

INCONSISTENT USER

By: S.U.Khan, J.*

Section 20(2) of U.P. R.C. Act provides several grounds for eviction. Clause (d) of the said subsection is as follows:-

“(d) that the tenant has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such use, or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be use for illegal or immoral purposes.”

Similar provisions are there under R.C. Acts of other States.

Under clause (ii) of third proviso to Section 21(1) of the U.P.R.C. Act it is provided that residential building cannot be released for business purposes. Interpreting this clause it has been held in *Kush Sahgal v. M.C. Mitter*, AIR 2000 S.C. 1390 (paras 32 to 34) that residential building cannot be released for establishing clinic.

Broadly speaking the purposes for which a building may be used or let out, are three. One is residential, second is commercial and the third is manufacturing. Changing business or selling different types of goods from a tenanted shop does not amount to inconsistent use.

In *M. Arul Jothi v. Lajja Bal* AIR 2000 SC 1122 under Tamil Nadu R.C. Act (Section 10(2)(ii)(b)] it was provided in the lease deed that the tenanted shop

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“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. (Emphasis supplied).”

It was found that the tenant had also started the business of selling groceries like chillies, dals and other condiments etc. (para 2). It was held that in view of express prohibition in the lease deed, additional business amounted to inconsistent user.

In *Hari Rao v. N. Gonvindachare* AIR 2005 SC 3389 under Tamil Nadu R.C. Act 1960 [Sec. 10(2)(ii)(b)] it has been held that if the premises is let out for a particular trade, change of trade by the tenant does not amount to change of user unless it was provided in the lease deed that the tenant could carry on only a particular trade and no other trade. In the said case the building/ room / shop was let out for shoe trade or trade in leather goods however after some time the tenant started using part of the premises for sale of readymade garments also. It was held that it did not amount to inconsistent user. *M. Arul Jothi*, supra, was distinguished on the ground that in the said case the lease deed specifically prohibited any other business. As to what would and what would not amount to inconsistent user it was stated in para 6 as follows:

“In other words, when the lease is granted for the purpose of a trade, in the absence of any covenant in the contract between the parties prohibiting a user different from the particular one mentioned in the lease deed, the tenant would be entitled to carry on any trade in the premises, consistent with the location and the nature of the premises. In a case where the premises let out for a commercial purpose, is used by the tenant for a residential purpose, it would be a user for a purpose other than that for which it was leased attracting Section 10(2)(ii)(b) of the

Act. Similarly, if a building had been let out for the purpose of a trade, but a tenant uses the premises for the purpose of manufacture or production of materials after installing machinery, that would be a user other than the one for which the building was let. User of a building let out for a trade as a godown may attract the provision.”

In this authority the judgments of *M.K. Palaniappa, Mohan Lal, Gardial, Dashrath* and *Ram Gopal* were considered in para 7 as follows.

In *M.K. Palaniappa Chettiar v. A. Pennuswami Pillai (1970)2 SCC 290* under T.N. R.C. Act, the tenant, while continuing the business for which the building was taken on rent, was using a negligible portion of the building for the purpose of cooking. Supreme Court held that the High Court was in error in reversing the decision of the Rent Controller and the Appellate Authority to the effect that no ground for eviction under Section 10(2)(ii)(b) of the Act was made out. Supreme Court dismissed the petition for eviction.

In *Mohan Lal v. Jai Bhagwan, AIR 1988 SC 1034*, Supreme Court, interpreting the corresponding provision in Haryana Urban (Control of Rent & Eviction) Act, 1973, held that when a tenant who had taken a building on lease for the purpose of running a business in liquor, converted the business into that of general merchandise, in the absence of a negative covenant, the user did not amount to user for a purpose other than that for which the building was leased.

The same position was adopted in *Gurdial Batra v. Raj Kumar Jain, AIR 1989 SC 1841*, where the premises was let out for repairing business and the tenant along with the repairing business, also carried on sale of television sets for a while.

Supreme Court held that there was no change of user which would attract the liability for eviction under the corresponding provision of the East Punjab Urban Rent Restriction Act, 1949. It was clearly stated that the concept of injury to the premises which forms the foundation of Section 108(o) of the Transfer of Property Act is the main basis for a provision similar to the one in Section 10(2)(ii)(b) of the Act.

Dashrath Baburao Sangale & Others v. Kashimath Bhaskar Data, AIR 1993 SC 2646 was a case where the premises was taken on rent for "sugarcane crushing with the help of an ox and for the shop thereof" and the tenant was to get constructed a temporary shed of tin-sheet for that purpose. The tenant started a cloth business in the premises. The courts below found that this was a user for a purpose other than that for which the premises was leased and Supreme Court found no ground to interfere. This decision only re-affirms the position that everything would depend on the terms of the letting and the facts of the case. Obviously, the cloth business started, had no connection with crushing of sugarcane.

The decision in *Ram Gopal v. Jai Narain and others* 1995 Supp. (4) SCC 648, shows that the user by the tenant of a building taken on rent for the purpose of running a shop (commercial), for a manufacturing purpose, would entail his eviction on the ground of change of user. The tenant, in that case, installed an Atta Chakki and an Oil Kolhu, in the shop.

In *Bishambar Dass Kohli v. Saty Bhalla* 1993 (1) SCC 566 (3 judges) under East Punjab R.C. Act 1949 it was held that change in user need not be in respect of substantial part of the tenanted building. It was quoted and followed in *Arul Jothi* (2000) supra.

In *Mohan Amba Prasad Agnihotri v. Bhaskar Balwant Aher* AIR 2000 SC 931 under Bombay R.C. Act 1947 it was found that the tenanted premises consisting of 3 rooms was let-out for use of the two rooms on front side for commercial purpose and the third room at back side for residential purpose, however the tenant switched over the portions and was using two rooms on the front for residential purpose and the third backside room for business. It was held that it did not amount to change of user.

In *Jagdish Lal v. Permanand* AIR 2000 SC 1822 under Hyderabad R.C. Act 1973 it was held that change of business from General Merchandise to restaurant business amounted to change in user. However such change was only for a short period and tenant had reverted back to his original business during pendency of eviction proceedings and several other grounds for eviction had also been taken which all were negated by all the Courts hence appellant was allowed to continue as tenant subject to paying higher rent. Rent was enhanced from Rs. 600/- Rs. 1500/- per month.

In Delhi R.C. Act 1958 it is provided under Section 14(1)(a) that if the tenant has used or dealt with premises in a manner contrary to any condition imposed on the landlord by the Government or by the Delhi Development Authority or the Municipal Corporation of Delhi while giving land on lease to the landlord on which premises is situate, tenant shall be liable for eviction. In *Munshi Ram v. Union of India* AIR 2000 SC 2623 it was held that if such a building was used for residential as well as commercial purpose while D.D.A. had imposed the condition that it shall be used for residential purpose only then the tenant would be liable to eviction unless he stopped the misuse within the time fixed by the Rent Controller.

In *M/s. Atul Castings Ltd. v. Bawa Gurvachan Singh*, AIR 2001 SC 1684 under East Punjab R.C. Act 1949 it was held that use of one room of a residential building to dispose of some office files by the tenant does not amount to change of user.

Similarly use of a room as chamber by an advocate being a tenant in residential building would not amount to change of user. Under Section 14(1)(e) of Delhi R.C. Act residential building cannot be released for commercial purpose (like Section 21(1) Clause (ii) of third proviso of U.P. R.C. Act). In *Hira Lal Kapoor v. Prabhu Chaudhury* AIR 1988 SC 852 (paras 9 to 13) it was held that if an advocate landlord sought eviction of the tenant from residential accommodation and asserted that along with residence he will use one room as chamber, it did not amount to seeking release for non-residential purpose. However it was further held that in case entire tenanted accommodation had been intended to be used as chamber, it would not have been permissible.

However in *Bishambar Das Kohli v. Satya Bhalla* 1993 (1) SCC 566 (3 judges) supra advocate husband of the lady tenant was using one room of the tenanted house as his chamber. It was held that it amounted to inconsistent user.

The only way of reconciling *Bishamber Dass Kohli* and *Hira Lal Kapoor*, supra, is to confine the first authority to the cases where the tenant himself or herself is not a practicing advocate at the time of taking the residential building (house) on rent. If a practicing advocate takes the house on rent the purpose for which it is let out by the landlord and taken on rent by the tenant is residence with a portion to be used for chamber. Accordingly there will not be any inconsistency with the purpose

of letting. However if the spouse, son or daughter of the tenant is advocate and at the time of letting it is not clarified that some family member is practicing advocate then use of a portion as chamber by that family member advocate may be inconsistent user. Similar will be the position if after start of tenancy landlord or any of his family members becomes advocate.