Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

RAM SARUP AND ANOTHER,—*Petitioners.*

versus

DIN DAYAL,—*Respondent.*

C.R. No. 2269 of 1992

April 9, 1996.

The East Punjab Urban Rent Restriction Act, 1949—*Ss.* 13(3)(*a*)(*i*), (*ia*)(*ii*)(*iii*)(*iv*) *and* 13(4)—*Haryana Urban (Control of Rent and Eviction) Act,* 1973—*Ss.* 1(3), 13(3)(*a*)(*i*)(*ii*)(*v*)(*b*)(c) *and* 13(6)—*Building unfit and unsafe—Landlord evicting tenant on the said ground—Landlord raising new building—Whether tenant entitled to claim possession of new building—Held, no—Decision of Supreme Court—Applicability of.*

Held, that the expression "that building" is referable to the building previously occupied by the tenant. This expression does not refer to a new building, which may be erected by the landlord after demolition of the old building which was in occupation of the tenant and which was got vacated by him either for the purpose of carrying out any building work at the instance of the State Government or local authority or any Improvement Trust under some improvement or development scheme or where the building was found to be unsafe or unfit for human habitation. Once the building is demolished for carrying out work under improvement or development scheme or it is demolished on the ground that it has become unsafe or unfit for human habitation the character of "that building" disappears. Therefore, on a plain reading of Section 13(4) of the Punjab Act or 13(6) of the Haryana Act, it is clear to us that the tenant cannot apply for restoration of possession of the premises or land after the building is demolished by the landlord and a new building is constructed. No doubt the provisions of the Acts of 1949 and 1973 are meant for protection of tenant's right but such protection can be given to the tenant within the parameters indicated in the two statutes and there is no reason or justification to stretch the language of the two statutes so as to take away the right of the landlord to construct a new building according to his own choice after he gets possession of the building or land on the ground that the same has become unsafe or unfit for human habitation. There is no logic or reason to interpret the expression "that building" so as to include a new building constructed by the landlord after the demolition of the old building, which was in occupation of the tenant at the time of handing over the possession to the landlord. In so far as the Haryana Act is concerned, Section 1(3), which is reproduced below, makes it clear that the provisions of the

Haryana Act do not apply for a period of ten years to any building construction of which is completed on or after the commencement of the 1973 Act :—

> "S.I. (3). Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion."

Scope of Section 1(3) of the Haryana Act cannot be confined to the building constructed for the first time. The expression "any building" used in Section 1(3) will apply to the building which is constructed for the first time on an open land as well as a building which is constructed after demolition of an existing building which may have become unsafe or unfit for human habitation.

(Para 5)

Further held, that the true ratio of the decision of the Apex Court in Shadi Singh *v.* Rakha, 1992 (2) PLR 163 is that where the landlord carries out repairs of the building after obtaining its possession on the ground specified in Section 13(3)(a)(iii) of the Punjab Act or Section 13(3)(c) of the Haryana Act then he has to restore the building to the tenant on an application made by him in this behalf. It would not at all be appropriate to take out a few sentences here and there from the judgment in Shadi Singh's case. read them out of context and then hold that the said judgment lays down a proposition that after obtaining possession of the building on the ground specified in Section 13(3)(a)(iii) of the Punjab Act or Section 13(3)(c) of the Haryana Act, the landlord should demolish the building, reconstruct it and give it back to the tenant.

(Para 17)

M. L. Sarin, Senior Advocate, with Rahul Rathore, Advocate, *for the petitioners.*

Sanjay Kaushal, Y. K. Sharma, Ravinder Chopra, Anil Khetarpal Ashish Handa, R. K. Jain, Advocates, S. P. Gupta, Senior Advocate with Sukant Gupta and Raj Bassi, *for the Respondent.*

JUDGMENT

G. S. Singhvi, J.

(1) These petitions have been placed before us for deciding the question whether a tenant, who has been evicted from the premises on the ground that the building has become unfit and unsafe for human habitation, is entitled to be reinducted as a tenant on reconstruction of the building by the landlord and if so, on what terms and conditions ?

(2) A learned Single Judge (V. K. Jhanji, J.) before whom Civil Revision No. 2269 of 1992 etc. were placed for hearing, noticed the two decisions of the Supreme Court in *Wazir Chand* v. *Swarankar Sabha* (1), and *Shadi Singh* v. *Rakha* (2) and observed that the decision of the apex Court in *Shadi Singh's* case runs contrary to the decision in Wazir Chand's case. Jhanji, J. further noted that both the decisions have been rendered by Benches of two Judges. He, therefore, thought it proper to refer the question to a larger Bench.

(3) Section 13(3) (a) (i), (ia), (ii), (iii), (iv) and 13(4) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Punjab Act') and Sections 1(3), 13(3) (a) (i), (ii), (v), (b), (c) and 13(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Haryana Act') are reproduced below for the purpose of ready reference :

"Section 13. Eviction of tenants : (Punjab Act) (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 ;

(b) he is not occupying any other residential building in the urban area concerned ;

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area ; and

(d) it was let to the tenant for use as a residence by reason of his being in the service of employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in service or employment :

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, be

(1) 1990 H.R.R. 209.
(2) (1992-2) 102 P.L.R. 163.

shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord :

(i-a) in the case of a residential building, if the landlord is member of the armed forces of the Union of India. requires it for the occupation of family and if he produces a certificate of the prescribed authority, referred to in Section 7 of the Indian Soliders (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act. (Inserted by Punjab Act No. 6 of 1966) :

(ii) in the case of rented land (The words "non-residential building or" omitted by Punjab Act No. 29 of 1956 if :—

(a) he requires it for his own use ;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land. (The words "building or" and "as the case may be" omitted by Punjab Act No. 29 of 1956) and (c) he has not vacated such rented land (The word "building or" omitted by Punjab "Act No. 29 of 1956) without sufficient cause after the commencement of this Act, in the urban area concerned ;

(iii) *In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development Scheme or if it has become unsafe or unfit for human habitation* ;

(iv) in the case of any residential building : if he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer or as a registered practitioner within the meaning of that expression as used in the Punjab Medical Registration Act, 1916, or for the residence of his son who is married if—

(a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be ; and

(b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned.

13(4). Where a landlord who has obtained possession of a building or rented land in pursuance of an order under sub-paragraph (i) of sub-paragraph (ii) of paragraph (a) of sub-section 3 does not himself if occupy it or if possession was obtained by him for his family in pursuance of an order sub-paragraph (i-a) of paragraph (a) of sub-section (3), his family does not occupy the residential building or, if possession was obtained by him on behalf of his son in pursuance of an order paragraph (a) sub-paragraph (iv) of sub-section (3), his son does not occupy it for purpose of which possession was obtained for a continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under sub-paragraph (iii) of the aforesaid paragraph (a) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall made an order accordingly.

13. *Eviction of tenants* : (Haryana Act) (3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession :—

(a) in the case of a residential building, if :—

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area ;

(ii) he requires it for use as an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the

meaning of that expression used in the Punjab Medical Registration Act, 1916, the Punjab Ayurvedic and Unani Practitioners Act, 1963, or the Punjab Homoeopathic Practitioners Act, 1965, or for the residence of his son who is married :

Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act ;

(v) he is a member of the armed forces of the Union of India and requires it for the occupation of his family and produces a certificate from the prescribed authority referred to in Section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of Section 3 of that Act.

Explanation :—For the purposes of this sub-clause "family" means such relations of the landlord as ordinarily live with him and are dependent upon him ;

(b) in the case of rented land, if he requires it for his own use, is not occupying in the urban area concerned for the purpose of his business any other rented land and has not vacated such rented land and without sufficient cause after the commencement of the 1949 Act ;

(c) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the State Government or local authority or any improvement trust under some improvement or development scheme or *if it has become unsafe or unfit for human habitation* ;

(6) Where a landlord, who has obtained possession of a building or rented land in pursuance of an order under sub-clause (i) of clause (a) or clause (b) of sub-section (3), does not himself occupy it or if possession was obtained under sub-clause (v) of clause (a) or sub-section (3), his

family does not occupy the residential building, or if possession was obtained by him on behalf of his son in pursuance of an order under sub-clause (ii) of clause (a) of sub-section (3), his son does not occupy it for the purpose for which possession was obtained, for a continuous period of twelve months from the date of obtaining possession or where a landlord who has obtained possession of a building under clause (c) of sub-section (3) puts that building to any use or lets it out to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that the possession of such building or rented land shall be restored to him and the Controller shall make an order accordingly."

(4) An analysis of the above-quoted provisions of the Punjab Act as well as the Haryana Act shows that the landlord can seek an order of possession from the tenant of a building or land for his own occupation or the occupation of residential building by his family or on behalf of his son, for use as an office or consulting room, who intends to start practice as a lawyer, qualified architect or chartered accountant or as a 'registered practitioner' or for the residence of his son, who is married. The landlord can also apply to the Controller for an order directing the tenant to put the landlord in possession in the case of a residential building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe and unfit for human habitation. Section 13(4) of the Punjab Act and Section 13(6) of the Haryana Act incorporate consequences of non-occupation of building or rented land by the landlord after its vacation for his own use or for the use of his family or son under the various clauses specified therein. There provisions also incorporate consequences where the landlord has got the building vacated on the ground of it being unsafe and unfit for human habitation in case he puts that building to any use or to any tenant other than the tenant evicted from it. In all the cases. the tenant can apply to the Controller for an order directing that the possession of the building or the rented land be restored to him, and in that case the Controller has to pass an order for restoration of the possession.

(5) Here, we are concerned with the cases where possession of the building is obtained by the landlord under Section 13(3) (a) (iii)

of the Punjab Act or 13(3) (c) of the Haryana Act. The most significant words used in this regard, in Section 13(4) of the Punjab Act or section 13(6) of the Haryana Act are *"puts that building to any use or lets it out to any tenant other than the tenant evicted from it."* This necessarily contemplates existence of the building from which the tenant has been evicted and the landlord has been put in possession by an order of the Controller. The expression "that building" is referable to the building previously occupied by the tenant. This expression does not refer to a new building, which may be erected by the landlord after demolition of the old building which was in occupation of the tenant and which was got vacated by him either for the purpose of carrying out any building work at the instance of the State Government or local authority or any Improvement Trust under some improvement or development scheme or where the building was found to be unsafe or unfit for human habitation. Once the building is demolished for carrying out work under improvement or development scheme or it is demolished on the ground that it has become unsafe or unfit for human habitation the character of "that building" disappears. Therefore, on a plain reading of Section 13(4) of the Punjab Act or 13(6) of the Haryana Act, it is clear to us that the tenant cannot apply for restoration of possession of the premises or land after the building is demolished by the landlord and a new building is constructed. No doubt the provisions of the Acts of 1949 and 1973 are meant for protection of tenant's right but such protection can be given to the tenant within the parameters indicated in the two statutes and there is no reason or justification to stretch the language of the two statutes so as to take away the right of the landlord to construct a new building according to his own choice after he gets possession of the building or land on the ground that the same has become unsafe or unfit for human habitation. There is no logic or reason to interpret the expression "that building" so as to include a new building constructed by the landlord after the demolition of the old building, which was in occupation of the tenant at the time of handing over of possession to the landlord. In so far as the Haryana Act is concerned, Section 1(3), which is reproduced below, makes it clear that the provisions of the Haryana Act do not apply for a period of ten years to any building construction of which is completed on or after the commencement of the 1973 Act :—

> S.I. (3). Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion."

Scope of Section 1(3) of the Haryana Act cannot be confined to the building constructed for the first time. The expression "any building" used in Section 1(3) will apply to the building which is constructed for the first time on an open land as well as a building which is constructed after demolition of an existing building which may have become unsafe or unfit for human habitation.

(6) The right of the tenant to be protected against an unscrupulous landlord who does not maintain the building in proper shape and condition is amply protected by Section 12 of the Punjab Act as well as the Haryana Act. Under the Punjab Act, the tenant can apply to the Controller for permission to make necessary repairs of the tenanted building and to deduct the costs of repair payable by the tenant, in case the landlord fails to undertake necessary repairs. The only restriction imposed on the right of the tenant to undertake repairs of the building is that the tenant should not carry out structural alteration. Therefore, if the building is otherwise safe and in a habitable condition, the tenant can always seek an order from the Controller to carry out necessary repairs if the landlord fails to do so. Section 12 of the Haryana Act goes a step further. Proviso to Section 12 empowers the Controller to allow the tenant to carry out urgent repairs on such terms and conditions as may be imposed by the Controller. Therefore, even before a final decision is taken on the application filed by the tenant under the main part of Section 12 of the Haryana Act, the Controller can permit urgent repairs by the tenant. These provisions amply safeguard the interest of the tenant and indirectly compel the landlord to carry out necessary repairs of the tenanted premises from time to time. A further safeguard is available to the tenant where the landlord secures the possession of the building on the ground that it has become unsafe and unfit for human habitation but he uses it or lets it out to any body else after undertaking the repairs of that building. In that event, the tenant can apply under Section 13(4) in the case of the Punjab Act or under Section 13(6) in the case of the Haryana Act for restoration of the possession.

(7) It is also significant to note that Section 13(4) of the Punjab Act and Section 13(6) of the Haryana Act speak of various contingencies in which a tenant can seek restoration of the possession of the building or land from which he has been evicted. Three of these contingencies are :—where the possession has been obtained by the landlord for his own use or for the use of his family or married son. In either of these cases, the tenant can apply for

restoration if the building or land is not used for the purpose for which the ejectment order has been secured. Fourth contingency is where the landlord uses the building or lets it out to any other tenant after obtaining its possession under Section 13(3) (a) (iii) of the Punjab Act or under Section 13(3) (c) of the Haryana Act. The important difference between the first three contigencies and the last contingency in which the tenant can apply for restoration of possession is that the landlord or his family or his son has to occupy the premises within 12 months of the date of obtaining the possession whereas in the last contingency there is no such obligation on the landlord. There is nothing in Section 13(4) of the Punjab Act or 13(6) of the Haryana Act which make it obligatory for the landlord to first demolish the existing buidilng and then to raise a new construction within a specified time limit. Neither of these provisions can be read as containing an implied obligation of the landlord to invest money for demolition of the building and then to raise new construction of the same form and structure and then to put the tenant back in possession. Such an interpretation of Section 13(4) of the Punjab Act or 13(6) of the Haryana Act would amount to rewriting of the statute. It would then mean that as per the statutory provisions, the landlord is obliged to demolish the building of which he has obtained possession on the ground of it having become unsafe and unfit for human habitation and a further obligation to raise new structure for reinduction of the tenant. In our opinion, there is no necessity to adopt such an interpretation because the plain language used by the Legislature is clear and unambiguous.

(8) In *Prabhakaran Nair and others* v. *State of Tamil Nadu and others* (3), the vires of Section 14(1) (b) and Sections 16(2) as well as 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, were challenged on the ground of the same being arbitrary, discriminatory and unreasonable. The landlord had sought ejectment of the tenant on the ground of non-payment of rent, unlawful sub-letting, causing damage to the property and also for the purpose of demolition and reconstruction. The trial Judge ordered the ejectment of the tenant under Section 14(1) (b) of the Tamil Nadu Rent Act only for demolition and reconstruction. The tenant filed appeal before the Appeal Court as well as the High Court, but failed. The Supreme Court also dismissed the Special Leave Petition. Thereafter, a petition under Article 32 of the Constitution was filed challenging the constitutional validity of the provisions of Sections 14(1) (b)

(3) (1987)4 S.C.C. 238.

and 16(2) of the Tamil Nadu Rent Act. On behalf of the petitioners, reliance was placed on the Rent Acts of Maharashtra, Kerala, Karnataka, West Bengal etc. which contain provisions for reinduction of the tenant in the premises after reconstruction. While rejecting the contention that absence of the provisions for re-induction of the tenant renders the statute as arbitrary and unreasonable, their Lordships observed :—

> "It has further to be borne in mind that after such demolition the reconstruction of a new building on the same site is bound to take time and such time depends upon the nature of the building to be erected and it might take years it was argued. During that period a tenant was bound to have found some other suitable alternative accommodation ; on the other hand in the case of a building for repairs, a tenant may arrange for temporary accommodation for a few months and return back to the building. Therefore, provision for re-induction in the case of repairs and absence of such a provision in the case of demolition and reconstruction is quite understandable and rational.
>
> It has to be borne in mind that it is not practicable and would be anomalous to expect a landlord to take back a tenant after a long lapse of time during which time the tenant must necessarily have found some suitable accommodation elsewhere. This is the true purpose behind section 14(1) (b) read with Section 14(2) (b). In the aforesaid view of the matter, we are unable to accept the submission that in providing for re-induction of a tenant in case of repairs and not providing for such re-induction in case of reconstruction, there is any unreasonable and irrational classification without any basis.
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> We are therefore unable to accept the submission that absence of the right of re-induction of tenants in reconstructed premises is either arbitrary or unreasonable. The submission that Section 16(2) which provides that when a building is totally demolished and on which a new building is erected shall be exempt from all the provisions of the Act for a period of five years is bad is also unsustainable. See in this connection the observations of this Court in M/s Punjab Tin Supply Co., Chandigarh ●

Central Government, (1984)1 S.C.C. 206, and Motor General Traders *v.* State of Andhra Pradesh, (1984) 1 S.C.C. 222. It was submitted that the fact that in these cases exemption was after the first construction of the building and not after demolition and reconstruction but that would not make any difference to the principle applicable. The principle underlying such exemption for a period of five years is not discriminatory against tenants, nor is it against the policy of the Act. It only serves as an incentive to the landlord for creation of additional housing accommodation to meet the growing needs of persons who have no accommodation to reside or to carry on business. It does not create a class of landlords who will forever be kept outside the scope of the Act as the provision balances the interests of the landlords on the one hand and the tenants on the other in a reasonable way. This Court in Atam Parkash *v.* State of Haryana, (1986) 2 S.C.C. 249, also judged the rules of classification in dealing with the Punjab Pre-emption Act, 1913."

(9) In *M/s P. Orr. and Sons (P) Ltd.* v. *M/s Associated Publishers (Madras) Ltd.* (3), a three Judges Bench of the Supreme Court again considered Section 14(1) (b) of the Tamil Nadu Rent Act which entitles the landlord to seek possession of the building for demolition and reconstruction. While considering the provisions, their Lordships observed that "expression 'immediate purpose of demolishing it' does not mean instant demolition but demolition within specified time but without undue or protracted delay." The observations made by the apex Court in paragraphs 14 and 15 are quite relevant and are, therefore, quoted below :—

"It may be noticed that clause (a) of sub-section (2) of Section 14 provides that the landlord should give an undertaking that he would, on completion of the repairs, offer the building to the tenant who delivered possession in terms of clause (a) of sub-section (1) for his re-occupation within three months or within such further time as the Controller may allow, and when the landlord has failed to so act in accordance with his undertaking, section 15 authorises the Controller to direct that the tenant be put back in possession of the building on the original terms and conditions.

(3) 1990 (2) R.C.R. 648.

Clause (b) of sub-section (2) of Section 14, however, only speaks of an undertaking by the landlord that he would substantially commence the demolition of any material portion of the building within one month and complete the same within three months from the date of recovery of possession or within such further period as the Controller may allow. Section 16 allows the tenant the right to re-occupy the building on the original terms and conditions of the lease if the landlord has failed to act in accordance with his undertaking under Section 14(2) (b). But the section does not speak of any undertaking by the landlord to re-induct the tenant in the new building erected by him. Nor does the Act contain any provision for enforcement of the landlord's expressed intention to erect a building on the site of the demolished building. Once a building is totally demolished, and a new building is erected in its place, the Act would cease to apply to the new building for a period of five years from the date of its completion (Section 16(2)).

The absence of any provision to compel re-induction of the tenant after reconstruction or to compel reconstruction after demolition and the non-applicability of the Act for a period of five years after reconstruction make it imperative that the reasonableness of the landlord's requirement should be considered with care and caution, bearing in mind the fundamental legislative object to protect the tenant from unreasonable eviction."

(10) We shall now refer to the judgments of the Supreme Court to which reference has been made in the order of the learned Single Judge. The Judgment in *Wazir Chand* v. *Swarankar Sabha* (supra) relates to interpretation of Sections 13(3) (c) and 13(6) of the Haryana Act. Wazir Chand was ordered to be evicted on the ground that the building under his occupation was unfit for human habitation. Wazir Chand challenged the findings recorded by the Rent Controller that the building had become unfit for human habitation. He also contended that even if the eviction could be justified on the ground that the building has become unsafe or unfit for human habitation, he has a right of re-entry to the newly constructed building and the landlord is obliged to give him the space equivalent to the one he was earlier occupying in the old building. Learned counsel appearing for the appellant conceded that after ejectment, the landlord has reconstructed the building and the same is being used as 'Dharamshala'. Therefore, the Supreme Court considered the alternative

argument of the learned counsel for the tenant that the tenant had got a right of re-entry to the newly constructed building. While rejecting this contention, their Lordships held :—

> "It seems to us that sub-section (6) of Section 13 has no application to a building re-constructed by the landlord. There is no other provision to which our attention has been invited in support of the claim of the tenant. Of course, similar provisions are found in other enactments for example, statutes of Maharashtra, Karnataka, Kerala, West Bengal, where there are provisions for reinduction of tenants in the premises after reconstruction. The Tamil Nadu Building (Lease and Rent Control) Act, 1960 also does not provide for any such provision for reinduction. For want of such a right of re-entry to the tenant, the Constitutional validity of the Tamil Nadu Rent Act was challenged on the ground that it is arbitrary, discriminatory and unreasonable and that it is violative of Article 14 of the Constitution. This Court in *Prabhakaran Nari etc.* v. *State of Tamil Nadu and others,* 1987 (4) SCC 238, has upheld the validity of that Act. In the circumstances, we cannot accept the claim put forward by the tenant under sub-section (6) of Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 for reinduction into the re-constructed building." (Underlining is ours).

(11) In *Shadi Singh* v. *Rakha* (supra) the facts were that order of ejectment was passed in favour of the landlord on the ground that the building had become unsafe and unfit for human habitation. The Appellate Authority reversed the order of ejectment and held that the appellant had already carried out the repairs of the shop in dispute and the same has become safe and habitable and need for ejectment no longer subsists. This Court allowed Civil Revision No. 958 of 1975 and restored the order passed by the learned Rent Controller. Their Lordships of the Supreme Court noted that as per the Appellate Authority, out of five, two Khanas (columns) of the roof had fallen down and that three require replacement of few batons and that no portion of the wall had fallen down. The Supreme Court noticed that the appellant had carried out repair of that part of the roof which had fallen down and no more and held that it amounts to minor repairs and not reconstruction of the shop or structural alteration thereof.

(12) Their Lordships also noticed the Section 12 of the Punjab Act and observed that Section 12 gives right to the tenant to seek

permission of the Controller to effect ordinary repairs and further observed that the repairs effected by the appellant were not extensive. Their Lordships observed that the High Court was not right in reversing the findings recorded by the Appellate Authority. Their Lordships accepted the arguments raised on behalf of the tenant that subsequent events which took place during the pendency of the appeal before the Appellate Authority should be taken into consideration and held :—

> "Shri Goel, learned counsel for the appellant, with thorough preparation and neat presentation of the case, argued that on the date of filing an application for eviction the building was unsafe and unfit for human habitation due to fall of roof from two Khanas, By subsequent replacement of them by the appellant, the requirement of the building to effect the repairs no longer subsisted. This subsequent event was rightly taken note by the appellate authority and the High Court took narrow view of the matter and wrongly reversed the judgment of the appellate authority. We find force in the contention. The High Court having accepted the finding of the appellate authority that the tenant effected repairs by replacing the fallen roof and made it safe and fit for habitation the requirement of the building for the same purpose no longer subsisted. Whether the repairs effected by the tenant at its own cost without taking recourse of Section 12, would alter the situation ? Our answer is no. It is settled law that all the provisions should not be rendered otiose or surplusaged. It is difficult to give acceptance to the contention of Shri Harbans Lal, learned senior counsel for respondent, that the verb 'requires' in Section 13(3) (a) (iii) would be applicable to the first part, namely to carry out any building work. It also would encompass of the building which became unsafe or unfit for human habitation. The requirement of the building would be both to carry out building work as per the development schemes of the named authorities or when the building needs repairs of reconstruction when the existing one became unfit and unsafe for human habitation. Otherwise, there is no power to the Controller to order eviction though the building became unfit and unsafe for human habitation."

(13) Their Lordships then dealt with the contention raised on behalf of the landlord that by his unilateral act of effecting repairs

without any order under Section 12, the tenant made himself liable for eviction because the landlord's right to seek eviction under Section 13(3) (a) (iii) cannot be frustrated and observed :—

> "There is a distinction between effecting repairs and in its guise to make structural alteration or to restructure and building. The tenant cannot effect structural alteration or reconstruct the building. It is the right of the landlord alone to exclusively have it done unless of course, the landlord having had the tenant evicted from the building for that purpose and demolished the building and failed to reconstruct and redeliver possession thereof to the tenant. *In a given case if the tenant acts unilaterally and effects structural alterations or reconstructs the building, it itself may be a ground for eviction under the appropriate provision of the statute.* No such allegation was made, nor an amendment to the pleading sought by the respondent in this behalf. A feeble attempt was made by Shri Harbans Lal to raise the contention. In the absence of the pleading and the contentions raised in the courts below, we decline to permit the counsel to argue that point, since there is no factual foundation in that behalf. *The test in each case is whether it is absolutely necessary to have the tenant evicted to carry out repairs or structural alteration for making the demised building safe and fit for human habitation.* Further it is to be asked whether the repairs are so fundamental in character and extensive which cannot be carried out without evicting the tenant from the building or while the tenant remained in occupation. If the repairs could be carried out without disturbing the possession of the tenant, the need for eviction is mere a wish of the landlord or a ruse to have the tenant evicted. Take for instance, a building, in which commercial activity having established good will, was taken possession of under Section 13(3) (a) (iii) and got no repairs effected but demolished and no reconstruction was made for a long time. Prolonged stoppage of business will have a deleterious effect on the good will and cripple the business of the tenant. Each case on its own facts presents its true colours. Its effect is to be visualised and considered in its own perspective."
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> (Underlining supplied).

(14) A careful reading of the two judgments shows that while in the first case (*Wazir Chand* v. *Swarankar Sabha*) the Supreme

Court was directly concerned with the interpretation of Section 13(6) of the Haryana Act and the claim of the tenant to be put in possession of the portion of the newly constructed building had been unequivocally rejected, in the second case (*Shadi Singh* v. *Rakha*), the Supreme Court was examining a case in which the tenant was evicted on the ground that the building had become unsafe and unfit for human habitation, but had got the demised premises (shop) repaired and had made it habitable during the pendency of the appeal filed by him. Their Lordships held that the appellate authority was justified in taking note of the subsequent event and in holding that requirement of the landlord to carry out the repairs no longer subsisted and that the High Court was not right in interfering with the order of the appellate Court on the ground that the tenant had carried out the repairs in contravention of Section 12 and was, therefore, not entitled to take advantage of it. The observations made by the apex Court that each case on its own facts presents its true colours, go to show that in *Shadi Singh's* case (supra), their Lordships were greatly influenced by the fact that the tenant had carried out repairs of the building and had made it habitable and, therefore, the ground of ejectment, namely, that the building has become unsafe and unfit for human habitation no more subsisted. It is also important to bear in mind that while in *Wazir Chand's* case (supra), their Lordships had specifically considered a case where the possession of the building was given to the landlord on the ground that it had become unsafe and unfit for human habitation, the building was demolished and new building was constructed, in *Shadi Singh's* case even before the possession of the building could be given to the landlord, in pursuance of the order of the Rent Controller, the tenant had carried out the repairs during the pendency of the appeal and this by itself shows that in *Shadi Singh's* case really the building had not become unfit or unsafe for human habitation and, therefore, the landlord was not justified in seeking ejectment under Section 13(3) (a) (iii) of the Punjab Act.

(15) In view of the above, the observations made in paragraphs 4 and 6 of the judgment in *Shadi Singh's* case regarding the scope of Section 13(4) will have to be treated as confined to the facts of that case. In para 4 of *Shadi Singh's* case, the Supreme Court observed :

> "4. Sub-section (4) further obligates on effecting reconstruction or repairs that "where a landlord who has obtained possession of a building or a rented land in pursuance of an order.....under sub-paragraph (iii) of paragraph (a), puts that building to any use or lets it to any tenant who

has been evicted my apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly." Section 12 gives right to a tenant to effect necessary repairs, thus....."

(16) In para 5, their Lordships referred to Section 12 as well as Section 13(3) (a) (iii) of the Punjab Act and observed :—

"On reconstruction or effecting repairs by the landlord, he is enjoined to restitute the evicted tenant into possession of the building. Under sub-section, Controller to make an order in that behalf, despite the landlord himself makes use of the building or lets it out to any other tenant and puts a new tenant in possession of the evicted building."

(17) If the above-quoted observations of the Supreme Court are taken out of the context then it does appear that there is a direct conflict between the two judgments of the Supreme Court rendered by co-ordinate Benches of two Judges, namely, one in *Wazir Chand's* case and the other in *Shadi Singh's* case between the judgment in *Shadi Singh's* case is read as a whole, it is clearly revealed that the observations with reference to Section 13(4) and the right of tenant to get back the possession after repairs or reconstruction were really made in the background of facts of that case, namely, that the tenant had already carried out the repairs and had made the shop habitable. "The true ratio of the decision of the apex Court in *Shadi Singh's* case is that where the landlord carries out repairs of the building after obtaining its possession on the ground specified in Section 13(3) (a) (iii) of the Punjab Act or Section 13(3) (c) of the Haryana Act then he has to restore the building to the tenant on an application made by him in this behalf. It would not at all be appropriate to take out a few sentences here and there from the judgment in *Shadi Singh's* case, read them out of context and then hold that the said judgment lays down a proposition that after obtaining possession of the building on the ground specified in Section 13(3) (a) (iii) of the Punjab Act or Section 13(3) (c) of the Haryana Act, the landlord should demolish the building, reconstruct it and give it back to the tenant."

(18) In this context, we may make reference to the observation made by the Supreme Court in *Krishana Kumar* v. *Union of India* (4), on the doctrine of precedent. That was a case in which

(4) A.I.R. 1990 S.C. 1782.

the Railway employees covered by Provident Fund Scheme had challenged the cut off date fixed for exercising of option to switch over to the pension scheme. Reliance was placed by the petitioner on an earlier decision of the Supreme Court in *D. S. Nakara* v. *Union of India* (5). While distinguishing the decision in *Nakara's* case, their Lordships held :—

> "The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain 'propositions wider than the case itself required.' This was what Lord Selborne said in *Caledonian Railway Co.* v. *Walker's Trustees* (1882 (7) AC 259) and *Lord Halsbury in Quinn* v. *Leathem* (1901) AC 495 (502). Sir Frederick Pollock has also said: "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision."
>
> In other words, the enunciation of the reason or principle upon which a question before a Court has been decided is alone as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. *The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law either statutory or judge-made, and a minor premised consisting of the material facts of the case under immediate consideration.* If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4th End., Vol. 26, para 573 :
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> "The concrete decision alone is binding between the parties to it *but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force*

(5) A.I.R. 1983 S.C. 130.

of law and which when it is clear it is not part of a Tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a Tribunal for its judgment, all are taken as forming the ratio decidendi."

(Underlining is ours).

(19) Similarly, in *Commissioner of Income-tax* v. *M/s Sun Engineering Works (P) Ltd.* (6), their Lordships indicated the guidelines as to how a decision of the Supreme Court should be construed and observed :—

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

(20) Reference in the latter decision has been made to the following observations made in *Madhav Rao Jiwaji Rao Scindia Bahadur* v. *Union of India* (7) :—

"It is not proper to regard a word, a clause or a sentence occuring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

(6) 1992 A.I.R. S.C.W. 2600.
(7) A.I.R. 1971 S.C. 530.

(21) It will also be useful to refer to a Full Bench decision of this Court in *Punjab State Electricity Board* v. *Ashok Kumar Sehgal* (8). Speaking for the Court, M. M. Punchhi, J. (as he then was) observed that the principles of law declared by the Supreme Court are binding and not the order passed by the apex Court for doing justice between the parties. Punchhi, J. observed :—

> "It is the principles of law culled out from a judgment of the Supreme Court which alone are declaratory for the nation. The effective order of the Supreme Court, whereunder justice was done to the parties is binding on the parties. Thus, while following the ratio of a decision of the Supreme Court, it is not obligatory for the lower Courts to regulate reliefs always on the lines of the Supreme Court decision which is being followed."

Punchhi, J. further observed that :—

> "The Supreme Court while declaring law does not enact it as a statute or something better than a statute."

(22) On the basis of above, we hold that the decision in *Shadi Singh's* case does not lay down a proposition of law that after obtaining possession of the building or land under Section 13(3) (a) (iii) of the Punjab Act or Section 13(3) (c) of the Haryana Act, the landlord should construct a new building after demolishing the old structure and restore its possession to the tenant. We hold that the judgment of the Supreme Court in *Wazir Chand* v. *Swarankar Sabha* (supra) lays down the correct law and it should be followed for interpreting Section 13(4) of the Punjab Act and Section 13(6) of the Haryana Act. We also hold that the tenant is not entitled to restoration of possession under Section 13(4) of the Punjab Act or Section 13(6) of the Haryana Act where the landlord obtains possession of a tenanted building or land under Section 13(3) (a) (iii) of the Punjab Act or Section 13(3) (c) of the Haryana Act and constructs a new building after demolition of the old structure.

(23) The reference is answered accordingly.

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(8) A.I.R. 1990 P&H 117.

(24) Now the cases be placed before the learned Single Judge for decision on other issues arising in these revision petitions.

S.C.K.

Before Hon'ble Jawahar Lal Gupta & M. L. Koul. JJ.

PUSHP LATA,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

C.W.P. No. 6059 of 1996.

16th May, 1996.

Constitution of India, 1950—Art. 226/227—Punjab Civil Services Rules, Vol. I Part I—Rl. 4.8—Stoppage of employee at efficiency bar in time scale pay on ground of being unfit to cross bar—Whether such action amounts to imposition of penalty—Held that action is not penal per se—Does not amount to withholding of increments of pay by way of penalty.

Held, that the petitioner had earned only one good report during 13 years of her service career till the year 1984. Out of the remaining 12 reports, seven were 'average' and 5 were even 'below average' In this situation, it is clear that she had failed to secure "at least 50 per cent good reports" as stipulated in the instructions issued by the Government. Consequently, she could not even be classified as 'Fair'. She was 'poor'. As a result, she was not and actually could not have been permitted to cross the Efficiency Bar.

(Para 6)

Further held, that the action was in strict conformity with the provisions of Rule 4.8 of the Punjab Civil Services, Volume I Part I and the instructions issued by the Government. In fact, the petitioner has herself relied upon these instructions. Admittedly, she does not fulfil the criterion prescribed in these instructions. Consequently, she can have no legitimate grievance.

(Para 7)

Further held, that the stoppage of an employee at the efficiency bar in the time scale of pay on the ground of his/her unfitness to cross the bar does not amount to withholding of increments of pay by way of a penalty.

(Para 10)

J. S. Maanipur, Advocate, *for the Petitioner.*