

CASE NO.:
Appeal (civil) 630-632 of 2003

PETITIONER:
Bharat Lal Baranwal

RESPONDENT:
Virendra Kumar Agarwal

DATE OF JUDGMENT: 29/01/2003

BENCH:
CJI, Ashok Bhan

JUDGMENT:
J U D G M E N T

(Arising out of SLP (C) Nos.13612-13614 of 2001)

BHAN, J.

Leave granted.

On the submissions made before us the only point required to be determined in these appeals is: as to whether the tenant-respondent (hereinafter referred to as "the respondent") having started using the premises in dispute for a purpose other than the purpose for which it was let out to him without the written consent of the appellant-landlord (hereinafter referred to as "the appellant") is liable to be evicted in view of the provisions of Section 20 (2)(d) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") ?

The suit premises consisting of three rooms were admittedly let out for business purpose of selling of copies and books in the year 1970 by the father of the appellant to the respondent-tenant. In the year 1976, the respondent started manufacturing copies, registers sweet-meat boxes made of card board. In the year 1982 he installed a printing machine and started printing work without obtaining the written consent of the appellant.

It may be stated that father of the appellant died in the year 1978 leaving behind his widow Smt. Ramrati Devi and three sons, namely, Ramayan Prasad, Jagdish Prasad and Bharat Lal Baranwal(appellant). In the family settlement, the northern portion of house including the suit premises was allotted to the appellant, as such he became the owner as well as the landlord of the suit premises.

After issuing notice under Section 106 of Transfer of Property Act and passage of statutory notice period, appellant instituted the suit for eviction under Section 20(2) of the Act against the respondent.

In response to the notice issued, the respondent entered appearance and filed the written statement. On the basis of the pleadings of the parties the following three issues were framed.

1. Whether the defendant started manufacturing work in the premises in suit and thereby violated the terms of the tenancy?
2. Whether the notice is invalid and the suit is not maintainable?
3. To what relief, the plaintiff is entitled?

Parties led their evidence. The Trial Court after appraisal of the evidence recorded the following findings:

"1. That in the inception the tenant was carrying out business in sale of copies and books in the premises in suit.

2. The tenant started manufacturing copies, registers and sweetmeat boxes made of card board in the year 1976.

3. The original landlord was alive when the tenant started manufacturing work and no objection was raised from his side.

4. The printing work was started in the year 1982-83."

It was held that the tenant did not put the suit premises to any use inconsistent with the purposes for which it was let out. No damage was caused to the building by the use of the machines. As no objection was raised by the original landlord in the year 1976 when the tenant started manufacturing copies and registers etc. there was a tacit consent of the landlord to the change of use of the suit premises. On these pleadings the Trial Court dismissed the suit.

The appellant being aggrieved, filed a revision petition as provided under the Act. The Revisional Court after referring to Section 20(2)(d) of the Act as it stood prior to its amendment as well as after its amendment by U.P. Act No.28 of 1976, held that neither before the amendment of clause (d) of Section 20(2) nor thereafter the respondent could use the premises for any purposes other than it was let out without the written consent of the landlord. Since the tenant had changed the user of the premises for a purpose other than the one for which it was let out to him, he was liable to be evicted. Accordingly, the revision petition was accepted and a decree for ejectment was passed against the respondent.

Aggrieved against the order of Revisional Court, the respondent filed a petition under Article 226/227 of the Constitution of India in the High Court challenging the order of the Revisional Court. The High Court relying upon the decisions of this Court in Mohan Lal Vs. Jai Bhagwan 1988, (2) SCC 474 and Gurdial Batra Vs. Raj Kumar Jain, 1989 (3) SCC 441, held that the tenant had not changed the use of the suit premises for a purpose other than the one for which it was let out to him. Mohan Lal Vs. Jai Bhagwan (supra) was a case arising under the Haryana Urban (Control of Rent and Eviction) Act 1973 wherein it was held that any purpose which is part of, or ancillary or allied to the original purpose will not amount to change of user. In Gurdial Batra's case (supra), it was held that where shop was let out for repairing of cycle and rickshaws and was also used for selling of television sets would not amount to the change of user. The finding recorded by the High Court in the present case is as under:-

"..Here the premises in dispute was already used for operating stitching machine, rolling machine for making copies, file cover, boxes of sweat meats; the printing is an allied purpose. It cannot be said that petitioner has changed the purpose for which it was let out to him. The revisional court wrongly allowed the revision."

Counsel for the parties have been heard at length.

Broadly speaking a building can be let out for three purposes:

1. Residential
2. Business
3. Manufacturing

If the dominant purpose for which a building is let out is maintained, a tenant may not become liable to be evicted. But if the building is let out for residential or business purposes and the tenant starts manufacturing activity or vis-a-versa, then it would amount to change of user subject to the provisions of the act in reference.

In order to determine the controversy between the parties it would be useful to refer to Section 20(2)(d) of the Act before and after its amendment. Section 20(2)(d) before its amendment read:

"20. Bar of suit for eviction of tenant except on specified grounds.-

(1) x x x

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:

xxx xxx xxx

(d) that the tenant has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the building, or has without the consent in writing of the landlord used it for a purpose other than such purpose, or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purposes;

xxx xxx xxx"

This Section was substituted by U.P. Act No. 28 of 1976 w.e.f. 5.7.1976 and the same reads:

"20. Bar of suit for eviction of tenant except on specified grounds.-

(1) xxx xxx xxx

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:

xxx xxx xxx

(d) that the tenant has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such use, or has been convicted under any law for the time being in force of an

offence of using the building or allowing it to be used for illegal or immoral purposes;

xxx xxx xxx"

Section 20 provides that the suit for the eviction of a tenant from a building after the determination of tenancy may be instituted on one or more of the grounds enumerated therein. In the present case we are concerned with clause (d) of the said Section. Clause (d) prior to its amendment in the year 1976 could be divided into two parts:

- a) That the tenant has done any act, which is inconsistent with the purpose for which he was admitted for the tenancy of the building.
- b) Has without the consent in writing of the landlord used it for a purpose other than the purposes for which it was let out.

For doing an act which was inconsistent, written consent of the landlord was not required, it could be presumed from the surrounding circumstances or the conduct of the parties but in the case of change of use of the building for a purpose other than the purpose for which it was let out obtaining of the consent of the landlord in writing was mandatory. For an act done, which was inconsistent with the purpose for which the premises were let out the tenant was not required to take the written consent of the landlord, but where the premises were put to a use for a purpose other than for which it was let out then written consent of the landlord was a must. After the amendment of clause (d) the tenant could neither use the building nor do any act which was inconsistent with the purposes for which the premises was let out without the written consent of the landlord. In all other respects the provisions of clause (d) remained the same.

Admittedly the premises were let out to the respondent for business purposes. He started manufacturing activity in the suit premises without obtaining written consent of the landlord. This would be a change of use of the premises for a purpose other than the purposes for which it was let out and not merely an act inconsistent with the purpose for which the tenant was admitted to the tenancy of the building. For change of use of the building for a purpose other than the purpose for which it was let out written consent of the landlord was required to be obtained under Section 20(2)(d) of the Act even prior to its amendment. So, the written consent of the landlord was required for change of user of the building for a purpose other than it was let out prior to as well as after the amendment of clause (d) of Section 20(2) of the Act. The fact, for what purpose the premises was let out and whether the tenant has changed the user of the premises is jurisdictional fact and it was open to the revisional court to go into the said questions. In our view, High Court fell in error in holding that the trial court's finding that the premises was let out for operating stitching machine, rolling machines being finding of Court could not have been set aside by the revisional court. The Revisional Court recorded a finding that even prior to the amendment of the Act, the tenant used the premises for the purpose other than the premises was let out, without the consent of the landlord.

As the tenant has changed the user of the building from business to manufacturing without the written consent of the landlord before and after the Amendment of the Act, he became liable to be evicted under Section 20(2)(d) of the Act. High Court thus erred in reversing the well considered judgment of the Revisional Court.

For the reasons stated above the appeals are accepted. The Order of the High Court is set aside and that of the revisional court restored. Since the tenant has been in occupation of the building for the last nearly 30 years he is granted time upto 30th of June, 2003 to vacate and hand over the vacant possession of the building to the landlord on giving of usual undertaking

within four weeks and payment of arrears of rent, if any, and to pay future rent as and when it falls due as per the agreed terms. In the event of failure to give the undertaking as directed above, the appellant shall be a liberty to seek immediate possession of the suit premises through the process of the Court. There will be no order as to costs.

JUDIS