The Indian Law Reports

Punjab and Haryana Series

REVISIONAL CIVIL

Before Inder Dev Dua, J.

IDEAL CHARITABLE HOSPITAL TRUST,—*Petitioner*

versus

MADAN GOPAL,—*Respondent*

Civil Revision No. 201 of 1964.

May 25, 1965/March 22, 1966.

East Punjab Urban Rent Restriction Act (III of 1949)—Object of—S. 13(2)(ii)(b)—Premises let out for purposes of residence and business or trade—Tenant ceasing to reside therein and using the premises solely for business without the written consent of the landlord—Whether liable to be ejected.

Held, that the scheme of the East Punjab Urban Rent Restriction Act is apparently meant to protect honest and reasonable tenants against the greedy and unscrupulous landlords, but it is by no means designed to seriously affect the legal incidence of the landlord's title except to the extent that the statute clearly provides ; in other words, it does not operate so as to make the tenant the owner of the premises. The Act has, therefore, to be so construed as to harmonise and strike a proper balance between the ownership of the landlord and the protection of the tenant against greed, etc., on the part of the former within the discernible legislative scheme and design.

Held, that the language used in section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act prohibits the conversion of user of the building to a different purpose without the landlord's written consent, the object apparently being to protect the property from being spoiled or damaged by using it for a purpose for which the landlord would perhaps have not agreed to lease. A residential building includes two purposes, namely, of residence and business or trade. Clause (ii)(b) of section 13(2) of the Act does not in terms say that if a residential building, as defined, is converted into a non-residential building, the tenant exposes himself to the risk of being ejected. So when premises are let for both purposes of residence and business or trade, and the purpose of residence alone is dropped by the tenant ceasing to reside in the premises, using it solely for business without the written consent of the landlord, the provisions of section 13(2)(ii)(b) are not attracted and the tenant is not liable to be ejected on this score.

Petition under section 15(5) *of the East Punjab Urban Rent Restriction Act,* 3 *of* 1949, *for revision of the order of Shri C. G. Suri, Appellate Authority, Ludhiana, dated* 28*th December,* 1963, *reversing that of Shri Harbans Singh, Rent Controller, Ludhiana, dated* 20*th March,* 1963, *dismissing the ejectment application of the landlord-Trust with costs throughout.*

D. N. AWASTHY, ADVOCATE, for the Petitioner.

HARBHAGWAN KHUNGAR, ADVOCATE, for the Respondent.

JUDGMENT

DUA, J.—These two revisions (Civil Revisions No. 201 of 1964 and No. 259 of 1964) under section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No. 3 of 1949), raise common point and are, therefore, being disposed of together. Indeed it is conceded that they stand or fall together and arguments have been addressed only in Civil Revision No. 201 of 1964.

The petitioner, the Ideal Charitable Hospital Trust, was created on 7th of February, 1958. Madan Gopal respondent was a tenant in the house in dispute on a monthly rent of Rs. 50. The petitioner Trust, through its President, Shri Chaman Lal, presented an application under section 13 of the Act for the eviction of Madan Gopal in July, 1961, alleging that he was liable to be evicted on the ground of non-payment of rent from 1st of July, 1960 to 30th of June, 1961, for using the premises for a purpose other than that for which they had been let and for parting with possession of the residential portion of the house.

This application was resisted by the respondent on various grounds, including the contention that the application had not been filed by a duly authorised person. The petitioner, according to the tenant-respondent, had been unwilling to accept the rent due, with the result that the same was deposited in the State Bank of India under orders of the Senior Subordinate Judge. Rent for three months—from April to June, 1961—was tendered in Court. Conversion of user, according to the tenant's plea, could not be taken up as a ground for ejectment, because a similar plea had been previously adjudicated upon between the parties. Parting of possession on the part of the tenant was denied.

On the pleadings of the parties the following issues were settled:—

(1) Whether the Trust can apply through Shri Chaman Lal, President?

(2) Whether the respondent is not liable to be ejected on the ground of default of payment of rent? and

(3) Whether the other grounds mentioned in the application are barred under section 14 of the Rent Restriction Act?

It may be pointed out that issue No. 2 had been framed differently in the first instance, but was later modified in the present form.

Two further issues were added by Shri Harbans Singh, Rent Controller, on 30th of May, 1962 :—

(1) Has the respondent converted the user of the premises from the purpose for which these were let ? and

(2) Has the respondent parted with possession of part of the premises, as alleged? If so, when and with what effect?

The first issue was decided in favour of the Trust and on issue No. 2 the Rent Controller came to the conclusion that the respondent was liable to be evicted on the ground of non-payment of rent. The Rent Controller has observed during the discussion on this issue that no rent had been paid outside the Court and deposits were made in the Court of the Senior Subordinate Judge in the name of eight trustees and Mohan Lal was not a trustee and the respondent had knowledge of this fact. The deposits having been made in his name also, they were not valid. It is also clear from the judgment of the Rent Controller that in a previous litigation for the eviction of the respondent nine petitioners, including Mohan Lal, had applied for the purpose and it was stated therein that Mohan Lal was entitled to rent for 1st of January to 1st of February, 1958 only, which was before the creation of the Trust. The Rent Controller, however, in addition to this finding has also observed that in accordance with the judgment of a learned Single Judge of this Court deposit with the Senior Subordinate Judge under the Punjab Relief of Indebtedness Act, 1934 (Punjab Act No. 7 of 1934), could not be considered

to be a valid tender under section 13(2)(i) of the Rent Restriction Act. On this basis the respondent was held liable to be evicted. Issue No. 3 was also decided against the respondent. The two additional issues were, however, decided against the petitioner. In the final result the order of eviction was passed.

On appeal the Appellate Authority reversed this order. It appears that in the meantime a Division Bench of this Court in *Mam Chand* v. *Chhotu Ram.* (1) had authoritatively decided that a person who owes money could deposit the same in Court in full or part payment to his creditor and that such deposit in Court is tantamount to payment having been made to the creditor. A tenant, therefore, who deposits in the Court of the Senior Subordinate Judge under section 31 of the Punjab Relief of Indebtedness Act, 1934, a part of the rent due from him to the landlord sufficiently complies with the terms of the East Punjab Urban Rent Restriction Act. On this point, therefore, the Appellate Authority reversed the decision of the Rent Controller. In so far as the question of the deposits in the name of the eight trustees and of Mohan Lal is concerned, the Appellate Authority observed that Mohan Lal had gone through the formality of creating a trust, but his intention in doing so had been the subject-matter of comments by the Courts in previous litigation and it had been held by the Appellate Authority in the earlier litigation that the Trust had been created by Mohan Lal only with the object of securing the ejectment of the tenants and there was no real intention on the part of the trustees to run a hospital in the premises and that no funds had been provided or arranged for the so-called charitable purposes of the Trust. It had further been observed that there was no specific scheme for the running of the hospital and the only objective of the Trust was to have the tenant ejected. These observations, it appears, were approved by this court in the earlier litigation and reference was made by the Appellate Authority to the judgment in the previous case reported as *Siri Kishan, etc.* v. *Ghanesham Dass etc.* (2). The Appellate Authority also seems to have taken the view that the Trust was to all appearance a colourable transaction made with ulterior motive and Mohan Lal's conduct after creating the alleged trust also showed that he was retaining interest in the property after its creation. It was illustrated by

(1) 1964 P.L.R. 93.
(2) I.L.R. (1963) 1 Punj. 115=1962 P.L.R. 1141.

stating that Mohan Lal had joined the trustees in the filing of the previous ejectment application and continued to take interest in the litigation even after the tenant had paid all the arrears of rent and costs, etc., on the first hearing in the earlier case. Mohan Lal's conduct throughout was construed by the Appellate Authority to suggest that he was still exercising control over the Trust property and had been realising its rent up to 30th of June, 1960. The tenant had also been saying in his applications (Exhibits R. 3 to R. 7) under section 31 of the Punjab Relief of Indebtedness Act that though Mohan Lal alleged that he had created a trust in favour of the other eight trustees, he never admitted that fact to be correct, and since the rents had to be paid and the trustees as well as the original landlord were refusing to accept payment he had no other option but to deposit rent in Court for payment to the trustees, if the original landlord was found to have no further interest in the property. In view of the indefinite position regarding the genuineness of the Trust and the findings of the Courts and the conduct of the original landlord and the trustees, the Appellate Authority felt that it would have really been unsafe for the tenant to deposit the rent in favour of the Trust alone because the original landlord could easily have turned round and said that in view of the findings of the Courts in previous ejectment proceedings the Trust had been found to be a colourable transaction and that the tenant was still liable to pay rents to him. The Appellate Authority very strongly disapproved of the Rent Controller's view, observing that—

> "The Courts would be failing in their duty if they defeat the object with which the Rent Act was brought on the Statute Book and allow such tactics of rapacious landlords to succeed to dislodge a tenant supposed to enjoy a certain protection under the law."

On the other ground of eviction also the Appellate Authority decided against the Trust with the observation that it was common ground between the parties that the building had originally been used by the tenant both for business and residential purposes and so long as the building was being put to any of these two uses there could be no conversion of user. If the tenant has taken residence somewhere else and continues to carry on his business in the premises in dispute and has not parted with possession of any portion of the building, then it was not possible to hold the tenant to have become liable to

eviction on those grounds. With these findings the appeal was allowed and the application for ejectment was dismissed. It may be mentioned that there was a cross-appeal by the Trust which inevitably failed on account of the acceptance of the tenant's appeal.

On revision, Shri Bhagirath Dass, the learned counsel for the petitioner, has stated all the facts in a very fair and frank manner, and has submitted, to begin with, that in a "non-residential building" as defined in section 2(d) of the Rent Act residence can only be for the purpose of guarding it and if the residence be for some other purpose then the "non-residential building" must be considered to have been converted into a "residential building". He has in this connection drawn my attention to the definition of "non-residential building" in section 2(d), according to which it means a building which is being used solely for the purpose of business or trade. There is a proviso, according to which residence in a building only for the purpose of guarding it should not be deemed to convert it into a "residential building." The counsel has also referred me to Exhibit A. 6, dated 9th of October, 1958, and has stressed that the building in question is now being used as a non-residential building inasmuch as it is being used for business and trade and not for residence. After reading out the relevant portions of the application for eviction and the written statement, he has very strongly argued that the building had been let out both for purposes of residence and hosiery business, but now the premises have been converted into exclusively non-residential building, thereby rendering the tenant liable to eviction under section 13(2) (ii)(b) of the Rent Restriction Act. It may here be pointed out that Exhibit A. 6 is a copy of a written statement by Madan Gopal, son of Kala Ram (respondent in this Court), dated 9th October, 1958, in which it was pleaded that the building in question was a non-residential building which was being used for the business of hosiery alone and it was not residential. In the application for eviction, dated 14th June, 1961, it has been asserted in paragraph 2 that the house was rented out as residential premises only and this paragraph has apparently been admitted in the written statement to be correct. In paragraph 3(b), it has been asserted that the respondent is using the building for a purpose other than for which it was leased and that the house had been let out for residential and hosiery business whereas the respondent has "converted the building to a non-residential use only". In the written statement, it has been pleaded in answer to this averment that this ground is not now available to the applicant who has suppressed the previous ejectment proceedings, a revision out of which is still

pending in the High Court. The learned Rent Controller and the Appellate Authority have decided this question against the landlord-petitioner in this Court. The Rent Controller has observed that the change that has come about in the use of the premises is that the tenant who also resided in a portion of the premises has taken up residence in a separate place. The premises were, however, not let out for residential purposes only, with the result that there was no conversion of user, the tenant being still in occupation of the entire premises, though for purposes of business only. The learned Appellate Authority has also, while dealing with this question, observed that this ground appears to have been fully thrashed out in the previous proceedings as well and that so long as the building was being put to any of the two uses, namely, business and residence, there could be no conversion of user. My attention has, however, not been drawn to any specific portion of a previous order which dealt with this precise aspect. But be that as it may, I think it is desirable to deal with this argument as put before me.

A "non-residential building", as noticed earlier, means, according to the statutory definition, a building used solely for the purposes of business or trade and a "residential building" means any building which is not a non-residential building, whereas a "scheduled building" means a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to the Rent Act, partly for his business and partly for his residence. It is nobody's case in the present controversy that the building in question is a scheduled building. The petitioner's argument is a very short one. He says that as the building when initially let out was used both for purposes of residence and hosiery business and was thus not a non-residential building, it must be considered to be a residential building. By using it now solely for the purposes of business, the tenant has without the written consent of the landlord started using it for a purpose other than that for which it was leased, thereby attracting section 13(2)(ii)(b) of the Rent Act. The argument, as put, is *prima facie* attractive and plausible, but a little deeper probe and scrutiny would show that the matter is perhaps not so simple as it is put. The language used in section 13(2)(ii)(b) seems to prohibit the conversion of user of the building to a different purpose without the landlord's written consent, the object apparently being to protect the property from being spoiled or damaged by using it for a purpose for which the landlord would perhaps have not agreed to lease. Now the clause in question of section 13(2) does

not in terms say that if a residential building, as defined, is converted into a non-residential building, then the tenant exposes himself to the risk of being ejected. A residential building includes two purposes, namely, of residence and business or trade. If it is used for one of these two purposes, then the question arises: Does the cession of one of the two purposes also attract the operation of this clause? or is the prohibition contemplated in the clause in question only confined to the user for a new purpose unknown to the landlord? This question does not seem to me easy to answer in the abstract and may require an investigation into the further question as to what was the dominant purpose for which the building is leased. If the building is mostly residential, but a part of it is capable of being used for some business or trade as well, and it was leased with that intention and for such combined double-purpose, then using it solely and exclusively for business or trade may fall within the mischief contemplated by section 13(2)(ii)(b); but if the building was leased out mainly for the purposes of business or trade and residence in it [not only for guarding it within the contemplation of the proviso to clause (d) of section (2)] was also allowed and the building was a residential building in this sense, then ceasing to use it for the residence may not reasonably be hit by section 13(2)(ii)(b). It appears to me that this aspect has not been properly and fully adverted to either by the Rent Controller or by the Appellate Authority. The statutory definition of "non-residential building" and the negative conception of the definition of "residential building" does not, in my opinion, provide a safe criterion for solving the problem raised in the present controversy. I quite very well visualise a case in which the use of the entire building, including the portion meant for residential purposes, being put to purposes of business and trade may damage that portion, the use of which is so changed so as to bring it within the mischief sought to be guarded against by section 13(2)(ii)(b). I can equally well conceive of a case in which such a use of the entire building for the sole purpose of business or trade may be wholly inocuous and harmless and unlikely to result in any unusual or unreasonable damage to the portion of which the use has been changed. In the latter case, it would be difficult to bring it within the mischief which the Legislature has presumably intended to guard against by enacting section 13(2) (ii) (b). As I construe the scheme of the Rent Act, it is apparently meant to protect honest and reasonable tenants against the greedy and unscrupulous landlords, but it is by no means designed to seriously affect the legal incidence of the landlords' title except to the extent that the statute

clearly provides: in other words, it does not operate so as to make the tenant the owner of the premises. The Act has, therefore, to be so construed as to harmonise and strike a proper balance between the ownership of the landlord and the protection of the tenant against greed, etc., on the part of the former within the discernible legislative scheme and design. The Rent Controllers and the Appellate Authorities are at times apt to ignore the other side of the picture and take a somewhat one-sided view which may give an impression of being inconsistent with and unworthy of a balanced approach of a trained judicial mind. This reflection, so far as humanely possible, deserves to be avoided.

In the case in hand, the aspect mentioned above, depending as it does on the facts of each individual case, has not been adverted to satisfactorily by the Tribunals below. I would, therefore, like them to send to me a report on this aspect.

In so far as the question of deposit is concerned, a Bench decision of this Court in *Khushi Ram* v. *Shanti Rani* (3), following an earlier Bench decision of this Court in *Mam Chand* v. *Chhotu Ram* (1) is against the petitioner. It has, however, been contended that the deposit in the case in hand was not made in favour of trustees only but in favour of the trustees and another person jointly, with the result that the deposit must be held to be invalid.

On behalf of the respondent, it has been argued that the order of the Appellate Authority shows how the author of the trust in the present case has been trying to seek eviction of the tenants and the conception of the Trust is apparently a mere device to secure eviction. It is for this reason that the tenant took the abundant caution of depositing the amount in the name of the author and the trustees with the *bona fide* desire of making the payment to the right parties. It has also been suggested that the amount has actually been withdrawn by the right party. There is no question of any obstruction having been created by this deposit in the withdrawal of the amount by the party entitled. In any case, on revision, this Court should not interfere on this barest technicality, even if there may be held some irregularity which is not admitted. I may point out that my attention has also been drawn by Shri Har Bhagwan, the learned counsel for the respondent, to a decision by my Lord the Chief Justice in

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(3) 1964 P.L.R. 755

Inder Singh v. *Kalu Ram Harijan and another* (4), accordingly to which change of user of a part of the building does not constitute a ground for ejectment and to a decision by S. B. Capoor, J., in *Rameshwar Dass* v. *Rishi Parkash* (5), according to the head-note of which if the dominant purpose to which the premises are put remains the same for which the premises had been let out to him, the tenant is not liable to eviction under section 13(2)(ii)(b) of the E. P. Rent Restriction Act.

In the result, I remit the case to the Rent Controller with a direction that he should express the opinion as to what was the dominant purpose for which premises in question were let out and to what extent the building was being used for business or trade and for residence, respectively. The Rent Controller should submit his report through the Appellate Authority who would also express its opinion on this point. The report should reach this Court within three months from today. Parties are directed to appear before the Rent Controller on 19th July, 1965, when a short date for one week should be given to the parties for arguments. As soon as the report is received in this Court, the case should be set down for hearing.

ORDER, DATED MARCH 22, 1966

DUA, J.—On 25th May, 1965, I had remanded this case to the Rent Controller with a direction that he should express his opinion as to what was the dominant purpose for which the premises in question were let out and to what extent the building was being used for business or trade and for residence respectively. That order may be considered as a part of this order. The Rent Controller has in his report dated 25th September, 1965, expressed his opinion, to quote his exact words, "that the dominant purpose for which the premises in question were let out was both residence and business and that the building was being used exclusively now for business or trade." In pursuance of my directions, the papers were placed before the Appellate Authority, who has expressed his opinion in these words:—

> "Learned Rent Controller has remarked that residence and running of business both were the dominant purpose, but I do not agree with that conclusion. The dominant purpose can

(4) I.L.R. (1965)1 Punj. 121=1965 P.L.R. 58.
(5) I.L.R. (1965)1 Punj. 177.

be only one, and not both. It can no doubt be said that the premises were let out equally for residence and equally for running the business but it would be incorrect to say that both were the dominant purposes.

5. As regards the second aspect, mentioned in the order of Hon'ble High Court, all that can be said is that the disputed premises are being used solely for the purpose of business or trade inasmuch as the respondent has totally stopped his residence therein and has shifted to other premises. There is no data at present to determine to what extent this building was being used for business or trade and for residence respectively during the period when the respondent was actually putting up there prior to his shifting from these premises."

The learned counsel for the petitioner has very strongly urged that by ceasing to reside in the premises, the tenant has changed the character of the building. According to him, the purpose as mentioned in section 13(2)(ii)(b) of the East Punjab Urban Rent Restriction Act must be read in the background of the definition of the expressions "non-residential building" and "residential building" contained in section 2(d) and (g) of the Rent Act. He contends that if the premises were originally leased out both for the purposes of residence and business or trade, and now they are being used solely for the purpose of business or trade and not for the purpose of residence, then it must be held that the tenant has used the premises for a purpose other than that for which it was leased. The learned counsel has sought support for his submission from a judgment by Dulat, J., in *Balwant Singh* v. *Brij Mohan,* C.R. 645 of 1961, decided on 16th March, 1962 In the unreported case, the premises had been let by the owner for the purpose of installing therein some handlooms. This was done in 1954. In 1957, the tenant changed over to power and installed powerlooms run with electricity and it was this conduct on the part of the tenant which induced the landlord to apply for his eviction on the ground that the tenant had without the written consent of the landlord used the building for a purpose other than that for which it was leased. This plea prevailed both with the Rent Controller and the Appellate Authority. On revision, it was argued that broadly considered the tenant had not used the building for a different purpose because the change from handlooms to powerlooms was a very minor deviation from

the original purpose. This argument was repelled by the learned Judge in the following words:—

> "Regarding the first argument, it is true that considered from one angle, there has been only a small change in the running of the factory and manual labour has merely been replaced by power. From another angle, however, it is clear that what has come to exist after this change is a proper factory in the modern sense, for machines run with power have been set up for a certain manufacturing process, while the letting itself was expressly for the purpose of setting up *khaddis* or handlooms, which is a very different kind of activity. * * *. The point of the provision in the East Punjab Urban Rent Restriction Act is apparently this that before a landlord agrees to let the premises, he must know the purpose for which it is let and if he agrees to a particular purpose which means that he consents that the building may be used in a particular manner that purpose or manner cannot be substantially altered unless his written consent to the change has been obtained."

In my opinion, these observations instead of supporting the petitioner's claim go against him. On its own facts, in the unreported case, the learned Judge of course concluded that the two purposes were different but the *ratio decidendi* of the decision does not help the petitioner in the case before me; rather it suggests that in the absence of a substantial alteration in the purpose or manner of use of the premises, the provision for eviction contained in section 13(2)(ii)(b) may not be attracted. The decision by S. B. Capoor, J., in *Rameshwar Dass* v. *Rishi Parkash, etc.* (5), is also of little assistance to the petitioner. All that has been held there is that if the dominant purpose to which the premises are put remains the same for which they had been let out, the tenant is not liable to eviction under section 13(2)(ii)(b) of the Rent Act. The facts in that case were that the premises had been let out for purposes of residence but without the written permission of the landlady the tenants had installed a nickel polishing machine in the *deohri* of the house and also used one room in the house for the polishing of the scientific apparatus while another room was used as an office. There were six rooms on the ground floor and two on the upper floor. With the

exception of the portion of the house already mentioned, the other rooms constituting the major portion were still being used for residential purposes. On these facts, the Tribunal had held that so long as the main use of the house was for residential purpose, the plea of change of purpose was not tenable. This view was upheld on revision in this Court. In this case also, the attention of the learned Judge was drawn to the unreported decision by Dulat, J., in *Balwant Singh's case* but the ratio of the unreported decision was held to be of no assistance and I may say with respect that I agree with this view. The decision in *Ramzani* v. *Dhanu Ram* (6), has also been relied upon. According to this decision the two definitions of "residential building" and "non-residential building" show that whereas a "non-residential building" may be converted into a residential building by taking up residence in it which is not merely for the purpose of guarding it, a "residential building" cannot be held to cease to be one merely by doing something on it in addition to using it for a residential purpose. The Act apparently contemplates three distinct categories, namely, "non-residential building", "residential building" and "scheduled building". Merely because in a residential building in addition to residence, some business is also done may not for that reason alone convert it either into a "non-residential building" or a "scheduled building" unless the other requisites of scheduled building are also satisfied. I am unable to see how the ratio of this decision advances the petitioner's case. From one point of view, the ratio of this case is similar to that of the decision by S. B. Capoor, J., in *Rameshwar Dass's case*. *Gian Chand* v. *Tulsi Ram* (7) is equally unavailing to the petitioner. There too, it has been held that according to the statutory definition, residence in a non-residential building only for guarding it does not convert it into a residential building.

The learned counsel for the respondent has referred me to a Single Bench decision in *Inder Singh* v. *Kalu Ram* (4), in which Falshaw, C.J., has held that partial conversion of the use of a building is not covered by section 13(2)(ii)(b) of the E. P. Rent Act. In the reported case, a shop was taken on rent for purposes of trade but the tenant also started using it for residential purposes. It was held that the tenant could not be said to have used the building for a

(6) 1965 P.L.R. 785.

(7) 1965 Current Law Journal (Pb.) 221.

purpose other than that for which it was leased. It is in this context that the learned Chief Justice said:—

> "I am inclined to take the view that such a partial conversion is not covered by the provisions of the Act and I derive support for this view from the different way in which clauses (a) and (b) of section 13(2) (ii) have been phrased. Clause (a) reads "transferred his right under the lease or sublet the entire building or rented land or any portion thereof" while the words 'or any portion thereof' do not appear in clause (b). Obviously the omission is deliberate, and in my opinion the ejectment was rightly refused on this ground."

Whether or not the broad proposition formulated in the reported case that a premises taken for trade can legitimately be used in part for residence is supportable on the scheme of the Rent Act does not arise before me and I need express no considered opinion on it. Suffice it to say that the facts which concern us in the present case, namely, when the premises were let for both purposes and the purpose of residence alone has been dropped, do not as a matter of law attract the provisions of section 13(2)(ii)(b) of the Rent Act.

On behalf of the respondent, Shri Harbhagwan Khungar has also relied on a Bench decision of this Court in *Digambar Jain Sabha* v. *M/s. Express Block* (8), for the contention that even if all the conditions of section 13(2) of the Rent Act are fulfilled, it is still in the discretion of the Rent Authorities to decline to order eviction of the tenant on other circumstances. I should not like to base my decision on the ratio of this case. Indeed, I would refrain from expressing any considered opinion on this point in the present case. I may point out that that was a petition under Article 227 of the Constitution of India and it was observed by J. L. Kapur, J., who spoke for the Bench:—

> "Besides on the pleadings of the parties, I do not think that the learned Judge has, by refusing to order eviction, exercised jurisdiction in a manner which can fall within the rule laid down for the exercise of supervisory powers under Article 227 of the Constitution."

It is further argued by Shri Khungar that the landlord has acquiesced in the exclusive user of the premises for purposes of

(8) 1953 P.L.R. (Short Notes) page 2.

business and, therefore, he is not entitled to claim an order of eviction on this ground. It is submitted that the Tribunal below has not properly adverted to this question. In this connection, reference has been made to the written statement filed in the earlier case in 1958. I am disinclined at the present stage to go into the evidence on this aspect as well because, in my view, this revision can be disposed of on the ground that ceasing to reside in the premises does not on the facts established bring the case within the purview of section 13(2)(ii)(b).

It is next pointed out that a residential building can be converted into a non-residential building with the written permission of the Controller, as contemplated by section 11 of the Rent Act and it is argued that this suggests that such a conversion is not considered by the policy of the law to be of a very serious nature: it is emphasised that such conversion does not irretrievably deprive the tenant of his right of tenancy. It is true that the Act has conferred power on the Rent Controller to permit such a conversion but what is the true scope and effect of section 11 of the Act is again a matter on which I am disinclined to express any opinion in this case. In terms, section 11 is clearly inapplicable though the section does not seem to suggest that without modification of the contractual terms of the lease, the Rent Controller may in a given case grant permission as contemplated by it.

Reference has also been made by the respondent's learned counsel to Corpus Juris Secundum Volume 72 for seeking assistance against eviction from considerations of public policy. I am, however, unable to get much assistance from the broad observations relating to public policy, which have always to be confined to the particular statute and the attending circumstances which confront the Court in the disposal of each controversy. It must never be forgotten that public policy has sometimes been described to be an unruly horse, with the result that considerations of public policy, so far as the present controversy is concerned, must be confined within the purpose and object of the Rent Act. If, therefore, the case falls within the purview of section 13(2)(ii)(b) construed in the background of the statute and its purpose and object, then I do not think any consideration of public policy would justify this Court in declining to give relief to the landlord.

It is pointed out that the tenant wanted to place some additional material on the record, but this was opposed by the landlord. This

grievance, I am afraid, does not call for any decision at this stage, and indeed, it is scarcely necessary to go into it for disposing of the present revision.

For the reasons foregoing, this revision petition fails and is dismissed. The parties will, however, bear their own costs in this Court.

K.S.K.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

UMRAO SINGH,—*Petitioner*

versus

MUNICIPAL CORPORATION OF DELHI AND ANOTHER,—*Respondents*

Civil Writ No. 784-D of 1965.

March 11, 1966.

Delhi Municipal Corporation Act (LXVI of 1957)—S. 343—Notice of demolition under—Whether must be served on the owner—Appeal to the District Judge—Starting point of period of limitation—Whether the date of service of the notice on the owner.

Held, that the notice of demolition of a building or part of a building under section 343(1) of the Delhi Municipal Corporation Act, 1957, must be delivered to the person who is required to demolish it and not served in the way other notices are served under section 444 of the Act.

Held, that the period of limitation for an appeal to the District Judge under section 343(2) of the Act starts from the date when the notice is actually delivered or proved to be delivered to the person who is required to carry on the demolition.

Petition under Articles 226 and 227 of the Constitution of India, praying that:—

(a) A writ of certiorari or other appropriate writ be issued calling for the records of the case and quashing the order of the learned District Judge, dated the 14th July, 1965 and directing the learned District Judge to hear the appeal on merits ;