Rajinder Kumar Bansal . vs Municipal Committee on 17 August, 2021

Equivalent citations: AIR 2021 SUPREME COURT 3903, AIRONLINE 2021 SC 508

Author: Hemant Gupta

Bench: A.S. Bopanna, Hemant Gupta

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8238 OF 2013

RAJINDER KUMAR BANSAL & ORS .....APPELLA

VERSUS

MUNICIPAL COMMITTEE & ORS. .....RESPONDEN

WITH

CIVIL APPEAL NO. 8239 OF 2013

JUDGMENT

HEMANT GUPTA, J.

1. The landlord is in appeals aggrieved against an order passed by the High Court of Punjab & Haryana on 04.03.2009 whereby the club activities were not held as business within the meaning of Section 2(f) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 1 so as to apply the Act to the rented land. The High Court has set aside the orders passed by the Rent Controller as well as by the Appellate 1 Hereinafter referred to as the 'Act' Authority holding that the rented land is being put to use for the purpose of business.

2. The facts leading to the present appeals are that one Telu Ram was the original owner of the property. Bhagwan Dass held occupancy rights in terms of the Punjab Tenancy Act, 1887. Bhagwan Dass earlier executed a gift deed in favour of Louis club on 16.01.1909 for the purpose of running a club only after construction of a building thereon in respect of land bearing Khasra No. 770 comprising 15 bighas and 12 biswas and Khasra No. 771 comprising of 0 bighas 8 and biswas i.e. total admeasuring 16 bighas. Bhagwan Dass had doubt about the gift since he had only occupancy rights and therefore, a lease deed was executed, after cancelling the gift deed, in favour of the Respondent No. 2 herein on 03.03.1909. The rent was Rs. 10/- per year besides land revenue. The tenant was given authority to use land for the purpose of club. It further provided that if there is any construction, the landlord will pay market price of it. The lease deed in question reads as thus:

> " I, Bhagwan Dass S/o Lala Bihari Lal Mahajan is resident of City Ambala. That land in Khewat no. 10/12, Khasra No. 542, 543 measuring 15 Bigha 16 Biswa situated in Patti Acharjan, City Ambala, executant has occupancy rights U/s 6 as per tenancy law Punjab. That the executant with his own free will without any pressure gave possession for Entertainment vide Gift dated 16- 01-1909 in favour of Louis Club, Ambala City and possession was also given to the Club. The gift deed was also got registered. As gift deed as per condition on line no. 12, 13 of gift deed is not legally valid, so said Gift deed was cancelled by the present deed. Occupancy rights are given to Louis Club on perpetual leases. All the rights are given to the club for its use. Club is in possession. Club is authorized to use the land for the purpose of Club. For the occupancy rights of executant the rent has been fixed at Rs.10/- per year which will be paid yearly. Land revenue and amount to be paid to the owner of the land will be paid by Club. Club is authorised to get the said amount remitted from Govt. or owner or they may pay them. The condition is that if Club cease to exist and land is not used then the land will come back to the executant. If there is any construction the executant will pay the market price. If executant does not pay the said price the Club is authorised to remove his material or to sell the same to somebody else. The executant will have no objection. The owners have given consent separately for the above. That perpetual lease deed has been scribed on 03-03-1909."

3. It is an admitted fact that a pavilion was constructed, which was used for the purpose of club only. The Respondent No. 2 herein created a sub-lease in favour of Ladies Tandon Club. Later, one portion of the property was transferred to the Municipal Committee. The Municipal Committee changed the use of the property by sinking a tubewell for the use of residents of the town. Therefore, the appellants filed a petition for ejectment inter alia on the ground of non-payment of rent; (2) subletting of the premises without the consent of the landlord; and (3) that the property had been abandoned by the first respondent which had ceased to exist and the premises were now being used for the offices of different departments that is the property has been put to unauthorized use.

4. The joint written statement was filed on behalf of the Respondent Nos.

1, 2 and 3 i.e., Louis Club, Deputy Commissioner, State of Haryana inter alia pleading that the premises had never been used for business and commercial purposes. Therefore, it is not covered by

the rent control laws. The State claimed ownership of the property. It was further pleaded that Ladies Tandon Club has been occupying a portion of the property as a licensee since 1936 which is an unregistered society. Reference was made to the gift deed in which mutation was sanctioned and possession delivered to Louis Club.

5. An order of ejectment was passed by the Rent Controller on 18.2.1988.

An appeal against the said judgment was preferred by Louis Club through the Deputy Commissioner, State of Haryana. Such appeal was dismissed on 19.03.1994. Aggrieved against the order passed by the Appellate Authority, a Revision Petition was filed by the Municipal Committee under Section 115 of the Code of Civil Procedure, though it should have been under Section 15 (6) of the Act. The High Court allowed the revision petition.

6. The High Court relied upon the judgment of this Court reported as Haji Ismail Valid Mohmad v. Sports Club in the name of Union Sports Club2 that the activities of indoor and outdoor games of a club would not lead to the conclusion that premises was let out for the purpose of education. The High Court made reference to Hazara Singh and others v. Dalip Singh and others3 wherein it was held that if the land was not principally let for business or trade, the Act could not 2 (1992) 1 SCC 315 3 AIR 1981 Punjab and Haryana 155 have been applicable. The Full Bench judgment of the High Court reported as The Model Town Welfare Council, Ludhiana v. Bhupinder Pal Singh4, was distinguished that the Full Bench did not examine the question of "rented land" and thus it is not applicable. It was also held that club activities shall not mean business. In view of the said fact, the findings recorded by the Rent Controller and Appellate Authority were set aside and the eviction petition was dismissed as the authorities under the Act had no jurisdiction to entertain the ejectment petition.

7. Learned counsel for the appellant relied upon the judgment in Model Town Welfare Council wherein, the word 'business' appearing in Section 2(f) of East Punjab Urban Rent Restriction Act, 1949, which is pari materia with the definition of the rented land in Section 2(f) of the Act, framed the following questions for consideration:

> "(1) Whether the word "business" has been used in the definition of "rented land" in section 2(f) and in clause (b) of section 13(3)
>
> (a)(ii) of the Act in the restricted sense of commercial business carried on with the motive of earning profit or in the larger sense in which the expression includes everything which engages the time, talent and interest of a man, i.e., something in which a person proposes to engage himself either as a duty or in discharge of the responsibilities of his office."

8. The Full Bench of the High Court while deciding the said question, held as under:

> "24. Wherever the word "business" is defined in a particular 4 ILR 1971 (2) Punjab & Haryana 579 statute, it is to be given the meaning ascribed to it in that definition. The

> question whether the word “business” has been used in a narrower sense or in a larger sense arises in a case where no statutory definition of that expression has been given in the relevant piece of legislation. At page 164 of Aiyar’s Law Lexicon of British India (1940 Edition), the word “business” in its larger sense has been stated to mean “an affair requiring attention and care; that which busies or occupies one’s time, attention, and labour as his chief concern.” In the same passage the word “business” is mentioned to convey, in the narrower sense, mercantile pursuits; that which one does for a livelihood;

occupation; employment; as, the business of a merchant; the business of agriculture.” It has finally been stated that “the word ‘business’ is of large signification, and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors.” Referring to the larger sense of the word, it has again been stated at page 165 that ‘business is that which engages the time, talents and interest of a man; it is what a man proposes to himself; what belongs to a person to do or see done, that is properly his business; and a person is bound either by the nature of his engagements, or by private and personal motives, to perform a service for another.

31. After carefully considering the law laid down in all the above cases. I am Inclined to hold :-

> (1) That the word "business" is by itself not a word of art and is capable of being construed both in the wider as well as in the narrower sense depending on the context in which it occurs (2) Since the "landlord" within the meaning of section 2(c) of the Act can include an individual as well as juristic person and there is no special restrictive definition of the word business in the Act the expression "business" has been used in section 2(f) of the Act (in the definition of "rented land") as well as in section 13(3)(a)(ii)
>
> (b) in the wider sense and not in the narrower sense.
>
> (3) The word business in section 2(f) and section 13(3)(a)(ii) of the Act need not necessarily be commercial business carried on with a profit motive. The word includes within its scope a charitable business or a dealing in the interest of the public or a section of the public.
>
> (4) The scope of the word 'business' in the aforesaid provision of the Act is not controlled or coloured by the word 'trade' occurring alongside it in section 2(f) of the Act. Whereas every trade would be a business, the reverse of it is not true. Business is a genus, of which commercial and non-commercial business and trade are some of the species.” (Emphasis Supplied)
>
> 9. The Full Bench of the High Court approved the judgment of Madras High Court reported as P.K. Kesayan Nair v C.K. Babu Naidu5 as also another judgment of the same High Court reported as P. Vairamani Ammal v. K.N.K. Rm. Kannappa6 and a Single Bench judgment of Punjab & Haryana High Court reported as Arjan Singh

Chopra v. Sewa Sadan Social Welfare Centre, Ferozepur Cantt.7 to arrive at the conclusions referred to above.

10. In Arjan Singh Chopra's case, the tenant was sought to be evicted in bona fide requirement of a residential building. The stand of the tenant was that the building was being used for running of a school by the tenant. The argument raised was that building is a non-residential building. But if the landlord is able to show that the demised premises are not being used solely for the purposes of business or trade, the same would come within the definition of a residential building. The High Court held that the activity which the tenant society carries on in running and maintaining the school, by engaging teachers, as also some of the ministerial staff, to carry on the school, and by carrying on teaching activities, it is doing a business though it may not be making 5 AIR 1954 Mad. 892 6 1970 (II) M.L.J. 689 7 I.L.R. 1967 (II) Pb. & Hr. 645 a profit. It was held that the word business is of much wider connotation and so the activity definitely falls within the scope of that word as used in section 2(d) of the Act. It was held as under:-

"5. In the present case the tenant society maintains and carries on the school, in which connection it must necessarily engage teachers and some ministerial staff to manage the school, and for that purpose it must have funds which would be disbursed in maintaining and running the school. There is no evidence but probably part of such expense may be realised by some nominal fees which the society may be charging from its pupils. So the activity which the tenant society carries on in running and maintaining the school, by engaging teachers, as also some of the ministerial staff, to carry on the school, and by carrying on teaching activity, it is doing a business though it may not be making a profit. In view of the decision in the case cited its activity would also come within the scope of the word 'trade'. However, the word business is obviously of much wider connotation and so the activity definitely falls within the scope of that word as used in section 2(d) of the Act. The learned counsel for the landlord contends that the expression "business or trade" in section 2(d) has reference to such activity as is carried on in a shop, and hence carried on with a profit motive. If this was so, nothing stops the Legislature from limiting a definition in section 2(d) in the Act to a shop, but that is not so. The definition of a "non-residential building" applies to a building, whether shop or otherwise, which is used solely for the purpose of trade or business. So that the definition is not confined to a shop only nor does it necessarily imply that the activity, that is 'business or trade', must have with it profit motive. So this argument on the side of the landlord cannot succeed and as the activity of the tenant-society is 'business' within the meaning and scope of that word as used in section 2(d), the demised premises are 'non- residential building' with the result that the landlord cannot have ejectment of the tenant-society on the ground which is subject- matter of argument at this stage." (Emphasis Supplied)

11. A learned Single Bench of the Madras High Court in a judgment reported as P. Vairamani Ammal, was examining a case, where the tenant was using the premises as a rice and flour mill. The landlord has sought the ejectment of the tenant on the ground of his bona fide requirements for the purposes of distribution of water which was opposed inter-alia on the ground that such purpose is not a business, which would entitle the landlord to claim vacant possession. The High Court held as under:

"4. The Oxford Dictionary gives the meaning of the word "business" as "being busy, task, duty.....habitual occupation, profession, trade, serious work." It is, therefore, to be seen that the word has a very wide import and would cover every activity where men keep themselves busy. In Halsbury's Laws of England 3rd Edition, Volume 38, the word 'business' is stated as a wider term than and not synonymous with, trade and means practically anything which is an occupation as distinguished from a pleasure. Examining the scheme of the Act it will be seen that the purpose of the enactment is to consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such building. In this context the meaning of the word "business" will have to be determined..... The Object of the enactment being one to regulate of occupation of residential and non- residential buildings. I can see no prohibition against the landlord putting the building to any legitimate use and also requiring the building bonafide for any legitimate use. So long as the object is a legitimate one and so long as the requirements of the sub- section are fulfilled, I see no reason for restricting the meaning of the term "for purposes of a business." If the legitimate activity by the landlord will be his business the ordinary meaning of the word 'business' applies and there is no warrant for commercial activities or activities of trade alone. Mr. Baluswami, the learned Counsel, drew my attention Section 10(3)(b) and submitted that special provision is made for a case of religious, charitable, education or other public institution and if the word 'business' is given such a wind construction, there is no necessity for providing for a separate provision for religious, charitable and educational institutions. The contention cannot be construing the word "business" in the very restricted way and to confine it to accepted as Section 10(3)(b) is wider in its scope and the institution get possession even though if it is in occupation of another building in the same town. Further the religious institution is entitled to possession even though the purpose may not be on that falls under Section 10(3)(a)(i)(ii) and (iii). Sub-section 10(3)(c) would also support the construction which I am putting on it, as the landlord who is occupying only a part of the building may apply to the Controller for an order directing a tenant occupying a portion of the building to put the landlord in possession if he required additional accommodation for residential purposes of or purposes of a business which he is carrying on. The purport of this sub-section would be that if the landlord is in occupation of a portion of a residential or non- residential building he would be entitled to the other portion, and I see no warrant in the section for restricting his right to activities which are commercial in nature.

8. .....On a consideration of the decisions and on a consideration of the submissions made by the learned Counsel on either side, I am satisfied that the learned District Judge was right in holding that the carrying on the Thanneerpandal activity would be for purposes of business as required under Section (3)

(a)(iii) of the Act."

12. We find that the High Court has distinguished the Full Bench judgment in Model Town Welfare Council not for good reasons. The rented land as defined in Section 2(f) of the Punjab Act is pari materia with definition of rented land in the Act. It has been held that the expression "business" appearing in Section 2(f) need not necessarily be commercial business carried on with a profit motive. The word includes within its scope a charitable business or a dealing in the interest of public or a section of the public. Therefore, use of land as club for a pavilion is in interest of section of the public. Thus, land let out to a club which for the purpose of construction and use of pavilion falls within the scope of Section 2(f) of the Act and thus eviction petition is maintainable under the Act.

13. The judgment in Haji Ismail Valid Mohmad was a case where the premises were let out to a club to hold entertainment programmes and music concerts. It was found that the activities of club are more in the nature of cultural activities or recreational activities. A perusal of the said judgment shows that the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 apply to premises let out to residence, education, business, trade or storage and also open land let out for building purposes. The argument was raised that the premises were let out for purposes of education. However, the High Court took the view that the premises let out to tenant were for promoting cultural activities. Therefore, the tenant was entitled to protection of Section 6 of the Act. It was the said finding which was reversed by the Court, the Court has held as under:

"16. We regret, we cannot agree with this conclusion of law. The activities of the club are more in the nature of cultural activities or recreational activities. They are certainly not for education. In our view, in the context in which the term 'education' appears, it does not refer to such cultural activities or recreational activities as amounting to education. The basic purpose of the club activities relate to fraternizing among the members by playing indoor or outdoor games or otherwise. Such activities cannot lead to the conclusion that the premises were let for purposes of education and consequently the respondent/tenant was not entitled to the protection of the Act. We are thus constrained to set aside the impugned judgment of the High Court as well as the judgment of the lower appellate court and restore the judgment dated August 30, 1974 passed by the learned trial court. The appeal is allowed with costs."

14. The High Court has also relied upon Supreme Court judgments reported as Narain Swadeshi Mills v. Commissioner of Excess Profits Tax8, Senairam

Doongarmall v. Commissioner of Income Tax9, Manipur Administration v. Nila Chandra Singh10, as well as the judgment of Punjab & Haryana High Court reported as Hazara Singh. The judgment reported in Senairam Doongarmall arises out of the Income-Tax Act, 1922 to determine the business income. The judgment reported as Narain Swadeshi Mills is to determine the existence of business under the Excess Profits Tax Act, 1940. The judgment reported as Manipur Administration pertains to a control order issued under the Essential Commodities Act, 1955. Each of the statute is enacted for a particular objective in mind. The definition in one statute cannot be used for interpreting the same word in another statute. The judgment of the High Court in Hazara Singh is renting of an agricultural land though within the municipal area. All these judgments are clearly not applicable to the present case where the rented land was let out to a club with an implied permission to construct. The Tenant has constructed a pavilion in the year 1911 and the said pavilion was mortgaged to the District Board. The District Boards were constituted as part of local self-Government under the Punjab District Boards Act, 1883. The said Act was repealed when the Punjab Municipal Act, 1911 was enacted. The only question requires to be examined was whether such sports activity can be said to be either business or trade. The Full 8 AIR 1955 SC 176 9 AIR 1961 SC 1579 10 AIR 1964 SC 1533 Bench of the High Court was erroneous in holding that the land let out to the club used for pavilion is not for the purpose of business.

15. Learned Counsel for the State raised an argument that the huge amount of property tax has not been paid by the lessee or the successor. The fact is wholly inconsequential. Since the finding of fact was recorded by the learned Rent Controller and the Appellate Authority has not been disputed, therefore, the order of the eviction was rightfully passed against the respondents.

16. Consequently, the present appeals are allowed. The order passed by the High Court is set aside. The respondents are given three months' time to vacate the premises and handover the possession to the appellants. It is needless to say that the appellants have to pay all taxes which are due on the land before they are permitted to use the premises for their purposes.

.....J. (HEMANT GUPTA) .....J. (A.S. BOPANNA)
NEW DELHI;

AUGUST 17, 2021.