not turn it into a case of lease. This revision fails and is dismissed, but there is no order in regard to costs.

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B. R. T.