

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 5872 of 2006 (O&M)
Date of decision: April 6, 2015

Satish Kumar and others

...Petitioners

Versus

Som Parkash Rishi

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the Reporters or not ?**
- 3. Whether the judgment should be reported in the Digest?**

Present: - Mr. Puneet Jindal, Senior Advocate with
Mr. CB Goel, Advocate, and
Mr. Varun Goyal, Advocate,
for the petitioners.

Mr. Arun Jain, Senior Advocate, with
Mr. Abhishek Dhull, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

1. The tenant who was sought to be evicted on several grounds, including the ground that the tenant had changed the premises from residential to non-residential survived the action at the first court when it held that it was not established that the property was let only for residential purpose. The Rent Controller also observed that it was at all times shown to be used for commercial purpose and that in any event, the landlord was barred by acquiescence and estoppel from complaining of change of user. The Appellate Authority reversed the decision and ordered eviction only on the ground that the property had been shown to be used for residential purpose and that there can be no question of acquiescence or estoppel for a

change that has not been authorized in writing. The Appellate Authority observed that there was no scope in law for authorising change of user otherwise than in writing and ordered eviction. The other grounds of eviction are not required to be stated since both the courts held that other grounds which the landlord had pleaded for eviction have not been established. The respective Senior Counsel appearing on behalf of the tenant and the landlord would stay confine only to ground of change of user.

2. The learned Senior Counsel appearing on behalf of the landlord would argue that the property admittedly had not been let out by the person who had filed the petition, but they themselves were purchasers from the original landlord and the original landlord had not restricted the use for residential purpose and that the property was always being used only for the purpose for which it was let. The Senior Counsel would make an issue of the fact that there was no written note and there was also no proof led by the landlord that the property was let out only for residential purpose. The counsel also read to me at length the observations of the Rent Controller that the landlord had not set out the date when the change of user was made and that further even in previous petition filed earlier, there had been no reference to the fact that the property was put to use only for the residential purpose. The counsel would support the findings of the trial court that there was no proof of change of user of the building and the Appellate Authority had wrongly made reference to the fact that the property had been put to a different use than the purpose for which it was let. The counsel would refer to the fact that the property was referred to as a godown which in the nature of things is a non-residential purpose and relied on the judgment of the Supreme Court in Shabir Ahmad Versus Sham Lal 2002 AIR Supreme

Court 1036 that considered the issue of lease of a shop-cum-flat (SCF) and held on the facts brought before it that it was a commercial building and it could not be treated as a residential purpose only because there was an expression 'flat'.

3. The Senior Counsel appearing on behalf of the landlord points out with reference to the plan as approved by the Chandigarh Administration at the time of allotment that the demised property is a shop-cum-flat comprising of the basement which is described as a godown, a first floor that comprises of a hall, a kitchen, a bathroom and latrine, including and office space and the second floor which is referred to as workers room. What was rented out was the only first floor and no part of the building at the ground floor or the second floor was let out. The counsel would state that the place in the first floor shown as the office was a manner of use that was possible but what was constructed and let out was only a hall with kitchen and the toilet facilities, as mentioned above. The counsel would also refer me to the communication elicited under the RTI Act from the estate office that the particular property demised could not be used for any commercial activities, like opening of shop and display of sale and purchase of goods. The Senior Counsel would also read to me the averments of the petition itself which clearly explained that the property let out was a residential one and there was not even a dispute in that regard. The counsel would refer me the voters list during the relevant period when the entire family members of the petitioners were entered as residing there including the wife and the daughter. The entries showed that it could not have been used as a godown for a commercial purpose. The counsel would also read to me the evidence of witnesses cited by the tenants who had spoken about the

fact that the tenant's family had shifted their family from the demised property to Panchkula, meaning thereby that they were using the property for a residential purpose they had later changed the character of the property for sale of tea at the premises.

4. There is no denial at all anywhere that the property is now being used for commercial purpose. The Senior Counsel for the petitioners was only trying to show that the property was never used for residential purpose. His own reference to a judgment of the Supreme Court was in the context of how an SCF could be treated as a commercial property. Now the evidence brought on record are formidable to deny that the property was being used for a residential purpose. Admittedly, there was no written document of lease. It will be, therefore, futile to expect proof of terms of tenancy through an instrument. It has to be inferred only from the evidence. That evidence is a clearly pointer to the fact that the original letting was only for residential purpose. PW3/1 which is a voters list for 1983 contains a reference to the tenants family including his wife Geeta Devi and son Suresh Kumar. The electricity supply for the property is shown to be DS (domestic supply), as per Ex. PW3/A. Both RW2 and RW3 have spoken in their evidence that the tenant was using the property for sale of tea on the first floor and the tenant himself as RW1 has admitted that “we have presently residents of Panchkula at rent (sic)”. The expression “presently” must be at the time of giving the evidence residing in a place other than the demised property.

5. It was agreed by both the counsel at the time of arguments that there is a policy of Chandigarh administration that the ground floor as a godown can be converted as a shop but there was no policy for converting

the first floor as either a godown or a shop. The description of the property as SCF in the context in which the evidence has come must surely be understood as a flat for residential purpose from the manner in which the property was used.

6. The change of user has been clearly established and the lower appellate court has considered the issue correctly. There is no scope for interference with the order of the court below.

7. The revision petition is dismissed.

April 6, 2015
prem

(K.KANNAN)
JUDGE