

CASE NO.:
Appeal (civil) 1605 of 1999

PETITIONER:
SHABIR AHMAD

Vs.

RESPONDENT:
SHAM LAL & ANR.

DATE OF JUDGMENT: 08/02/2002

BENCH:
Syed Shah Mohammed Quadri & S.N. Variava

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

This appeal arises from the judgment and order of the High Court of Punjab & Haryana in Civil Revision No.872 of 1996 dated May 28, 1998. By that order the High Court upheld the judgment of the Appellate Authority in R.A.No.206 of 20.5.94 dated February 3, 1996 confirming the order of the learned Rent Controller dated April 6, 1994.

The appellant is the tenant of a portion of the first floor of 'shop-cum-flat', S.C.F.No.14, Sector 22, Chandigarh (hereinafter referred to as 'the premises') of which the respondents are the landlords. The relationship between the appellant and the respondents is governed by the provisions of the East Punjab Urban Rent Restriction Act, 1949 which was extended to Chandigarh by the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 and subsequently amended by the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 (for short 'the Act').

The respondents filed a petition for eviction of the appellant on two grounds but what survives for consideration is the ground of bona fide requirement of the respondents for residential purposes, under Section 13(3)(a)(i)(a) of the Act. The appellant contested the eviction petition, inter alia, on the ground that the premises let out to him is a non-residential building and, therefore, his eviction cannot be sought under the said provision. The learned Rent Controller found the ground of bona fide requirement in favour of the respondents and recorded the finding that the premises is a part of a residential building. Accordingly, it ordered eviction of the appellant by its order dated April 6, 1994. The appellant's appeal before the Appellate Authority having been dismissed on February 3, 1996, he filed Civil Revision No.872 of 1996 in the High Court which was also dismissed by an order dated May 28, 1998 in terms of the judgment in Civil Revision No.1085 of 1995. That order of the High Court is under challenge in this appeal.

Mr.V.C.Mahajan, the learned senior counsel appearing for the appellant, has contended that the courts below recorded

an erroneous finding that the premises which is a part of 'shop-cum-flat', is a residential building. He argued that the letter of allotment, the conveyance deed and the plan would clearly show that the building was a non-residential building, as such the eviction petition ought to have been dismissed by all the courts. Mr. Manoj Swarup, the learned counsel appearing for the respondents, relying on the same documents has submitted that the first floor of the 'shop-cum-flat' is a residential building and this is evident from the fact that it is termed as shop-cum-flat; the learned Rent Controller, the Appellate Authority as well as the High Court rightly held the premises to be a residential building.

The short question that arises for consideration is : whether the respondents are entitled to seek eviction of the appellant under Section 13(3)(a)(i)(a) of the Act. Inasmuch as the respondents' petition was filed under Section 13(3)(a)(i)(a) of the Act it would be appropriate to quote it here :

"13. Eviction of tenants -

(3)(a). A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession --

(i) in the case of a residential [* * *] building if --

(a) he requires it for his own occupation;

(b) to (d) *** *** *** ***

Proviso *** *** *** ***."

A plain reading of the provision shows that a landlord is enabled to apply to the Rent Controller for an order directing the tenant to put the landlord in possession in case of a residential building if he requires it for his own occupation. It is manifest that the aforementioned provision can be invoked only in case of a residential building. The controversy in this case centers round the question, whether the premises is a residential building. The ground floor is admittedly a shop portion. The dispute is about the first floor. If the first floor of the 'shop-cum-flat' is held to be a residential building, the answer to the question must be in the affirmative but if it is held to be non-residential building, the answer should be in the negative. It will be useful to refer to the definition of the expression "residential building" in clause (g) of Section 2 of the Act which reads :

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

This definition is somewhat circular. It defines the said expression in terms of 'non-residential building' which is defined in clause (d) as follows :

"2(d). "non-residential building" means a building being used solely for the purpose of business or trade."

It is thus clear that if a building is being used solely for the purpose of business or trade, it is a non-residential building and a building other than a non-residential building is a residential

building. In this case the appellant has been using the premises solely for the purpose of running a Hair Dressing Saloon from the inception of the tenancy, from July 22, 1974. This should, if nothing more is required to be considered, answer the question in the negative. But we have to ascertain the import of the expression 'shop-cum-flat' on the facts of this case. The courts below as well as the High Court having regard to the meaning of the word 'flat' in that expression treated the ground floor as a shop and the first floor as a flat and on that basis held that the premises is a residential building. In our view, the approach in interpreting the expression 'shop-cum-flat' having regard to the dictionary meaning of the word 'flat' is not proper.

The Courts ought not to be unmindful of the consequence of too much reliance on the dictionaries and Lexicons lest they go astray in interpreting recitals in a deed or document or provisions in a Statute. In Commissioner of Income Tax, Orissa & Ors. vs. M/s.N.C. Budharaja and Company & Ors. (1994 Supp. (1) SCC 280)], this Court observed :

"The words are : "construction, manufacture or production of any one or more of the articles and things....." and "construction, manufacture or production of any articles and things....." respectively. It is equally evident that in these sub-clauses as well as in the IXth Schedule and Xith Schedule, the words 'articles' and 'things' are used inter-changeably. In the scheme and context of the provision, it would not be right to isolate the word "thing", ascertain its meaning with reference to Law Lexicons and attach to it a meaning which it was never intended to bear. A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and -- as in this case -- to the legislative history of the provision."

[See also : State Bank of India vs. Shri N. Sundara Money (1976 (3) SCR 160)].

The said expression is not defined in the Act. It is not a technical expression and not a term of art; so it has to be understood in its popular sense, that is, as commonly understood. In that sense it is capable of being understood both as a 'residential' as well as a 'non-residential' building. Therefore, the expression 'shop-cum-flat' does not always mean that the ground floor of the building is meant for shops and the first and the higher floors are residential accommodation in the building. The correct approach would be to refer to the context in which the expression appears and then construe it. Undoubtedly, dictionaries including law dictionaries will be useful guides in the task of interpretation deeds and statutes provided appropriate meaning which fits in the context is chosen; otherwise it will be a fruitless exercise nay misleading course if a meaning de hors the context in which it appears, were to be opted. [See : Mangoo Singh vs. The Election Tribunal, Bareilly & Ors. (1958 SCR 418)].

In Ram Narain vs. The State of Uttar Pradesh & Ors. [AIR 1957 SC 18], a Constitution Bench of this Court laid down that the meanings of the words and phrases in an Act must take their colour from the context in which they appear. The learned counsel for the parties relied upon the following recitals in the letter of allotment and the deed of

conveyance in support of their respective contentions - Mr.Mahajan to dislodge the conclusion arrived at and Mr.Swarup to support the impugned order of the High Court. The letter of allotment provides :

"The following commercial site is hereby allotted to you on the conditions mentioned hereunder :-

Sector	Serial No. of site	Approximate dimensions	Price	Remarks
22-D	14 S.C.F.	33.70 256 .667 sq. yards		26,000/-

This shows that even at the time of allotment of the site itself, it was shown as commercial. A reading of clause 18 of the letter of allotment would be apposite.

"18. The site is classed as 'commercial' and the building to be erected on it shall not be used for the residential purpose unless otherwise specified in the plans supplied by the Government." (emphasis supplied)

This clause places the position beyond any doubt. It puts an embargo on the use of the building for residential purpose unless the plan supplied by the Government specified it as a residential building. Clause 6 directs that the building shall have to be constructed in accordance with the design which will be supplied by the Government after the building plans have been sanctioned. We have also perused the plan of the first floor (Annexure P-5). The design of the plan does not provide for bed-rooms etc. We find no provision for bathroom and no provision for kitchen, on the contrary a room is shown as 'office'. There is nothing in the plan which indicates that a residential accommodation is specified therein. A perusal of Clause 20 which says that the shop-cum-flat constructed on a site sold for general trade, will be a shop for trades (except those excluded therein) and prohibits cooking and use of fire among other things, also suggests that residential building was not contemplated.

Our attention was invited to the following recitals in the deed of conveyance (Ex.P-6) :

"DEED OF CONVEYANCE of a site at Chandigarh sold by auction to be used as a site for commercial purpose in the New Capital of Punjab at Chandigarh."

(emphasis added)

They also emphasise the commercial aspect of the building.

"And whereas the Punjab Government has sanctioned the sale of the site to the transferee in consideration of the sum of Rs.26,000/- (Rupees Twenty six thousand only) for the purpose of building shop-cum-flat and using the same exclusively for general trade (or restaurant i.e. shop portions)."

(emphasis added)

From these recitals, in the deed of conveyance, the letter

of allotment of the site, the plan and the agreement of tenancy it is evident that 'shop-cum-flat' is a non-residential building within the meaning of the Act and we have absolutely no doubt that the premises is a part of a non-residential building and in view of the embargo, noticed above, cannot be used for residential purposes. The High Court was, therefore, not correct to construe the word 'flat' in the expression 'shop-cum-flat' out of context with reference to the dictionary meaning of the word.

Mr.Swarup relied on the judgment of this Court in Chandigarh Housing Board & Anr. vs. Narinder Kaur Makol [2000 (6) SCC 415] to show that in the expression 'shop-cum-flat', the first floor is meant for residential purposes. In the light of the above discussion, it is too broad a proposition to merit acceptance. In that case, the building was in a different sector and the requirement of the Chief Architect and the Secretary of the Board was that the ground floor should be the shop and the first and second floors should be constructed as residential flats, therefore, the said judgment is clearly distinguishable on the facts of that case. In the instant case, we have already held, the first floor is meant for non-residential purposes and cannot be treated as residential building. Mr.Swarup relied on Section 11 of the Act to contend that the first floor cannot be allowed to be converted into a non-residential building. It is recorded to be rejected. Section 11 of the Act prohibits conversion of a residential building into a non-residential building. In the case on hand, a non-residential building is sought to be converted into a residential building, Section 11 has, therefore, no application.

For the above reasons, the order of the High Court under challenge cannot be sustained; it is accordingly set aside. The eviction petition filed by the respondents is liable to be dismissed. Accordingly, we allow the appeal and dismiss the application of the respondents for eviction of the appellant. In the facts and circumstances of the case, we make no order as to costs.

.....J.
[Syed Shah Mohammed Quadri]

.....J.
[S.N.Variava]

February 8, 2002.