M. Arul Jothi & Anr. vs Lajja Bal (Deceased) & Anr. on 29 February, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1122, 2000 (3) SCC 723, 2000 AIR SCW 739, 2000 (2) SCALE 155, 2000 (3) LRI 1145, 2000 SCFBRC 68, 2000 HRR 310, 2000 (1) UJ (SC) 632, 2000 UJ(SC) 1 632, 2000 (2) ALL CJ 1559, 2000 (3) SRJ 318, (2000) 2 JT 522 (SC), 2000 (2) JT 522, (2000) 2 KER LT 71, (2000) 1 RAJ LW 135, (2000) 1 CURCC 261, 1999 WLC(RAJ)(UC) 565, (2000) 1 RENCR 278, (2000) 1 RENTLR 668, (2000) 2 SCJ 67, (2000) 4 ANDHLD 62, (2000) 2 SUPREME 34, (2000) 2 SCALE 155, (2000) WLC(SC)CVL 193, (2000) 3 ANDH LT 19, (2000) 2 ALL RENTCAS 391, (2000) 2 BLJ 287

Bench: N.S.Hegde, A.P.Misra

CASE NO.:
Appeal (civil) 14150 of 1996

PETITIONER:
M. ARUL JOTHI & ANR. .

Vs.

RESPONDENT:
LAJJA BAL (DECEASED) & ANR. ..

DATE OF JUDGMENT: 29/02/2000

BENCH:
N.S.Hegde, A.P.Misra

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J MISRA, J.

The question raised in this appeal is the interpretation of Section 10(2)(ii)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960. The question is whether in terms of the rent agreement between the appellant (tenant) and the respondent (landlord), if the tenant uses the shop for a different purpose than the one specified therein will he be liable for eviction?

The short facts are, a rent agreement was entered into between respondent no.1 and one Mr. T.S. Arulrayar (the grandfather of the appellant) under which the disputed shop was rented out. The relevant portion of the rent agreement which requires our consideration is reproduced below:-

> shall be used by the tenant only for carrying on his own business dealing in radios, cycles, fans, clocks and steel furniture and for non-residential purposes and the tenant shall not carry on any other business than the above said business.
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> {Emphasis supplied} On 12th April, 1979 a legal notice was sent by the landlady to the said T.S. Arulrayar terminating his tenancy on two grounds, the wilful default in payment of rent and using the shop for a purpose other than that for which it was let out. This was followed by filing of petition before the rent controller in which it was stated that the tenant is also doing the business of provisions such as chilies, dals and other condiments etc., which is other than the one for which he took the accommodation on rent. The tenant denied it and asserted, if the rent-deed is read as a whole it cannot be said that it was for any specified purpose but was given broadly for doing business but was not for residential purpose. Thus, it cannot be termed as a different user. The rent controller finally decreed the suit by holding that tenant is also carrying on the business of provisions, which is other than the one mentioned in the rent deed which would be a different user, hence ordered for his eviction. Thereafter the said T.S. Arulrayar filed an appeal before the Appellate Authority which also confirmed the aforesaid judgment. Next civil revision was filed before the High Court. The High Court remanded the case to the Appellate Authority, relying on M.K.P. Chettiar Vs. A.P. Pillay, 1970 (2) SCC 290, for recording, whether the tenant was using substantial portion of the disputed shop for a different user. After remand the Appellate Authority once again decreed the eviction suit recording substantial portion being put to different user. The appellants grievance is that the said Authority did not record any finding as to the area actually used by him for a different purpose. The inference of a different use of substantial portion was only drawn since appellant could not produce the accounts books relating to the grocery business. The challenge was also that the said Authority wrongly placed burden of proof on the tenant instead on the landlord, hence filed the revision before the High Court. During pendency of the same, Mr. T.S. Arulrayar died and the present appellant and respondent no.2 were brought as his legal representatives. The High Court also confirmed the findings recorded by the Appellate Authority. Aggrieved by this the present appeal is filed.
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> The thrust of submission by learned senior Counsel for the appellant is that the shop was given on tenancy for doing business and even if the appellant changes his business or undertook another business from dealings in radios, cycles, fans, clocks and steel furniture to the grocery business; would still be a business and such a change would not affect his right to use it as such. Broadly, tenancies are either for residential or commercial use. Since the change of business does not change its use from commercial it would not constitute this to be a ground for his eviction. To substantiate this, he made reliance on Section 108 (o) of the Transfer of Property Act,

which is quoted hereunder:-

> 108 Rights and liabilities of lessor and lessee .. (o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

{Emphasis supplied} It is submitted that language of this section and that of Section 10 (2)(ii) (b) are similar. Both expresses that tenant must not use the property for a purpose other than that for which it was leased. He also emphasised that the accompanying words used in the aforesaid quoted portion of the rent-deed, namely, that shall be used by the tenant only .and for non- residential purposes, confirms the interpretation that the shop is to be used for non-residential purposes in other words only for business thus any change of business would have no consequence and thus would not defeat the tenants right. For ready reference Section 10(2)(ii)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 is also quoted below:-

> 10. Eviction of tenants: (1) A tenant shall not evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16:
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> (2) 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 application, is satisfied
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> (i)
>
> (ii) that the tenant has after the 23rd October, 1945 without the written consent of the landlord
>
> (a).
>
> (b) used the building for a purpose other than that for which it was leased, or . {Emphasis supplied} He relied on, Gurdial Batra Vs. Raj Kumar Jain, 1989 [3] SCR 423. This was a case where the premises (shop) was let out for repairing business. Later, along with the repairing business, the sale of T.V. was temporarily carried on. The Court held that this change of user would not constitute to be a use for a purpose other than that for which it was leased. This was a case under Section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act, 1949, the provision of which is similar to the present provision to which we are called upon to interpret. For this conclusion, the Court relied on an earlier decision of this Court in Mohan Lal Vs. Jai Bhagwan ,1988 [2] SCC 474, to which we shall refer hereunder and also observations of Lord

Diplock J. in Duport Steels Ltd. Vs. Sirs, 1980 [1] ALL ER 529, which is reproduced below:-

While respectfully agreeing with the said observations of Lord Diplock, that the Parliament Legislates to remedy and the judiciary interprets them, it has to be borne in mind that the meaning of the expression must be found in the felt necessities of the time. In the background of the purpose of rent legislation and inasmuch as in the instant case the change of the user would not cause any mischief or detriment or impairment of the shop in question and in one sense could be called an allied business in the expanding concept of departmental stores, in our opinion, in this case there was no change of user which attracted the mischief of section 13(2)(ii)(b).

It held:

Letting the premises can broadly be for residential or commercial purpose. The restriction which is statutorily provided in Section 13(2)(ii)(b) of the Act is obviously one to protect the interests of the landlord and is intended to restrict the use of landlords premises taken by the tenant under lease. It is akin to the provision contained in Section 108(o) of the Transfer of Property Act dealing with the obligations of a lessee. A house let for residential purpose would not be available for being used as a shop even without structural alteration. The concept of injury to the premises which forms the foundation of clause (o) is the main basis for providing clause (b) in Section 13(2)(ii) of the Act as a ground for the tenants eviction.

We find in Gurdial Batras case (supra) there is absence of any words in the rent deed which restricts or limits of doing or not doing any business except the one stated in the rent deed. Thus, on these facts the court held that the letting could only be either for residential or commercial purpose. This distinguished feature is revealed by what the Court also records:

The landlord has accepted the position that in the rent note it was not written that the respondent would not do any business in the shop in dispute except the cycle or rickshaw repairs. On these facts it has now to be decided as to whether the premises has been used for a purpose other than that for which it had been leased.

{Emphasis supplied} The next reliance was placed on Mohan Lal Vs. Jai Bhagwan, 1988 [3] SCR 345. As per clause 4 of the rent note, the tenant was to run the business of English Liquor Vend, and do sale of liquor in the shop. The landlord filed the eviction suit on the change of user by the tenant from liquor business to that of general merchandise. In this case the Court held:

While respectfully agreeing with the said observations of Lord Diplock, that the Parliament Legislates to remedy and the judiciary interprets them, it has to be borne in mind that the meaning of the expression must be found in the felt necessities of

the time. In the background of the purpose of rent legislation and inasmuch as in the instant case the change of the user would not cause any mischief or detriment or impairment of the shop in question and in one sense could be called an allied business in the expanding concept of departmental stores, in our opinion, in this case there was no change of user which attracted the mischief of section 13(2)(ii)(b) of the Act. The High Court, therefore, was in error.

This Court held, in expanding concept of departmental stores the other business would only be allied business. But again we find this case is again as in the Gurdial Batra (supra), there were no restrictive words. However, this case also significantly records the following:-

According to the appellant the purpose of the user still remains commercial and that in the rent note there was no clause prohibiting the appellant to change any other business in the shop in dispute.

{Emphasis supplied} Next reliance is on State of Karnataka Vs. Ayyanahalli Bakappa and Sons, 1988 [3] SCC 587. This is a case where initially shop was given for running a grocery shop but later it was changed to running a book shop. This decision neither records facts nor any reason.

Next reliance is on Mehta General and Provisions Stores and Ors. Vs. Prem Wati (Smt.) (Dead) Through LRs., 1995 Supp [1] SCC 319. Here the change was from general provision store to the textile. Again here also neither reasons nor facts are recorded. In the aforesaid last two cases it cannot be said whether there was any prohibition clause in the rent deed of the use of the building.

On the other hand, learned counsel for the respondent relied on Ram Gopal Vs. Jai Narain and Ors., 1995 Supp [4] SCC 648. This is a case where the shop was given for business but later tenant installed an Atta Chakki and Oil Kohlu. This case could not be of any help to the respondents as here the change was, as held, from business to manufacture. Having heard learned counsels for the parties in our considered view the case cited on behalf of the appellants were all those where there was no specific clause restricting the use of the tenanted accommodation. On the other hand, in the case in hand, there is specific prohibition clause in the rent deed. In the present case there is specific clause which states shall be used by the tenant only for carrying on his own businessand the tenant shall not carry on any other business than the above said business. By the use of the words only with reference to the tenant doing business coupled with the last three lines, namely, the tenant shall not carry on any other business than the above said business, clearly spells out the intend of the parties which restricts the user of the tenanted premises, only for the business which is stated therein and no other. In order to meet this, learned counsel for the appellant referred to section 108(o) of the Transfer of Property Act and language of Section 10(2)(ii)(b) which are similar hence he submits interpretation has to be given in a

broader perspective, that is the use of building by the tenant should not be such as to damage it or diminishes its value and restriction if any could be that if it was given for business it should not be used for residential purpose and vice versa. We have no hesitation to reject this. If such an interpretation is given, it would make any specific term of a valid agreement redundant. Once parties enter into a contract then every word stated therein has to be given its due meaning which reveals the rights and obligations between the parties. No part of the agreement or words used therein could be said to be redundant. Such restriction could only be if any statute or provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 specifies, which is none. Nor we find any restriction by Section 108 of the Transfer of Property Act. In fact, Section 108 of the Transfer of Property Act starts with the words in the absence of a contract or local usage to the contrary. In other words, it permits contract to the contrary mentioned under that Section.

So, we come to the conclusion that use of the words in the rent-deed not to use it for any other purpose, it has to be given effect to and hence Section 10(2)(ii)(b) has to be interpreted to mean that use of building shall not be for a purpose other than that for which the shop was given. There is specific clause restricting its user thus it has to be used for the purpose given and no other.

The last submission by learned counsel for the appellant is unless there is specific finding that tenant has used substantial portion of the building it could not be said that there is change of user in view of M.K.P. Chettiar Vs. A.P. Pillay 1970 (2) SCC 290 (Supra), and it is for this the case was remanded, and the finding of substantial portion having used is not sustainable as details of that not recorded hence eviction decree is not sustainable. On the other hand, learned counsel for the respondents relied on the statement made by the appellants father (Mr. T.S. Arulrayar) who was the original lessee, which reveals that substantial portion of the shop was used for the changed business. The said statement is quoted hereunder:

I am running the radio shop in area measuring East to West 9 feet and North to South 9 and ½ feet. The provision store is being run in area measuring East to West 7 feet and North to South 9 and ½ feet.

The submission is, this itself shows substantial portion of the shop is being used for other business. In view of this statement and the finding recorded by authority below that substantial portion of the shop is being used by the tenant for the changed business we do not feel it proper to interfere with it.

However, we find in Bishamber Dass Kohli (Dead) By Lrs. Vs. Satya Bhalla (Smt.), 1993 [1] SCC 566 where this question was raised that change of business was not in the substantial part of the building. The Court held:

Shri Mahajan contended that to constitute the ground under Section 13(2)(ii)(b), the change in user should be in respect of at least a 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 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 schedule 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 the building is of significance, a distinction is made in 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. Same is the position with regard to the ground of eviction contained in Section 13(2)(ii)(b) wherein change in user of the building is alone significant for constituting the ground. {Emphasis supplied} This is a decision by three Honble Judges of this Court. This completely dissolves the submission for the appellant. Learned counsel for the appellant attempts to distinguish this decision that this was a case under Section 2(h) of the East Punjab Urban Rent Restriction Act, 1949. It defines scheduled building as one being used partly for business and partly for residence. So even if part is used for residence it continues to be scheduled building. This distinction would not distract the law laid down therein which is evid ent from the last line of the aforesaid quoted lines which holds, Same is the position with regard to the ground of eviction contained in Section 10(2)(ii)(b) wherein change in user of the building is alone significant for constituting the ground. In view of what we have concluded and the said decision which squarely apply, we have no hesitation to hold that courts below have rightly decreed the suit for eviction as against the appellant and change of user of the business by the appellants from radios, cycles, fans, clocks and steel furniture to grocery business is in contradiction to the specific term of the agreement. Thus such tenant would be covered by Section 10(2)(ii)(b). Hence the appellant is liable for eviction which the courts below have rightly decreed. This appeal accordingly fails and is dismissed. Costs on the parties.