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SI ABIR AHMAD
v.
SHAM LAL AND ANR.

FEBRUARY 8, 2002

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[SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

Rent Control and Eviction :

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East Punjab Urban Rent Restriction (Extension of Chandigarh) Act, 1974 (as amended in 1982)—Sections 13(3) (a) (i) (a), 11 and 2(g) and (d)—‘Shop-cum-flat’ premises—Eviction petition on the ground of bonafide requirement for residential purposes—Entitlement of—Premises solely used for running a Hair Dressing Salon—Recitals of letter of allotment, deed of conveyance and site plan showing that the premises was a non-residential building—No provision in the design plan for bedrooms, bathroom or kitchen—Held, the premises was not a residential building but was part of a non-residential building—Courts below were not justified in interpreting the expression ‘shop-cum-flat’ having regard to the dictionary meaning of the word ‘flat’—Section 11 of the Act prohibiting conversion of a residential building into a non-residential building, has no application—Eviction petition dismissed.

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Interpretation of Statutes

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Expression ‘shop-cum-flat’—Interpretation of—Recourse to dictionaries—Held, undoubtedly a useful guide provided appropriate meaning which fits in the context is chosen.

Words and Phrases :

Expression ‘shop-cum-flat’—Meaning of.

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‘residential building’; ‘non-residential building’—Meaning of in the context of Section 2(g) and (d) of the East Punjab Urban Rent Restriction (Extension of Chandigarh) Act, 1974.

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Appellant was a tenant of a portion of first floor of ‘shop-cum-flat’ premises owned by respondents. Appellant had been using the premises solely

for the purpose of running a Hair Dressing Saloon from the very inception of the tenancy. Respondent-landlords filed eviction petition on the ground of *bona fide* requirement for residential purposes under Section 13(3)(a)(i)(a) of the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 (as amended in 1982). Appellant contested the eviction petition *inter alia* on the ground that the tenanted premises was a non-residential building and, therefore, eviction could not be sought under the said provisions. However, Rent Controller passed an eviction order holding that the premises was part of a residential building and the *bona fide* requirement of landlords had been established. Appellant unsuccessfully filed an appeal and revision. Hence the present appeal.

On behalf of the appellant-tenant it was contended that the letter of allotment, the conveyance deed and the site plan clearly show that the building was a non-residential premises and thus, the courts below erred in holding that 'shop-cum-flat' premises was a residential building.

Allowing the appeal, the Court

HELD : 1.1. The first floor of 'shop-cum-flat' premises occupied by appellant-tenant is a part of non-residential building. Thus, the eviction petition filed by the respondent-landlords under Section 13(3)(a)(i)(a) of the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974, (as amended in 1982) is liable to be dismissed. [918-A, F]

1.2. On perusal of Section 2(g) and (d) of the Act it is clear that if a building is being used solely for the purpose of business or trade, it is a non-residential building and a building other than a non-residential building is a residential building. In the instant case, the appellant-tenant has been using the premises solely for the purpose of running a Hair Dressing Saloon from the inception of the tenancy. [915-C]

1.3. It is evident from the recitals in the deed of conveyance, the letter of allotment, the site plan and from the agreement of tenancy, that the 'shop-cum-flat' is a non-residential building within the meaning of the Act. The recitals in the letter of allotment and the deed of conveyance shows that even at the time of allotment of the site itself, it was shown as commercial. Clause 18 of the letter of allotment puts an embargo on the use of the building for residential purpose unless the plan supplied by the Government specified it as a residential building. The design plan of the first floor does not provide

A for bed-rooms etc. There is no provision for bathroom and no provision for kitchen, on the contrary a room is shown as 'office'. A perusal of clause 20 shows that the 'shop-cum-flat' constructed on a site sold for general trade, will be a shop for trades and prohibits cooking and use of fire among other things, also suggests that residential building was not contemplated.

[917-H, D]

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Chandigarh Housing Board and Anr. v. Narinder Kaur Makol, [2000] 6 SCC 415, distinguished.

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2. The approach of courts below as well as the High Court in interpreting the expression 'shop-cum-flat' having regard to the dictionary meaning of the word 'flat' is not proper. The expression 'flat' is not defined in the Act. It is not a technical expression and not a term of art; so it has to be understood in its popular sense that is, as commonly understood. In that sense it is capable of being understood both as a 'residential' as well as a 'non-residential' building. Therefore, the expression 'shop-cum-flat' does not always mean that the ground floor of the building is meant for shops and the first and the higher floors are residential accommodation in the building. The correct approach would be to refer to the context in which the expression appears and then construe it, Undoubtedly, dictionaries including law dictionaries will be useful guides in the task of interpreting deeds and statutes, provided appropriate meaning which fits in the context is chosen; otherwise it will be a fruitless exercise may misleading course if a meaning *de hors* the context in which it appears, were to be opted. [915-D; 916-B-C]

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Commissioner of Income Tax, Orissa and Ors. v. M/s. N.C. Budharaja and Company and Ors., [1994] Supr. 1 SCC 280; *State Bank of India v. Shri Sundra Money*, [1976] 3 SCR 160; *Margoo Singh v. The Election Tribunal, Bareilly and Ors.*, [1958] SCR 418 and *Ram Narain v. The State of Uttar Pradesh and Ors.*, AIR (1957) SC 18, relied on.

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3. Section 11 of the Act prohibits conversion of a residential building into a non-residential building. In the instant case, a non-residential building is sought to be converted into a residential building, Section 11 has therefore, no application. [918-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1605 of 1999.

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From the Judgment and Order dated 28.5.98 of the Punjab and Haryana

High Court in C.R. No. 872 of 1996.

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V.C. Mahajan and P.N. Puri for the Appellant.

Manoj Swarup and Manish Khandelwal for the Respondents.

The Judgment of the Court was delivered by

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SYED SHAH MOHAMMED QUADRI, J. This appeal arises from the judgment and order of the High Court of Punjab & Haryana in Civil Revision No. 872 of 1996 dated May 28, 1998. By that order the High Court upheld the judgment of the Appellate Authority in R.A. No. 206 of 20.5.94 dated February 3, 1996 confirming the order of the learned Rent Controller dated April 6, 1994.

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The appellant is the tenant of a portion of the first floor of 'shop-cum-flat', S.C.F. No. 14, Sector 22, Chandigarh (hereinafter referred to as 'the premises') of which the respondents are the landlords. The relationship between the appellant and the respondents is governed by the provisions of the East Punjab Urban Rent Restriction Act, 1949 which was extended to Chandigarh by the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 and subsequently amended by the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 (for short 'the Act').

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The respondents filed a petition for eviction of the appellant on two grounds but what survives for consideration is the ground of bona fide requirement of the respondents for residential purposes, under Section 13(3)(a)(i)(a) of the Act. The appellant contested the eviction petition, inter alia, on the ground that the premises let out to him is a non-residential building and, therefore, his eviction cannot be sought under the said provision. The learned Rent Controller found the ground of bona fide requirement in favour of the respondents and recorded the finding that the premises is a part of a residential building. Accordingly, it ordered eviction of the appellant by its order dated April 6, 1994. The appellant's appeal before the Appellate Authority having been dismissed on February 3, 1996, he filed Civil Revision No. 872 of 1996 in the High Court which was also dismissed by an order dated May 28, 1998 in terms of the judgment in Civil Revision No. 1085 of 1995. That order of the High Court is under challenge in this appeal.

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Mr. V.C. Mahajan, the learned senior counsel appearing for the appellant, has contended that the courts below recorded an erroneous finding

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A that the premises which is a part of 'shop-cum-flat', is a residential building. He argued that the letter of allotment, the conveyance deed and the plan would clearly show that the building was a non-residential building, as such the eviction petition ought to have been dismissed by all the courts. Mr. Manoj Swarup, the learned counsel appearing for the respondents, relying on the same documents has submitted that the first floor of the 'shop-cum-flat'

B is a residential building and this is evident from the fact that it is termed as shop-cum-flat; the learned Rent Controller, the Appellate Authority as well as the High Court rightly held the premises to be a residential building.

The short question that arises for consideration is : whether the respondents are entitled to seek eviction of the appellant under Section 13(3)(a)(i)(a) of the Act. Inasmuch as the respondents' petition was filed under Section 13(3)(a)(i)(a) of the Act it would be appropriate to quote it here :

"13. Eviction of tenants -

D (3)(a). A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession —

(i) in the case of a residential [* * *] building if —

(a) he requires it for his own occupation;

E (b) to (d) *** * * * * **

Proviso *** * * * * **."

A plain reading of the provision shows that a landlord is enabled to apply to the Rent Controller for an order directing the tenant to put the landlord in possession in case of a residential building if he requires it for his own occupation. It is manifest that the aforementioned provision can be invoked only in case of a *residential building*. The controversy in this case centers round the question, whether the premises is a *residential building*. The ground floor is admittedly a shop portion. The dispute is about the first floor. If the first floor of the 'shop-cum-flat' is held to be a residential building, the answer to the question must be in the affirmative but if it is held to be non-residential building, the answer should be in the negative. It will be useful to refer to the definition of the expression "residential building" in clause (g) of Section 2 of the Act which reads :

H "2(g). "residential building" means any building which is not a non-

residential building.”

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4. This definition is somewhat circular. It defines the said expression in terms of ‘non-residential building’ which is defined in clause (d) as follows :

“2(d). “non-residential building” means a building being used solely for the purpose of business or trade.”

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It is thus clear that if a building is being used solely for the purpose of business or trade, it is a non-residential building and a building other than a non-residential building is a residential building. In this case the appellant has been using the premises solely for the purpose of running a Hair Dressing Saloon from the inception of the tenancy, from July 22, 1974. This should, if nothing more is required to be considered, answer the question in the negative. But we have to ascertain the import of the expression ‘shop-cum-flat’ on the facts of this case.

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The courts below as well as the High Court having regard to the meaning of the word ‘flat’ in that expression treated the ground floor as a shop and the first floor as a flat and on that basis held that the premises is a residential building. In our view, the approach in interpreting the expression ‘shop-cum-flat’ having regard to the dictionary meaning of the word ‘flat’ is not proper.

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The Courts ought not to be unmindful of the consequence of too much reliance on the dictionaries and Lexicons lest they go astray in interpreting recitals in a deed or document or provisions in a Statute. *In Commissioner of Income Tax, Orissa and Ors. v. M/s. N.C. Budharaja and Company and Ors.*, [1994] Supp. 1 SCC 280, this Court observed :

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“The words are : “construction, manufacture or production of any one or more of the articles and things.....” and “construction, manufacture or production of any articles and things.....” respectively. It is equally evident that in these sub-clauses as well as in the IXth Schedule and XIth Schedule, the words ‘articles’ and ‘things’ are used inter-changeably. In the scheme and context of the provision, it would not be right to isolate the word “thing”, ascertain its meaning with reference to Law Lexicons and attach to it a meaning which it was never intended to bear. A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and — as in this case — to the legislative history of the provision.”

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A [See also : *State Bank of India v. Shri N. Sundara Money*, [1976] 3 SCR 160.]

B The said expression is not defined in the Act. It is not a technical expression and not a term of art; so it has to be understood in its popular sense, that is, as commonly understood. In that sense it is capable of being understood both as a 'residential' as well as a 'non-residential' building. Therefore, the expression 'shop-cum-flat' does not always mean that the ground floor of the building is meant for shops and the first and the higher floors are residential accommodation in the building. The correct approach would be to refer to the context in which the expression appears and then construe it. Undoubtedly, dictionaries including law dictionaries will be useful guides in the task of interpretation deeds and statutes provided appropriate meaning which fits in the context is chosen; otherwise it will be a fruitless exercise nay misleading course if a meaning de hors the context in which it appears, were to be opted. See : *Mangoo Singh v. The Election Tribunal, Bareilly and Ors.*, [1958] SCR 418.

D In *Ram Narain v. The State of Uttar Pradesh and Ors.*, AIR (1957) SC 18, a Constitution Bench of this Court laid down that the meanings of the words and phrases in an Act must take their colour from the context in which they appear. The learned counsel for the parties relied upon the following recitals in the letter of allotment and the deed of conveyance in support of their respective contention - Mr. Mahajan to dislodge the conclusion arrived at and Mr. Swarup to support the impugned order of the High Court. The letter of allotment provides :

F "The following commercial site is hereby allotted to you on the conditions mentioned hereunder :

| Sector | Serial No. of site | Approximate dimensions | Price | Remarks |
|--------|--------------------|------------------------|--------|---------|
| 22-D | 14 | 33.70 | 26,000 | |
| | S.C.F. | 256.667 sq. yards | | |

G This shows that even at the time of allotment of the site itself, it was shown as *commercial*. A reading of clause 18 of the letter of allotment would be H apposite.

“18. The site is classed as ‘commercial’ *and the building to be erected on it shall not be used for the residential purpose unless otherwise specified in the plans supplied by the Government.*”

(emphasis supplied)

This clause places the position beyond any doubt. It puts an embargo on the use of the building for residential purpose unless the plan supplied by the Government specified it as a residential building. Clause 6 directs that the building shall have to be constructed in accordance with the design which will be supplied by the Government after the building plans have been sanctioned. We have also perused the plan of the first floor (Annexure P-5). The design of the plan does not provide for bed-rooms etc. We find no provision for bathroom and no provision for kitchen, on the contrary a room is shown as ‘office’. There is nothing in the plan which indicates that a residential accommodation is specified therein.

A perusal of Clause 20 which says that the shop-cum-flat constructed on a site sold for general trade, will be a shop for trades (except those excluded therein) and *prohibits cooking and use of fire* among other things, also suggests that residential building was not contemplated.

Our attention was invited to the following recitals in the deed of conveyance (Ex.P-6) :

“DEED OF CONVEYANCE of a site at Chandigarh sold by auction to be used as a site for commercial purpose in the New Capital of Punjab at Chandigarh.”

(emphasis added)

They also emphasise the commercial aspect of the building.

“And whereas the Punjab Government has sanctioned the sale of the site to the transferee in consideration of the sum of Rs. 26,000 (Rupees Twenty six thousand only) for the purpose of building shop-cum-flat and using the same exclusively for general trade (or restaurant i.e. shop portions).”

(emphasis added)

From these recitals, in the deed of conveyance, the letter of allotment of the site, the plan and the agreement of tenancy it is evident that ‘shop-cum-flat’ is a non-residential building within the meaning of the Act and we

A have absolutely no doubt that the premises is a part of a non-residential building and in view of the embargo, noticed above, cannot be used for residential purposes. The High Court was, therefore, not correct to construe the word 'flat' in the expression 'shop-cum-flat' out of context with reference to the dictionary meaning of the word.

B Mr. Swarup relied on the judgment of this Court in *Chandigarh Housing Board and Anr. v. Narinder Kumar Makol*, [2000] 6 SCC 415 to show that in the expression 'shop-cum-flat', the first floor is meant for residential purposes. In the light of the above discussion, it is too broad a proposition to merit acceptance. In that case, the building was in a different sector and the requirement of the Chief Architect and the Secretary of the Board was that
C the ground floor should be the shop and the first and second floors should be constructed as residential flats, therefore, the said judgment is clearly distinguishable on the facts of that case. In the instant case, we have already held, the first floor is meant for non-residential purposes and cannot be treated as residential building.

D Mr. Swarup relied on Section 11 of the Act to contend that the first floor cannot be allowed to be converted into a non-residential building. It is recorded to be rejected. Section 11 of the Act prohibits conversion of a residential building into a non-residential building. In the case on hand, a non-residential building is sought to be converted into a residential building,
E Section 11 has, therefore, no application.

F For the above reasons, the order of the High Court under challenge cannot be sustained; it is accordingly set aside. The eviction petition filed by the respondents is liable to be dismissed. Accordingly, we allow the appeal and dismiss the application of the respondents for eviction of the appellant. In the facts and circumstances of the case, we make no order as to costs.

S.V.K.

Appeal allowed.