

PETITIONER:
N.D.M.C.

Vs.

RESPONDENT:
MRS HIRINDER SACHDEV, W/O LATE SHRI SOHAN LAL SACHDEV.

DATE OF JUDGMENT: 09/02/2000

BENCH:
S.B.Majumdar, D.P.Mohapatro

JUDGMENT:

MOHAPATRA, J.

Delay condoned. Leave granted.

The core question that arises for determination in this case is whether use of premises for the purpose of a guest house can be termed as domestic use for the purpose of electricity charges by the New Delhi Municipal Council (NDMC)?

The factual backdrop of the case, shorn of unnecessary details, may be stated thus:

Sohan Lal Sachdev, deceased, represented by legal representative, was the landlord of the premises bearing No.49, Golf Links, New Delhi. He occupied the ground floor of the said premises. In the month of September, 1981, he let out the first floor and the Barsati floor to Sachdeva Guest House for running a guest house. When this fact was intimated to the Corporation Authorities by the landlord, demands of electricity and water charges were made according to non domestic rates with effect from 1-10-1981. The landlord protested against the demand stating that the user of the premises for running a guest house cannot be said to be a commercial use of the premises and therefore the demand is unsustainable. Thereafter, the landlord filed a suit, Suit No.230 of 1982, seeking a decree of injunction against the NDMC restraining it from raising demand on the basis of commercial user of the premises on the ground as noted above.

The case of the NDMC was that use of the premises (first floor and Barsati floor) for running the guest house cannot be said to be domestic use; it is a commercial user and therefore demand of electricity on that basis is justified. The learned Trial Judge on the pleadings framed three main issues;

(1) Whether the user of the premises for running a guest house can be termed as commercial user ?

(2) Whether the defendant is competent to charge the electricity consumption on non domestic rates?

(3) Whether the plaintiff is entitled for the relief of injunction?

Relying on Section 23 of the Indian Electricity Act (the Act for short), the Trial Judge held that NDMC was competent to convert the charges of electricity supply from one category to another i.e. from domestic category to commercial category. She, however, did not accept the contention of NDMC that the user of the premises in running residential guest house can be termed as commercial user and answered issue number one in favour of the plaintiff and against the defendant. The Trial Judge further held that even if the running of a guest house at the suit premises cannot be termed as commercial user, it cannot also be termed as domestic user either. Therefore the NDMC had the right to charge rates at non domestic rates for supply of electricity and water at the premises being used for running the guest house. On the above finding the suit was dismissed.

On appeal by the landlord the learned Senior Civil Judge, Delhi, concurred with the finding of the trial court that NDMC was competent to vary the electricity charges of the suit premises. The first Appellate Court further held that NDMC has the right to charge non domestic rates for supply of electricity and water in the suit premises as the same was being used for running the guest house. The first Appellate Court dismissed the appeal.

The landlord filed second appeal in the High Court of Delhi challenging the judgment and decree of the first appellate court confirming the judgment of the trial court. The High Court reversed the concurrent decisions of the lower courts and decreed the suit. The High Court took the view that user of the suit premises for running the guest house without any kitchen facility is user for residential purpose and, therefore, the NDMC is not entitled to charge electricity and water charges on the basis of commercial use. Being aggrieved by the decision of the High Court, the NDMC has filed this appeal challenging the judgment.

On 23-3-1998, this Court ordered : Notice to issue in the light of the decision of this Court in the case of Municipal Corporation of Greater Bombay v. Mafatlal Industries & ors. reported in (1996) 8 SCC 27. Notice shall state that the SLP shall be disposed of finally at the notice stage. Notice to issue on the application for condonation of delay also.

The main thrust of the submissions of learned counsel for the appellant NDMC is that user of the suit premises for running the guest house with arrangement for boarding of guests on payment cannot be said to be private domestic user of the premises. It is the further contention of the learned counsel that such user of the premises can be appropriately classified as commercial user. The High Court, according to the learned counsel, committed an error in holding that the user of the suit premises is domestic.

The learned counsel appearing for the respondent landlord on the other hand supported the judgment of the High Court reiterating the reasons stated therein. On the case of the parties and the rival contentions raised on their behalf, the question formulated earlier arises for consideration. The two terms domestic and commercial

are not defined in the act or the rules. Therefore, the expressions are to be given common parlance meaning and must be understood in their natural, ordinary and popular sense. In interpreting the phrases the context in which they are used is also to be kept in mind. In Strouds Judicial Dictionary (Fifth Edition) the term commercial is defined as traffic, trade or merchandise in buying and selling of goods. In the said dictionary the phrase domestic purpose is stated to mean use for personal residential purposes. In essence the question is, what is the character of the purpose of user of the premises by the owner or landlord and not the character of the place of user. For example, running a boarding-house is a business, but persons in a boarding-house may use water for domestic purposes. As noted earlier the classification made for the purpose of charging electricity duty by the NDMC sets out the categories domestic user as contra-distinguished from commercial user or to put it differently non domestic user. The intent and purpose of the classification, as we see it, is to make a distinction between purely private residential purpose as against commercial purpose. In the case of a guest house, the building is used for providing accommodation to guests who may be travelers, passengers, or such persons who may use the premises temporarily for the purpose of their stay on payment of the charges. The use for which the building is put by the keeper of the guest house, in the context cannot be said to be for purely residential purpose. Then the question is, can the use of the premises be said to be for commercial purpose? Keeping in mind the context in which the phrases are used and the purpose for which the classification is made, it is our considered view that the question must be answered in the affirmative. It is the user of the premises by the owner (not necessarily absolute owner) which is relevant for determination of the question and not the purpose for which the guest or occupant of the guest house uses electric energy. In the broad classification as is made in the rules, different types of user which can reasonably be grouped together for the purpose of understanding the two phrases domestic and commercial is to be made. To a certain degree there might be overlapping, but that has to be accepted in the context of things. The High Court was not right in setting aside the order of the learned senior Civil Judge merely on the ground that the use of electricity for running the guest house does not come under the category of commercial use. The High Court has not discussed any reason for holding that user in such a case comes under the category of domestic use.

In the case of Municipal Corporation of Greater Bombay vs. Mafatlal Industries and Others, 1996 (8), Supreme Court Cases, 27, this Court interpreted the expression exclusively used as a private residential premises (In Bombay Electricity Duty Act, 1958). To connote that the premises in question must be exclusively used as a residential premises which in other words would mean where the premises which is used by any person privately for his own residence for a sufficient continued period and not a premises where a person can come and spend a day or a night and then go back. This Court further held that guest houses are maintained by company or commercial undertakings as a part of its commercial venture. The test of profit making as well as the test of the work private in contradiction to public have no relevance for interpreting the expression exclusively used as a private residential

premises. This court concluded that in the case of a guest house category R which applies to premises used as a private residential premises is not applicable and category C would apply as a residuary category to premises which does not come within the categories R, S, RC (LV) and SL. Though the fact situation in the case and the question which was considered by this Court therein are not the same as in the case on hand, the discussions in the judgment throw light on the controversy raised in this case.

On the discussions made and the reasons stated in the foregoing paragraphs, we are clearly of the view that the judgment of the High Court is unsustainable. Accordingly, the appeal is allowed. The impugned judgment of the High Court of Delhi is set aside. The New Delhi Municipal Council is entitled to charge for use of electricity in Sachdeva Guest House at the rate applicable to commercial use. No cost.