(1999) 06 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1326 of 1989

Des Raj Ashok Kumar	APPELLANT
Vs	
Raj Kumar and Others	RESPONDENT

Date of Decision: June 1, 1999

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13(2)

Citation: (1999) 123 PLR 111 : (1999) 2 RCR(Rent) 166

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: M.L. Sarin and Hemani Sarin, for the Appellant; S.C. Kapoor and Harsh Aggarwal, for the Respondent

Final Decision: Allowed

Judgement

V.S. Aggarwal, J.

The present revision petition has been filed by M/s Des Raj Ashok Kumar (hereinafter described as ''the petitioner'') directed against the order of eviction passed by the learned Rent Controller, Bathinda dated 23.5.1987 and of the Appellate Authority, Bathinda dated 10.4.1989. The Appellate Authority upheld the order of eviction so passed.

2. The relevant facts are that respondent Raj Kumar had filed a petition for eviction with respect to the property in dispute against the petitioner. The sole ground of eviction that found favour with the learned Rent Controller and the Appellate Authority was that the petitioner had started the shop for a purpose other than for which it was let out. It was asserted that there has been change in the user from whole-sale business of bidi to that of sanitary and pipe fittings without the written consent of the landlord. The petition for eviction on the said ground was contested. It was asserted that a rent note had been executed between the petitioner and the previous landlord. It was stipulated that business can be carried on in the shop. The

said rent note was stated to be in possession of the respondent. Plea was raised that business of sanitary and pipe fittings was not detriment to the interest of the shop or the landlord.

3. Issues were framed. Both the learned Rent Controller and the Appellate Authority found that the petitioner has failed to prove that there was any such rent note executed or has been lost. It was held that no such rent note as alleged by the petitioner had been executed. It was further concluded that the property had been let out for running the business of sale of the whole-sale bidies. But the petitioner has started the business of sanitary and pipe fittings. Accordingly it was held that there has been change in the user and order of eviction followed.

4. On behalf of the respondents, it has been asserted that there is a finding of fact arrived at by the learned Rent Controller and the Appellate Authority. It is to the effect that property was let out for the sale of whole-sale bidies and presently sanitary and pipe fittings are sold. According to the learned counsel this Court will not interfere in the said findings of fact. The argument as such is correct in terms that this Court ordinarily will not interfere in findings of fact arrived at by the Appellate Authority. Interference would only be effected if findings are absurd and not based on evidence. If there is misreading of evidence, leading to an erroneous finding, this Court certainly in that finding will interfere because that would be an illegality and impropriety in the order.

5. With this backdrop, one can conveniently travel to the facts of the case. Both the learned Rent Controller and the Appellate Authority have laid great stress on the fact that petitioner has failed to prove that there was a rent note executed between it and the earlier landlord whether the property was simply let out for being used as a shop. Indeed to this extent it is correct that petitioner failed to establish that there was a rent note executed. But the initial onus to show the purpose of letting to be specific i.e. only for sale of bidies was on the respondent. The respondent had to establish the same because this fact as such has not been admitted.

6. In the eviction petition, the respondent-landlord pleaded that property had been let out to the petitioner for carrying on the whole-sale business of bidies as dealer. He has changed the user to that of sanitary and pipe fittings without the consent of the landlord. This contention has been denied. During the course of evidence, Raj Kumar respondent appeared as AW-3. He stated that the shop in question was under the mortgage with S.S. Jain Sabha. No rent note had been executed and it was an oral agreement of tenancy. He stated that petitioner has started a new business of sanitary and pipe fittings instead of bidi business. He was cross-examined and admitted that he does not know if the petitioner was doing the business of selling the utensils earlier in the property under the name and style of Bansal Bartan Bhandar. The petitioner on the contrary deposed that earlier when the shop was taken on rent, it was taken only for business purposes. He admitted that he had stated the business of pipe fittings since 1975.

7. These facts clearly show that both the learned Rent Controller and the Appellate Authority did not read the evidence in a proper prospective. The respondent has not let out the property. The petitioner is an old tenant. Therefore, the respondent cannot be believed when he stated about the purpose for which the property was let out. He could not even deny that earlier the respondent was carying on the business of the sale of utensils. When the property had been mortgaged, at that time the mortgagee had let out the property. Thus, the specific purpose for which the property had been let out had not been established to be the sale of bidies in whole-sale. Once it is not so established, it must be taken that property in question was let out for a shop. It is still being used as a shop. There is no change of user. The findings to the contrary are only imaginary not sustained by evidence. These necessarily have to be set up.

8. There is another way of looking at the matter. Normally speaking, the property would be let out for residential, commercial, manufacturing or charitable purposes etc. In only rare cases the landlord would let out the property for specific purpose. This question as to whether in the particular facts whether it would amount to change of user or not, had been considered by the Supreme Court in the case of Mohan Lal Vs. Jai Bhagwan, . In the cited case the property was let out for carrying on the business of English Liquor Vend. The tenant changed it from liquor vend to general merchandise. The Supreme Court held that in one sense it could be called an allied business in expanding concept of departmental stores. The earlier decision rendered by this Court in the case of Sikander Lal v. Amrit Lal (1984) 86 P.L.R. 1, was over ruled. It was further held that change of user did not bring any detriment or impairment of the shop. The eviction petition was dismissed. In paragraph 9 of the Supreme Court held:-

"While respectfully agreeing with the said observations of Lord Diplock, that the Parliament legislates to remedy and the judiciary interpret them, it has to be borne in mind that the meaning of the expression must be found in the felt necessities of time. In the background of the purpose of rent legislation and inasmuch as in the instant case the change of the user would not cause any mischief or detriment or impairment of the shop in question and in one sense could be called an allied business in the expanding concept of departmental stores, in our opinion, in this case there was no change of user which attracts the mischief of Section 13(2)(ii)(b) of the Act. The High Court, therefore, was in error."

9. Similarly, in the case of Gurdial Batra Vs. Raj Kumar Jain, the same question had come up for consideration. In the cited case the premises were let for running of a repair shop. Alongwith the repair business, sale of Televisions was carried on. The Supreme Court relied upon the earlier decision in the case of Mohan Lal v. Jai Bhagwan (supra) and held that it did not amount to change of user. It was concluded that letting out of the premises broadly can be for residential or commercial purposes. In paragraph 6 of the Supreme Court held:-

"Letting of a premises can broadly be for residential or commercial purpose. The restriction which is statutorily provided in Section 13(2)(ii)(b) of the Act is obviously one to protect the interests of the landlord and is intended to restrict the use of the landlord''s premises taken by the tenant under lease. It is akin to the provisions contained in Section 108(o) of the Transfer of Property Act dealing with the obligations of a lessee. That clause provides: ''The lessee may use the property and its products, if any, as a person of ordinary prudence would use them if they were of his own; but he must not use or permit another to use the property for a purpose other than that for which it was leased . . . . ''A house let for residential purpose would not be available for being used as a shop even without structural alteration. The concept of injury to the premises which forms the foundation of Clause (b) is the main basis for providing Clause (b) in Section 13(2)(ii) of the Act as a ground for the tenant''s eviction. The Privy Counsel in UPO Naing v. Burma Oil Co. (A.I.R. 1929 P.C. 108) adopted the same consideration. The Kerala High Court has held that premises let out for conducting trade in gold if also used for wine store would not amount to an act destructive of or permanently injurious to be leased property (1977 K L.T. 417). Similarly, the Bombay High Court has held that when the lease-deed provided for user of the premises for business of fret work and the lessee used the premises for business in plastic goods, change in the nature of business did not bring about change of user as contemplated in Section 108(o) of the Transfer of Property Act (1973 M L.J. 545)."

The said decisions of the Supreme Court were relied on by this Court in the case of Rameshwar Dass v. Hakim Ram Sarup Garg 1989 (1) CLJ 146. In the cited case the property was let for hikmat but the tenant started using it for storing and selling of acid. It was held that acid was not inflammable nor detriment to the premises. The Court held that it was not change of user and petition for eviction was dismissed. Same view found favour with this Court in the case of Bal Chand of Abohar v. Gauri Shankar by LR''s 1991 HRR 161. The property was let out for sale of cloth. It was changed to the sale of gur-shakar. This Court held that this does not amount to change of user. Identical was the view of this Court in the case of Smt. Raj Kumari of Pathankot v. Dr. Krishna and Anr., 1992 Haryana Rent Reporter 124 and in the case of Ujagar Singh v. Manohar Lal Anand (1993) 105 PLR 105.

10. However, on behalf of the respondent reliance was placed on the judgment of Supreme Court rendered in the case of Dashrath Baburao Sangale and Ors. v. Kashimath Bhaskar Data 1995 H.R.R. 300. In the cited case under the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 if the tenant has committed any act contrary to the provision of Section 108 of the Transfer of Property Act, he renders himself liable for eviction. The property was stated to have been let out for sugar cane crushing business but it was being used for selling the ready made clothes. Keeping in view the provisions of the Bombay Rent Act, the order of eviction was approved. This judgment of the Supreme Court was relied upon by this Court in the case of Sh. Ram Parshad (Died) Vs. Ved Parkash, .

11. It has already been held that the property was not let out for any specific purpose. The purpose of letting shown has been only commercial. Otherwise also earlier bidies were being sold. Presently the sanitary and pipe fittings were sold. Not only the property is being used as a shop but it is an extension of the business for sale of certain goods. Just like in the case of Mohan Lal (supra) it would be an extension of a big business store rather than a case of change of user. Therefore, it cannot be termed that the ground of eviction as such was available.

For these reasons, the revision petition is accepted and the impugned orders are set aside. Instead the eviction is dismissed.