of Evacuee Property Act, 1950, to declare the suit property to be the evacuee property could have been taken before 7th day of May, 1954, nor any such proceedings were pending on May 7, 1954, and, therefore, the property of Qazi Abdul Rashid could not be declared to be an evacuee property. Their lordships observed that if at the point of time when the question arises as to whether the property is evacuee property or not, power of the Authority constituted under the Act to adjudicate that question stands terminated and extinguished by the operation of section 7-A of the 1950 Act, none of the clauses of section 46 of the 1950 Act, would bar the jurisdiction of the civil court to determine that question which had not been decided by the Custodian during the period he had the power to determine it. The ratio of this judgment is not attracted to the facts of the present case.

(23) Their lordships of the Supreme Court in *Haji Siddi Siddik's* case (supra) had an occasion to consider *Dr. Rajendra Prakash's* case (supra) and then distinguished it by observing that that was a case in which the evacuee concerned migrated to Pakistan in the year 1963 after the insertion of section 7-A of the 1950 Act.

(24) For the reasons, aforementioned, we hold that the Courts below rightly held that the jurisdiction of the civil court was barred and dismissed the suit. We may, however, observe that both the courts below have given their finding of fact that the property was evacuee property and the counsel for the appellant had confined himself and rightly so to the raising of only the questions of law pertaining to the jurisdiction of the civil court.

(25) For the reasons, aforementioned, the appeal is dismissed, but with no order as to costs.

R.N.R.

Before D. V. Sehgal, J.

AMIR CHAND,—*Petitioner.*

versus

SARDAR ARJAN SINGH,—*Respondent.*

Civil Revision No. 2134 *of* 1979.

September 21, 1987.

Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—*Sections* 4 *and* 13(2)(*iii*)—*Material impairment—Acts likely to impair*

value and utility of building—Extension of covered length by tin shed; door replaced by rolling shutter; level of roof changed—Such acts of tenant—Whether amount to material impairment of demised shop—Tenant—Whether liable for eviction—Discovery of structural alteration by landlord—Landlord applying for fixation of fair rent thereafter—Landlord's application—Whether amounts to condonation of acts of tenant—Ground for eviction—Whether still available to the landlord.

Held, that where the tenant covers the *chabutra* in front of the shop of extending the covered length of the shop by erecting a tin shed and by removing the door of the shop from its original place and instead putting up a steel rolling shutter in front of the extended portion of the shop and by his act of changing the level of the roof of the shop thereby changing the flow of the rain water in front of the shop and where underneath the *chabutra* the tenant has built a store and has placed a wooden shutter to close that store, these changes effected by the tenant are quite material. In the language of the Supreme Court these have altered the form and structure of the building. Hence it has to be held that such changes made by the tenant are likely to impair materially the value as well as the utility of the building in dispute.

(Para 5).

Held, that the landlord as well as the tenant have the right to apply for fixation of fair rent under section 4 of the Act. When the landlord takes recourse to the said provision, by no stretch of reasoning can it be said that any ground for the eviction of the tenant, which has become available to him, is condoned when he moves an application under Section 4.

(Para 6).

Petition under section 15(6) *of Haryana Urban (Control of Rent and Eviction) Act for revision of the order of the Court of Shri Krishan Kant Aggarwal, Appellate Authority under the Haryana Urban (Control of Rent and Eviction) Act,* 1973 *Gurgaon dated 8th August,* 1979 *reversing that of Shri R. D. Aneja, then Rent Controller, Gurgaon dated 27th April,* 1979 *accepting the appeal and accepting the ejectment petition with costs throughout and directing the respondent to surrender possession of the demised property shown in plan*

(*Ex. PW5/1*) *situated in Sadar Bazar, Gurgaon Cantt to the appellant within two months from the day on 8th August, 1979, failing which the appellant shall be at liberty to take possession of the said property in execution proceedings.*

H. L. Sarin Senior Advocate with R. L. Sarin Advocate and Miss Ritu Bahri, Advocate, *for the Petitioner.*

N. C. Jain, Senior Advocate with V. K. Jain, S. K. Vij and J. B. Jain, Advocates, *for the Respondent.*

JUDGMENT

D. V. Sehgal, J.

The tenant-petitioner is aggrieved against the judgment dated 8th August, 1979 passed by the learned Appellate Authority, Gurgaon, under section 15(4) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'the Act'), whereby an appeal filed by the landlord-respondent has been allowed. The judgment of the learned Rent Controller dated 27th April, 1979, which went in favour of the petitioner has been set aside and an order of ejectment has been passed against him.

(2) The premises in dispute is a shop which was let out by the respondent to the petitioner,—*vide* rent note dated 3rd January, 1962 Ex. P.W.5/2. The respondent filed an application for ejectment of the petitioner under section 13 of the Act alleging, *inter alia,* that the petitioner has committed such acts as are likely to impair materially the value and utility of the building and as such he is liable to ejectment under clause (iii) of section 13(2) of the Act.

As regards the alleged material alterations made by the petitioner, there is not much dispute on facts which can be noticed thus. The shop let out to the petitioner is shown in yellow shade in the plan Ex. P.W.5/1. It measures 6′ × 10′. There was a *chabutra* in front of it measuring 2′ × 6′ and is shown in pink shade in the said plan. In front of the *chabutra,* there is the road of the bazar. The petitioner has raised a tin shed on the said *chabutra* in front of the shop. He has removed the wooden door of the shop fixed in the wall *Kha Ga* and instead a steel shutter has been fixed in front of the tin shed in the line, *cha chha.* In this manner, he has extended the length of the shop by 2′. It is now 12′ long instead of the original length of 10′. The petitioner has also changed the slope of the roof

of the shop from the northern side to the southern side and has closed the water outlet of the roof at point *Sa* in the northern wall of the shop and has started discharging the rainy water from the roof of the shop on the southern side. He has not only encroached upon the *chabutra* by constructing a tin shed and extending the length of the shop but in addition underneath the *Chabutra* he has constructed a godown to which a shutter is fixed and he stores the stock of merchandise there. These additions and alterations can be seen and appreciated by perusal of the photographs Exs. P.W. 4/4 to P.W. 4/6, the negatives of which are Exs. P.W. 4/1 to P.W. 4/3. On two sides of the shop in dispute, i.e. towards the South and West, adjoin the other shops of the respondent, while on the West adjoins a shop in occupation of one Mam Chand. None of the above facts as found by the learned Appellate Authority was questioned before me. The learned counsel for the parties confined their arguments to the question 'whether the additions and alterations detailed above come within the mischief of clause (iii) of section 13(2) of the Act'. The learned Rent Controller was of the view that these could not be termed as 'material changes affecting the value and utility of the shop in dispute'. The learned Appellate Authority, however, took the contrary view and ordered ejectment of the petitioner.

(3) The learned counsel for the petitioner placed reliance on *Mohinder Singh* v. *Om Parkash and others* (1), *M/s. Parkash Chand Harnam Singh* v. *Shri Gian Chand* (2), and the decision of the final Court in *Om Parkash* v. *Amar Singh and another* (3). He further submitted that at the instance of the respondent the learned Rent Controller fixed the fair rent of the shop in dispute,—*vide* his judgment dated 8th January, 1979 Ex. R.1. The very fact that the respondent moved an application under section 4 of the Act for determination of the fair rent of the said premises amounts to acquiescence on his part as regards the alleged acts of additions and alterations in the shop by the tenant. To seek support for this submission he relied on a Division Bench of this Court in *Ved Parkash* v. *Darshan Lal Jain* (4). The learned counsel for the respondent, on the other hand, placed reliance on a Division Bench decision of this Court in *Narain Singh* v. *Bakson Laboratories etc.* (5), *M/s. Suman Light*

(1) 1978(1) R.C.J. 406.
(2) 1979(1) R.C.J. 1.
(3) A.I.R. 1987 S.C. 617.
(4) 1986(2) P.L.R. 90.
(5) 1981 (2) R.C.R. 237.

Hosiery, Madhopuri v. *Jaswant Singh* (6), *Manmohan Das Shah and others* v. *Bishun Das* (7), *Lakhmi Chand and others* v. *Hira Lal* (8), *Jagmander Dass and another* v. *M/s. Hari Kishan Sushil Kumar* (9) and *Smt. Nirmala* v. *Ishwar Chander* (10).

(4) In fact, the question 'whether or not the acts committed by the tenant are likely to impair materially the value or utility of the building' is to be decided keeping in view the peculiar facts of the case in hand. No doubt the principles of law enunciated in a catena of authorities provide the guidelines for reaching at a finding but these do not supply any strait jacket formula which can be applied to the facts of a particular case and a finding recorded on its basis. However, to be fair to the learned counsel for both the sides, I shall notice briefly what has been held in the judgments relied on by them. In *Mohinder Singh's case* (supra), it was held that where the flooring of the shop, which was originally of bricks, has been cemented, the door in between the shop and the compound behind it has been removed making a permanent link between the shop and the compound and the compound has been roofed with wooden planks, the alterations thus done could not be deemed as material alterations so as to attract the aforesaid provisions of the Act. In *M/s. Parkash Chand Harnam Singh's* case (supra), a Division Bench of this Court ruled that the act of the tenant in just fixing up the door in the verandah after removing the same from the original place would not amount to impairment of value and utility of the building. In *Om Parkash's* case (supra) the final Court was dealing with the provisions of section 14(c) of the U.P. Cantonments (Control of Rent and Eviction) Act (10 of 1952). It provides, *inter alia*, that a tenant is liable for his eviction from an accommodation if without the permission of the landlord he has made or permitted to be made any such construction as in the opinion of the Court is likely to substantially diminish its value. It is to be noted that language of section 14(c) *ibid* considered by the final Court is quite different from that of clause (iii) of section 13(2) of the Act. The latter provision lays down that the tenant attracts eviction if he has committed or caused to be committed such acts as are "likely to impair materially the value or utility of the building or rented land."

(6) 1985(1) R.C.R. 680.
(7) A.I.R. 1967 S.C. 643.
(8) 1986 Haryana Rent Reporter 184.
(9) 1981(1) R.C.R. 489.
(10) 1983(2) R.C.R. 208.

Thus, the Court may form an opinion whether the tenant by making such a construction has materially altered or substantially diminished the value of the building. But it shall have to be seen from the point of view of the landlord whether its utility is likely to be materially impaired by such acts. It may, however, be noted that in *Om Parkash's* case (supra) construction of a partition wall in a hall and tin shed in the open courtyard adjacent to the building without digging any foundation of the floor of the room or touching its ceiling was held not to attract the eviction of the tenant under section 14(c) of the said Act. In *Narain Singh's* case (supra), a Division Bench of this Court held that where the tenant converts the verandah of a residential building into room by brick walls he impairs the value and utility of the building. The contention that the structure could be easily removed and the building restored to its original condition was held to be not tenable. It was further observed that the words "value or utility" in clause (iii) *ibid* have to be read disjunctively. It is not that the impugned act must impair both the value and utility of the building but it suffices if the material impairment is either of the financial value of the building or similarly of the utility of the building. It consequently suffices for the purpose of the landlord if he is able to establish either of the two requirements. In *M/s. Suman Light Hosiery, Madhopuri's* case (supra), following the rule laid down in *Narain Singh's* case, it was held that where the tenant constructs *parchhatis* and a wall and these alterations considerably increase the burden on the roof of a room underneath, if would amount to alterations materially impairing value and utility of the building. In *Manmohan Das Shah's* case (supra), the Supreme Court was examining the expression "or is likely substantially to diminish its value" in section 3(1)(c) of U.P. (Temporary) Control of Rent and Eviction Act, 1947. Without attempting to lay down any general definition as to what material alterations mean, as such a question would depend on the facts and circumstances of each case, the final Court observed that the alterations in the given case must mean material alterations as the construction carried out by the tenant had the effect of altering the form and structure of the accommodation. The expression "material alterations" in its ordinary meaning was held to mean important alterations, such as those which materially or substantially change the front or the structure of the premises. It was further observed that such alterations might not cause damage to the property or diminish its value or might not amount to an unreasonable use of the leased premises or constitute a change in the purpose of the lease. In that case lowering the level of the ground floor by

1½ feet by excavating the earth therefrom and putting up a new floor, the consequent lowering of the front door and putting up instead a larger door lowering correspondingly the height of the *chabutra* so as to bring it on the level of the new door-step, the lowering of the base of the starircase entailing the addition of new steps thereto and cutting the plinthband on which the door originally rested so as to bring the entrance to the level of the new floor were held to be structural alterations which are not only material alterations but are such as to give a new face to the form and structure of the building thus falling within the mischief of clause (c) which was being examined by the Supreme Court. In *Lakhmi Chand's case* (supra), the roof of the shop in dispute was raised by the tenant to an extent of 4/5 feet in comparison to the other shop without the consent of the landlord. The wooden door was replaced by a shutter and a slab was constructed in the middle of the shop. This was held to be a clear case of materially impairing the value and utility of the building. In *Jagmander Dass's* case (supra), the tenant constructed a structure on the open space in front of the shop. The said open space did not belong to the landlord. The structure was, however, held to impair the utility of the shop and the tenant was held to be liable to ejectment by taking resort to clause (iii) of section 13(2) of the Act. In the case of *Smt. Nirmala,* the tenant covered the front open space and converted the entire building into an open hall. It was held that the tenant was liable to ejectment. The contention that the changes so made had increased the utility of the building was turned down. It was held that the impairment of the utility has to be seen from the point of view of the landlord and not that of the tenant.

(5) Now coming to the facts of the present case, the tenant has covered the *chabutra* in front of the shop by extending the covered length of the shop by erecting a tin shed. He has removed the door of the shop from its original place. He has instead put up a steel rolling shutter in front of the extended portion of the shop abutting the road of the bazar. As if this was not sufficient, he changed the level of the roof of the shop. The rain water which used to flow in front of the shop at point given in the plan Ex. P.W.5/1 now flows southwards. It was observed by the learned Rent Controller and the same contention has been raised by the learned counsel for the tenant that the flow of water to the adjoining property may cause damage to such adjoining property but it improved the position of the demised shop. As already noticed above, the question whether

the alterations in the structure made by the tenant have diminished the value or utility of the building has to be seen from the point of view of the landlord. He owns the shop towards the South of the demised premises and it is towards the South that the rain water would flow as a result of the change in the level of the roof. Again, even the base of the *Chabutra* has been tampered with by the petitioner to bring it to his own use. Underneath the *chabutra,* the petitioner has built a store which is evident if we look at photograph Ex. P.W.4/5. He has placed a wooden shutter to close that store. These changes effected by the tenant are quite material. In the language of the Supreme Court these have altered the form and structure of the building. These have also changed its front. The level of the roof has also not been spared. The base of the *chabutra* has also been tampered with. Keeping in view the ratio of the judgments to which a brief reference has been made above, I am of the view that the changes made by the petitioner are likely to impair materially the value as well as the utility of the building in dispute. I have, therefore, no hesitation to affirm the finding recorded by the learned Appellate Authority.

(6) The contention of the learned counsel for the petitioner that the respondent acquiesced in the above structural alterations in the shop in dispute for the reason that he applied for the fixation of the fair rent of the shop under section 4 of the Act and,—*vide* judgment dated 8th January, 1979 Ex. R.1 the Rent Controller fixed its fair rent has no substance. The landlord as well as the tenant have the right to apply for fixation of fair rent by invoking the provisions of section 4 of the Act. When the landlord takes recourse to the said provision, by no stretch of reasoning can it be said that any ground for the eviction of the tenant, which has become available to him, is condoned when he moves an application under section 4 *ibid.* This contention is, therefore, rejected.

(7) As a result of the above discussion, I find no force in this revision petition and dismiss the same leaving the parties to bear their own costs. I, however, allow three months' time to the petitioner to vacate the premises in dispute on the condition that he deposits the entire amount of arrears of rent along with future rent for three months within one month from today in the Court of the Rent Controller for payment to the landlord-respondent. On his failure to do so, the respondent shall be entilted to take out execution and take possession of the demised premises forthwith.

R.N.R.