

NEW DELHI MUNICIPAL COUNCIL

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v.

SOHAN LAL SACHDEV (DEAD) REPRESENTED BY MRS.
HARINDER SACHDEV W/O. LATE SOHAN LAL SACHDEV

FEBRUARY 9, 2000

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[S.B. MAJUMDAR AND D.P. MOHAPATRA, JJ.]

Electricity Act, 1910: Section 23—Two floor of a residential house rented for use as a Guest house—Electricity charges claimed on domestic rates—Commercial rates charged—Suit filed for injunction restraining NDMC from charging commercial rates—Suit dismissed—First appeal also dismissed—Second appeal allowed by High Court—On appeal, Held: letting out of premises for running a guest house amounted to commercial purpose—Purpose for which the guest or occupant of guest house uses the electricity not relevant—Nature of purpose of the user by the owner relevant for determination.

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Words & Phrases:

'Commercial', 'domestic purpose'—Meaning of.

The respondent (after death represented by his wife) was residing on the ground floor of his house and let out the first floor and *barsati* to a Guest House. On this the appellant started charging for water and electricity on 'non-domestic rates'. The respondent, therefore, filed a suit for an injunction restraining the appellant from raising demand on the basis of commercial user of the premises which was dismissed. First appeal before the Sr. Civil Judge was also dismissed. The second appeal filed by the respondent was allowed by the High Court on the ground that the user of the suit premises for running the 'guest house' without any kitchen facility was a user for residential purpose. Hence the present appeal.

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Allowing the appeal, this Court

HELD : 1.1. The terms 'domestic' and 'commercial' are not defined in the Electricity Act or Rules. Therefore, the expressions are to be given common parlance meaning and must be understood in their natural,

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- A** ordinary and popular sense. In interpreting the phrases the context in which they are used is also to be kept in mind. The word "commercial" means traffic, trade or merchandise in buying and selling of goods whereas the phrase "domestic purpose" means use for personal residential purposes. The significant thing to note is that what is the character of the purpose of user of the premises by the owner or landlord and not the character of the place of user. The classification made for the purpose of charging electricity duty by the NDMC sets out the categories 'domestic user' as contra- distinguished from 'commercial' user or to put it differently 'non-domestic user'. The intent and purpose of the classification is to make a distinction between 'purely residential purpose' as against 'commercial purpose'. In the case of a 'guest house', the building is used for providing accommodation to 'guests' who may be travellers, passengers, or such persons who may use the premises temporarily for the purpose of their stay on payment of charges. The use for which the building is put by the keeper of the guest house in the context cannot be said to be for purely residential purpose. It is the use of the premises by the owner (not necessarily absolute owner) which is relevant for determination of the question and not the purpose for which the guest or occupant of the guest house uses electric energy. [735-C-H; 734-A-B]

- E** *Municipal Corporation of Greater Bombay v. Mafatlal Industries*, [1996] 8 SCC 27 relied on.

Stroud's Judicial Dictionary, Vth Edition, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 912 of 2000.

- F** From the Judgment and Order dated 18.12.96 of the Delhi High Court in R.S.A. No. 27 of 1995.

R.K. Maheshwari for the Appellant.

- G** Rajesh Malhotra and Dalip Kumar Malhotra, for the Respondent.

The Judgment of the Court was delivered by

MOHAPATRA, J. Delay condoned. Leave granted.

- H** The core question that arises for determination in this case is

whether use of premises for the purpose of a guest house can be termed as 'domestic use' for the purpose of electricity charges by the New Delhi Municipal Council (NDMC)? A

The factual backdrop of the case, shorn of unnecessary details, may be stated thus : B

Sohan Lal Sachdev, deceased, represented by legal representative, was the landlord of the premises bearing No. 49, Golf Links, New Delhi. He occupied the ground floor the said premises. In the month of September, 1981, he let out the first floor and the Barsati floor to Sachdeva Guest House for running a guest house. When this fact was intimated to the Corporation Authorities by the landlord, demands of electricity and water charges were made according to 'non domestic rates' with effect from 1.10.1981. The landlord protested against the demand stating that the user of the premises for running a guest house cannot be said to be a commercial use of the premises and therefore the demand is unsustainable. Thereafter, the landlord filed a suit, Suit No. 230 of 1982, seeking a decree of injunction against the NDMC restraining it from raising demand on the basis of commercial user of the premises on the ground as noted above. C D

The case of the NDMC was that use of the premises (first floor and Barsati floor) for running the 'guest house' cannot be said to be 'domestic use'; it is a commercial user and therefore demand of electricity on that basis is justified. The learned Trial Judge on the pleadings framed three main issues : E

- (1) Whether the user of the premises for running a guest house can be termed as commercial user? F
- (2) Whether the defendant is competent to charge the electricity consumption on non-domestic rates?
- (3) Whether the plaintiff is entitled for the relief of injunction? G

Relying on Section 23 of the Indian Electricity Act (the 'Act' for short), the Trial Judge held that NDMC was competent to convert the charges of electricity supply from one category to another i.e. from 'domestic' category to 'commercial' category. She, however, did not accept H

A the contention of NDMC that the user of the premises in running residential guest house can be termed as commercial user and answered issue number one in favour of the plaintiff and against the defendant. The Trial Judge further held that even if the running of a guest house at the suit premises cannot be termed as commercial user, it cannot also be termed as 'domestic user' either. Therefore, the NDMC had the right to charge rates at 'non domestic rates' for supply of electricity and water at the premise being used for running the guest house. On the above finding the suit was dismissed.

C On appeal by the landlord the learned Senior Civil Judge, Delhi concurred with the finding of the trial court that NDMC was competent to vary the electricity charges of the suit premises. The first Appellate Court further held that NDMC has the right to charge non domestic rates for supply of electricity and water in the suit premises as the same was being used for running the guest house. The first Appellate Court dismissed the D appeal.

E The landlord filed second appeal in the High Court of Delhi challenging the Judgment and decree of the first appellate court confirming the judgment of the trial court. The High Court reversed the concurrent decisions of the lower courts and decreed the suit. The High Court took the view that user of the suit premises for running the 'guest house' without any kitchen facility is user for residential purpose and, therefore, the NDMC is not entitled to charge electricity and water charges on the basis of commercial use. Being aggrieved by the decision of the High Court, the NDMC has filed this appeal challenging the judgment.

F On 23.3.1998, this Court ordered:

G "Notice to issue in the light of the decision of this Court in the case of *Municipal Corporation of Greater Bombay v. Mafatlal Industries & Ors.* reported in (1996) 8 SCC 27. Notice shall state that the SLP shall be disposed of finally at the notice stage. Notice to issue on the application for condonation of delay also".

H The main thrust of the submissions of learned counsel for the appellant NDMC is that user of the suit premises for running the guest house with arrangement for boarding of guests on payment cannot be said to be

private domestic user of the premises. It is the further contention of the learned counsel that such user of the premises can be appropriately classified as 'commercial' user. The High Court, according to the learned counsel, committed an error in holding that the user of the suit premises is 'domestic'.

The learned counsel appearing for the respondent landlord on the other hand supported the judgment of the High Court reiterating the reasons stated therein.

On the case of the parties and the rival contentions raised on their behalf, the question formulated earlier arises for consideration.

The two terms 'domestic' and 'commercial' are not defined in the Act or the Rules. Therefore, the expressions are to be given common parlance meaning and must be understood in their natural, ordinary and popular sense. In interpreting the phrases the context in which they are used is also to be kept in mind. In Stroud's Judicial Dictionary (Fifth Edition) the term 'commercial' is defined as "traffic, trade or merchandise in buying and selling of goods". In the said dictionary the phrase 'domestic purpose' is stated to mean use for personal residential purposes. In essence the question is, what is the character of the purpose of user of the premises by the owner or landlord and not the character of the place of user. For example, running a boarding-house is a business, but persons in a boarding-house may use water for 'domestic' purposes. As noted earlier the classification made for the purpose of charging electricity duty by the NDMC sets out the categories 'domestic' user as contra-distinguished from 'commercial' user or to put it differently 'non domestic user'. The intent and purpose of the classification, as we see it, is to make a distinction between purely 'private residential purpose' as against 'commercial purpose'. In the case of a 'guest house', the building is used for providing accommodation to 'guests' who may be travellers, passengers, or such persons who may use the premises temporarily for the purpose of their stay on payment of the charges. The use for which the building is put by the keeper of the guest house, in the context cannot be said to be for purely residential purpose. Then the question is, can the use of the premises be said to be for 'commercial purpose'? Keeping in mind the context in which the phrases are used and the purpose for which the classification is made,

- A it is our considered view that the question must be answered in the affirmative. It is the use of the premises by the owner (not necessarily absolute owner) which is relevant for determination of the question and not the purpose for which the guest or occupant of the guest house uses electric energy. In the broad classification as is made in the rules, different
- B types of user which can reasonably be grouped together for the purpose of understanding the two phrases 'domestic' and 'commercial' is to be made. To a certain degree there might be overlapping, but that has to be accepted in the context of things. The High Court was not right in setting aside the order of the learned senior Civil Judge merely on the ground that the use
- C of electricity for running the 'guest house' does not come under the category of 'commercial use'. The High Court has not discussed any reason for holding that user in such a case comes under the category of 'domestic' use.

- In the case of *Municipal Corporation of Greater Bombay v. Mafatlal Industries and Other*, [1996] 8 Supreme Court Cases, 27, this Court interpreted the expression "exclusively used as a private residential premises" (In Bombay Electricity Duty Act, 1958). To connote that the premises in question must be exclusively used as a residential premises which in other words would mean where the premises which is used by any person
- D privately for his own residence for a sufficient continued period and not a premises where a person can come and spend a day or a night and then go back. This Court further held that guest houses are maintained by company or commercial undertakings as a part of its commercial venture. The test of profit making as well as the test of the work 'private' in
- E contradiction to 'public' have no relevance for interpreting the expression "exclusively used as a private residential premises". This court concluded
- F that in the case of a guest house category 'R' which applies to premises used as a private residential premises is not applicable and category 'C' would apply as a residuary category to premises which does not come
- G within the categories R, S, RC (LV) and SL. Though the fact situation in the case and the question which was considered by this Court therein are not the same as in the case on hand, the discussions in the judgment throw light on the controversy raised in this case.

- H On the discussions made and the reasons stated in the foregoing paragraphs, we are clearly of the view that the judgment of the High Court

is unsustainable. Accordingly, the appeal is allowed. The impugned judgment of the High Court of Delhi is set aside. The New Delhi Municipal Council is entitled to charge for use of electricity in Sachdeva Guest House at the rate applicable to 'commercial' use. No costs. A

R.C.K.

Appeal allowed.

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