

CASE NO.:
Appeal (civil) 6495 of 2005

PETITIONER:
UMED SINGH

RESPONDENT:
ARYA SAMAJ SEWA SADAN

DATE OF JUDGMENT: 04/07/2006

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEALS NOS. 6496 & 6497 OF 2005

ALTAMAS KABIR, J.

The appellant, Umed Singh, was inducted as a tenant of the suit premises by one Sewa Ram at a monthly rent of Rs.100/- for residential purposes. One Mohan Lal was also a tenant of a portion of the building. The said Sewa Ram executed a Will in favour of the respondent-society, Arya Samaj Sewa Sadan, on 15th March, 1984. Soon thereafter, on 5th June, 1984, Sewa Ram died.

On 25th March, 1994, the respondent filed ejectment suit against the appellant herein under Section 13 (3) (a) (i) of the Haryana Urban (Control of Rent) & Eviction Act, 1973 (hereafter referred to as 'the Act') for non-payment of rent from 1st December, 1989 to 31st March, 1994 and also on the ground of bona fide requirement for starting a library in the suit premises. It may be indicated that the respondent-society also filed a suit against the other tenant, Mohan Lal, but the same was dismissed by the Rent Controller on the ground that running of a library could not be equated with the expression "use or occupation by the landlord for purposes of residence". An appeal preferred by the society against Mohan Lal was allowed and the judgment of the trial court was set aside. Ultimately, however, the High Court set aside the judgment of the Appellate Authority and restored the decision of the Rent Controller.

In the meantime, by its judgment and order dated 31st January, 2000, the Rent Controller decreed the eviction petition filed by the society against Umed Singh on the ground of bona fide requirement and an appeal preferred therefrom by Umed Singh was dismissed by the appellate authority on 24th August, 2000. Umed Singh filed a Revision Petition before the High Court on 7th November, 2000 against the said judgment of the appellate authority dated 24th August, 2000. The said Revision Petition was dismissed by the High Court on 22nd November, 2000. Subsequently, having regard to the decision of the High Court in the case of Mohan Lal, the other tenant, whereby the society's eviction petition had been dismissed, Umed Singh filed a Review Petition before the High Court on 21st December, 2000 relying on the decision in Mohan Lal's case. In view of the High Court's decision in Mohan Lal's case, the order dated 22nd November, 2000 dismissing Umed Singh's Revision Petition was recalled and upon further consideration of

the provisions of Section 13 (3) (a) (i) of the Act and its different interpretations by two Division Benches of the expression "for his own use and occupation" as used in the said section, the learned Judge referred the matter to the Chief Justice for the following question to be examined by a larger Bench, namely,

"Whether his own occupation' and the 'residential purpose' in relation to a corporate body/juristic person can be read in wider perspective or in stricto sensu of the dictionary meaning?"

The aforesaid reference was placed before the Full Bench of the Punjab and Haryana High Court which considered the question referred to it in great detail in its judgment dated 23rd August, 2002, in the context of Section 13 (3) (a) (i) of the Act. While considering the Reference, the attention of the Full Bench was drawn to the observations made by the learned Single Judge in Mohan Lal's case in C.R.No.1217/2000, wherein reference was made to a decision of this Court in the case of Attar Singh vs. Inder Kumar, reported in (1967) 2 SCR 50, which was a decision rendered under the provisions of the East Punjab Urban Restrictions Act, No.III of 1949 (hereinafter referred to as "the 1949 Act"). The learned Single Judge relied on the finding in the said decision that as the respondent-landlord required the land not for business or trade but only for constructing a house for himself, he was not entitled to eject the appellant under Section 13 (3) (a) (ii) of the 1949 Act from the rented land. After considering the decision of this Court in the aforesaid case, the Full Bench made a distinction between the facts of Attar Singh's case and those of the case before it upon holding that the expression "his own occupation" had been restricted by virtue of the restraints provided in Section 13 (3) (a) (ii) of the 1949 Act. Upon considering the submissions made, the Full Bench held that all buildings which were not "non-residential buildings" would be "residential buildings". Furthermore, the expression "business or trade" are so intertwined that they are complementary to each other and it is imperative to be seen in each case as to whether activities which are to be carried out in the building are attended with business and/or trade or not. If such element is missing in the activity which is to be carried on or is to be carried out in the building, such buildings would not be defined as "non-residential building". Upon holding as aforesaid, the Full Bench answered the question referred to it, as extracted hereinabove, in the following manner:-

"Any activity, whether it is to be carried out or is being carried on in a building by a juristic person or an individual but is not tainted with business or trade and is essentially not connected with profit and loss, such activity would not render the usage of the building as "non residential building". Unless the user has been defined under a statute to be commercial de hors of element of profit and loss, such building shall be termed as "non-residential building". Thus, in each case it shall have to be examined whether the element of business or trade has crept in with the necessary element of profit and loss and as a sequel thereto, the purpose

and object of occupation by the landlord shall stand defined accordingly."

In view of the above, the interpretation of Section 13 (3) (a) (i) of the Act in Mohan Lal's case was overruled. Subsequently, the Review Petition which was pending was also dismissed by virtue of the decision rendered in the Reference. These three appeals which were filed by the tenant, Umed Singh against the initial judgment of the High Court in the Civil Revision filed by the tenant and the judgment rendered by the Full Bench and the subsequent dismissal of the Review Petition, have been heard together and are being disposed of by this common judgment.

On behalf of the appellant, it was sought to be argued that the decision of the Full Bench was erroneous, inasmuch as Section 13 (3) (a) of the Act referred to residential buildings and clause (i) thereof could only be interpreted in respect of such residential building. It was urged that running a library could by no stretch of imagination be said to be for residential purposes and the expression "own occupation" could only be in relation to use and occupation for residential purpose. It was submitted that the Full Bench of the High Court had failed to consider the fact that the aforesaid provisions would have to be interpreted in the context of residential use and not for any other purpose. It was urged that the view taken by the Full Bench was erroneous and was liable to be set aside and both the Civil Revision Application and the Review Petition filed by the appellant before the High Court were liable to be allowed.

Such submissions were vehemently opposed on behalf of the respondent-society and it was submitted that all non-residential purposes need not be connected with commercial activity as had been provided for in clause (ii) of Section 13 (3) (a) which contemplates a form of commercial activity but has also been included in the expression "own occupation" in case of a "residential building".

Reference was made to the decision of this Court in Atul Castings Ltd. vs. Bawa Gurvachan Singh, 2001 (5) SCC 133, wherein it was observed that when a premises had been leased for residence only, and there was no specific clause in the agreement that not even one room could be used as a study room for the members of the family for doing office work at home, such activity could still be undertaken in the leased premises, particularly in the days of computer, internet and other like facilities which are kept at home for convenience and use.

Since we have been called upon to consider the provisions of Section 13 (3) (a) (i) and (ii) of the Act in the background of the decision rendered by the Full Bench of the Punjab and Haryana High Court, the same is reproduced hereinbelow for the sake of reference:-

"13. Eviction of tenants. \027 (3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession \026

(a) in the case of a residential building, if,--

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area:

(ii) he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homoeopathic Practitioners Act, 1965, or for the residence of his son who is married:

Provided that such son is not occupying in the urban area concerned any other building for use as office; consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act."

There is no ambiguity that the provisions referred to are to be considered in the case of a residential building. In other words, we will have to consider whether Sub-clause (i) makes it obligatory on the part of the landlord to use the premises purely for residential purposes only or whether the expression "own occupation" also connotes use of the premises for non-commercial purposes, i.e. for purposes unconnected with business or trade.

The respondent-society intends to use the premises in question for running a public library without any profit which would bring the same within the ambit of non-commercial use. The Full Bench of the High Court was, therefore, fully justified in arriving at the conclusion that the suit premises would be covered by the provisions of Section 13 (3) (a) (i) of the aforesaid Act. The respondent being a society, cannot have any residential requirement in respect of a premises and its activities will have to determine the nature of its use of a premises. A juristic person cannot have need of residence but may use a premises for non-commercial purposes. Since the society intends to use the premises for itself for a non-commercial purpose, unconnected with any business or trade, it must, in our view, come within the ambit of Section 13 (3) (a) (i) of the Act and more particularly so having regard to Clause (ii) which contemplates use of the residential premises even for purposes such as a consulting room for a lawyer or other professionals.

We, therefore, see no reason to interfere with the reasoning of the Full Bench while considering the provisions of Section 13 (3) (a) (i) of the Act and, in our view, the appeals before us are devoid of merit and are accordingly dismissed. There will be no order as to costs.