BISHAMBER DASS KOHLI (DEAD) BY LRS. A

v.

SMT. SATYA BHALLA

JANUARY 12, 1993

[J.S. VERMA, YOGESHWAR DAYAL AND N. VENKATACHALA, JJ.] B

East Punjab Urban Rent Restriction Act, 1940—Section 13(2)(ii)(b)—Eviction on the ground of change of user—Whether proper.

C

East Punjab Urban Rent Restriction Act, 1940—Sections 2(g), 2(h)—"Residential building", "Scheduled building"—Construction.

The suit premises was let out by the appellant landlord to the respondent on a monthly rent of Rs. 550 solely for residential purpose. In a part of the premises, the respondent's husband, a lawyer established his office and started using the same for that purpose. D

The appellant-landlord filed a petition before the Rent Controller seeking eviction of the respondent-tenant.

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The Rent Controller made an order of eviction of the respondent-tenant on the ground of change of user under section 13(2) (ii) (b), of the East Punjab Urban Rent Restriction Act, 1940.

The tenant's appeal was dismissed by the appellate authority, against which a revision to the High Court was preferred. F

The Single Judge of the High Court allowed the revision and set aside the eviction order, holding that the building let out as a 'residential building' became a 'scheduled building' by use of a part thereof as lawyer's office by the tenant's husband; and therefore, the ground of eviction was not available. G

Hence this appeal by the landlord by special leave, contending that the ground of change of user contained in section 13(2) (ii) (b) was clearly made out from the facts and the High Court erred in setting aside the order of eviction. H

A The respondent-tenant submitted that the landlord waived the ground of change of user by acquiescence to use of a part of the premises as lawyer's office; that the ground in section 13(2)(ii)(b) was not available unless the change of user was of substantial, if not the entire building and, therefore, mere use of a small part of the residential building as lawyer's B office does not constitute such change.

Allowing the appeal of the landlord, this court,

HELD : 1.01. Use of the building for a purpose other than that for which it was leased, without the written consent of the landlord is a C ground of eviction. The object clearly is that the parties must remain bound by the terms on which the building is let out, including the condition relating to its use for the purpose for which it was leased. In other words, breach of the covenant regarding the kind of user of the building let out is the ground of eviction contained in section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act. [177A-B]

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1.02. If the change in user of the building is of the kind that it makes the residential building let out for residential purpose alone change its character and become a 'scheduled building' as defined in section 2(h) of the Act without the written consent of the landlord, the ground of eviction E under section 13(2) (ii) (b) is made out. [177C]

1.03. This test is fully satisfied in the present case and the order of eviction was made by the Rent Controller and affirmed by the appellate authority on this basis. The High Court misconstrued the provisions to take the contrary view. [177D]

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Telu Ram v. *Om Parkash Garg* 1971 RCJ 1, approved.

Sant Ram v. *Rajinder Lal and Ors.*, 1978 (2) RCR 601; *Dr. Sewa Singh* v. *Smt. Ravinder Kaur and another,* [1971] 2 SCC 981, distinguished.

G 2.01. Even though a 'scheduled building' continues to be a residential building as defined in section 2(g), a residential building of which even a part is used for a scheduled purpose, becomes and is called a 'scheduled building' when user of the building is significant or the criterion. [176F]

2.02 Where user of a building is of significance, a distinction is made in H the Act between a residential building which is not a scheduled building and

that which is a scheduled building. This is so in section 4 of the Act dealing with determination of fair rent wherein fixation of rent is made on the basis of user and for that purpose a 'scheduled building' is treated differently from a residential building which is not a scheduled building. [176G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5434 of 1985. B

From the Judgment and Order dated 11.8.1987 of the Punjab and Haryana High Court in Civil Revision No. 1048 of 1986.

A.K. Gupta for the Appellants.

C

Vikram Mahajan, Gopi Chand and K.K. Gupta for the Respondent.

The Judgment of the Court was delivered by

VERMA, J. The suit premises in Chandigarh was let out by the appellant to the respondent, Smt. Satya Bhalla on 1.11.1974 on a monthly D rent of Rs. 550 solely for residential purpose. However, the respondent's husband, a lawyer established his office in a part of the suit premises and started using the same for that purpose. The appellant-landlord filed a petition before the Rent Controller in February, 1983 seeking eviction of the respondent-tenant on several grounds including the ground contained E in section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949 i.e. the use of the building for a purpose other than that for which it was leased. The Rent Controller made an order of eviction of the respondent-tenant on the ground of change of user contained in section 13(2)(ii) (b). The tenant's appeal was dismissed by the appellate authority which affirmed the order of eviction made by the Rent Controller. A further F revision to the High Court has been allowed by the learned single Judge and the order of eviction has been set aside. The High Court has held that the building let out as a 'residential building' became a 'scheduled building' by use of a part thereof as lawyer's office by the tenant's husband; and therefore, the ground of eviction was not available. The order of eviction G made in the landlord's favour was, therefore, set aside. Hence this appeal by the landlord by special leave.

The learned counsel for the appellant contended that the ground of change of user contained in section 13(2) (ii) (b) is clearly made out from the facts and the High Court has erred in setting aside the order of eviction. H

A In reply Shri V.C. Mahajan, learned counsel for the respondent-tenant, advanced several arguments. He submitted that the landlord had waived the ground of change of user by acquiescence to use of a part of the premises as lawyer's office. His next submission is that the ground in section 13(3) (ii) (b) is not available unless the change of user is of B substantial, if not the entire building and, therefore, mere use of a small part of the residential building as lawyer's office does not constitute such change, learned counsel also submitted that this is not a fit case for interference with the High Court's order under Article 136 of the Constitution.

C Having heard both sides, we are satisfied that this appeal has to be allowed. The High Court's interference in revision with the order of eviction made by the Rent Controller and affirmed by the appellate authority, was wholly unjustified.

There is no merit in Shri Mahajan's argument of waiver or acquies- D cence by the landlord. Before the Rent Controller the tenant had pleaded estoppel against the landlord, which after due consideration was rightly rejected by the Rent Controller. That finding of the Rent Controller was not assailed by the tenant either before the appellate authority or in the High Court. On merits also, this plea is untenable since no such conduct E of the landlord is shown. The argument is, therefore, rejected. We also do not find any substance in the contention that interference under Article 136 is not warranted, in case it is found that the High Court set aside the order of eviction on a misconstruction of the law applicable in the present case. The only question, therefore, is whether on the proved facts, no F longer in controversy, the ground in section 13(2) (ii) (b) is made out.

The material provisions in the East Punjab Urban Rent Restrictions Act, 1949 with reference to which the contention of Shri Mahajan has to be considered, are the following :-

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"2. **Definitions** .....

(a) "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, outhouses, or furniture let H therewith but does not include a room in a hotel, hostel or

boarding house;

xxx xxx xxx

(d) "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":

xxx xxx xxx

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

(h) "scheduled building" means a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to this act, partly for his business and partly for his residence;

xxx xxx xxx

13. **Eviction of tenant** - (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied -

.....

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord --

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

A (b) used the building or rented land for a purpose other than that for which it was leased, or

.....

the Controller may make an order directing the tenant to put
B the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the
C building or rented land and may extend such time so as not to exceed three months in the aggregate."

Shri Mahajan contended that to constitute the ground under sectic 13(2) (ii) (b), the change in user should be in respect of at least
D substantial part of the building if not the entire building. The comparison of sub-clause (b) with sub-clause (a) shows that the omission of the word 'entire' before the word 'building' in sub-clause (b) when the word 'entire' has been used before the word 'building' in sub-clause (a) is deliberate. For this reason, the change in user of the building required to constitute the ground under sub-clause (b) need not be of the entire building, the
E word 'entire' being deliberately omitted in sub-clause (b). Faced with this difficulty, Shri Mahajan submitted that the change of user should be of a substantial part of the building let out even though not of the entire building. This argument also cannot be accepted in this context. The definitions in section 2 of the Act show that even though a 'scheduled
F building' continues to be a residential building as defined in section 2(g), a residential building of which even a part is used for a scheduled purpose, becomes and is called a 'scheduled building' when user of the building is significant or the criterion. Thus, where user of a building is of significance, a distinction is made in the Act between residential building which is not a scheduled building and that which is a scheduled building. This is so in
G section 4 of the Act dealing with determination of fair rent wherein fixation of rent is made on the basis of user and for that purpose a 'scheduled building' is treated differently from a residential building which is not a scheduled building. Same is the position with regard to the ground of eviction contained in section 13(2) (ii) (b) wherein change in user of the
H building is alone significant for constituting the ground.

Accordingly, use of the building for a purpose other than that for which it was leased, without the written consent of the landlord is a ground of eviction. The object clearly is that the parties must remain bound by the terms on which the building is let out, including the condition relating to its use for the purpose for which it was leased. In other words, breach of the covenant regarding the kind of user of the building let out is the ground of eviction contained in section 13(2) (ii) (b).

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It is clear that if the change in user of the building is of the kind that it makes the residential building let out for residential purpose alone change its character and become a 'scheduled building' as defined in section 2(h) of the Act without the written consent of the landlord, the ground of eviction under section 13(2) (ii) (b) is made out.

C

This test is fully satisfied in the present case and the order of eviction was made by the Rent Controller and affirmed by the appellate authority on this basis. The High Court misconstrued the provisions to take the contrary view.

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A Division Bench of the Punjab and Haryana High Court in *Telu Ram* v. *Om Parkash Garg* 1971 RCJ 1 while dealing with section 13(2) (ii) (b) at the Act mentioned one of its conclusion in para 21 as under -

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> "(b) that if the result of the use of even a small portion of a building is such that the category of the premises is changed from residential, non-residential and scheduled, and it becomes a category different from the one for which the same had been let, the clause would be attracted;"

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This is how this provision appears to have been understood at least eversince than and the people in the State have arranged their affairs on that basis. Apart from the fact that this view commends to us as the correct view, the desirability of continuing the settled view is also a reason in its favour.

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Shri Mahajan referred to the decision of this Court in *Sant Ram* v. *Rajinder Lal and Ors.*, 1978(2) RCR 601. That case is distinguishable. In that decision the purpose of the lease was not spelt out precisely while letting out a small premises to a cobbler for his business where he sometimes stayed overnight after the day's work while he went to his home on

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A holidays. It was on these facts that the tenant staying overnight in the shop on some working days was not found to constitute the ground of change of user under section 13(2) (ii) (b) of the Act. That decision does not assist the respondent- tenant in this case.

Reference was also made to *Dr. Sewa Singh* v. *Smt. Ravinder Kaur*
B *and another,* [1971] 3 SCC 981. That judgment did not consider this question as it was not raised. The ground therein was that the High Court was not justified in taking the view in revision for the first time that the user of a part of the premises for a particular purpose was casual. No doubt, the user of a part of the residential building for the profession of a
C medical practitioner was involved and the definition of 'scheduled building' in section 2(h) of the Act was referred, but this point was neither raised nor considered. The decision in Dr. Sewa Singh cannot be treated as an authority for the view that change of user of a part of a residential building let out for use solely as a residence, for a scheduled purpose without the written consent of the landlord does not constitute the ground for eviction
D under section 13(2) (ii) (b) or that the ground of eviction based on personal need of the landlord contained in section 13(3) (i) (a) is not available to the landlord for that reason. If the logical inference from *Dr. Sewa Singh* appears to be that, then, with respect, we are unable to agree with the same.

E As a result of the above discussion, this appeal is allowed and the impugned order passed by the High Court is set aside resulting in restoration of the order of eviction made by the Rent Controller and affirmed by the appellate authority. The respondent will also pay cost to the appellant. Counsel's fee Rs. 3,000.

V.P.R. Appeal allowed.