

Hari vs Waqf Of Jalal Haji Abdul Kareem Sahib on 7 December, 1983

Equivalent citations: AIR1984SC150, 1983(2)SCALE906, (1984)2SCC400, AIR 1984 SUPREME COURT 150, 1983 CRILR(SC MAH GUJ) 32, (1983) 1 SCR 905 (SC), 1984 MPRCJ 43, 1984 (2) SCC 400, (1984) 1 ALL RENTCAS 247, (1984) 1 RENCJR 115, (1984) 1 RENTLR 391

Bench: D.A. Desai, Ranganath Misra

JUDGMENT

1. This appeal by special leave is by the tenant of a commercial premises located in the city of Madras and is directed against the confirming revisional order of the Madras High Court upholding an order of eviction. Eviction was asked for on two grounds; (1) material alteration in the building impairing the value and utility thereof; and (2) using the premises let out for non-residential purposes as residential accommodation. The Rent Controller rejected both the grounds and dismissed the petition for eviction. The appellate authority reversed the decision of the Rent Controller by accepting both the contentions and ordered eviction. The High Court agreed with the Controller that the construction of an additional room in the first floor did not materially impair the value and utility of the building but sustained the appellate order by holding :

...there is no reason to interfere with the finding of the appellate authority on the other ground having regard to the fact that it had 5 not been disputed that the building had been let only for non-residential purpose, viz., for the purpose of running a business in clocks and watches. The petitioner and his servants used to stay in the first floor of the premises though not continuously. The user of the additional room for the petitioner and his servants staying now and then clearly amounts to using the premises for a purpose different from the one for which it was let, viz., for residential purpose when the building was let for running a business in clocks and watches.

2. Undoubtedly the appellant has been running the business of clocks and watches in the premises. As found by the High Court, the occupation of the additional space is casual. The appellant and his servants obviously did not use the additional space as their residential accommodation. As rightly explained by counsel for the appellant, such space has been occasionally utilised as a resting place providing for accommodation for the guard to keep watch over the valuables in the shop. This cannot be taken to be a diversion of the tenancy from commercial to residential use.

3. We had a feeling that the respondent which is a waqf was anxious for enhancement of the rent and when that aspect was discussed, counsel for the respondent indicated that the landlord's representative was present in Court and both sides agreed that the rent which was Rs. 50/- per

month in respect of this tenancy which had been created in 1954 should be now fixed at Rs. 300/- per month with effect from December 1, 1983. Respondent's counsel indicated that rent was in arrears from 1976 but that fact was not accepted by appellant's counsel. Parties have, however, agreed that arrears of rent up to the end of November 1983 calculated at the rate of Rs. 50/- per month would either be deposited with the Controller or paid to the respondent by the end of January 1984. We accordingly dispose of this appeal with the direction that the decree for eviction be set aside and arrears of rent up to the end of November 1983 be paid by the end of January 1984 and the rent for the premises be raised to Rs. 300/- per month from December 1, 1983. There will be no order as to costs throughout.