

## REVISIONAL CIVIL

*Before D. Falshaw, C. J.*INDER SINGH,—*Petitioner.**versus*KALU RAM HARIJAN AND ANOTHER,—*Respondents.*

Civil Revision No. 349 of 1963.

*East Punjab Urban Rent Restriction Act (III of 1949)—S.13 (2) (ii) (b) and 13 (2) (iii)—Tenant taking shop for purposes of trade and using part of it for residence—Whether liable to be ejected—Encroachment of premises not included in the lease—Whether renders tenant liable to ejection.*

1964

Sept., 4th.

*Held*, that if a tenant takes a shop for purposes of his trade, and, while still carrying on his trade in part of the premises, uses part of them for residential purpose, he cannot be said to have 'used the building' for a purpose other than that for which it was let. Such a partial conversion is not covered by sub-clause (b) of clause (ii) of sub-section (2) of section 13 of the East Punjab Urban Rent Restriction Act, 1949.

*Held*, that nowhere in section 13 of the Act is encroachment of premises not included in the lease mentioned as a ground for the ejection of a tenant though it might give <sup>rise</sup> to some other action. The encroachment made by the tenant by erecting a corrugated iron cover over the verandah in front of the shop cannot be termed as an act which is likely to impair materially the value or utility of the building and his ejection cannot be ordered on that ground.

*Petition under Section 15 East Punjab Urban Rent Restriction Act for revision of the order of Shri Sant Ram Garg, Appellate Authority, (District and Sessions Judge), Ambala, dated the 21st February, 1963, affirming that of Shri H.S. Ahluwalia, Rent Controller Ambala, dated the 21st July, 1962, dismissing the application with costs.*

NARINDER SINGH, ADVOCATE, for the Petitioner.

G. S. CHAWLA, ADVOCATE, for the Respondents.

## JUDGMENT

FALSHAW, C.J.—This is a revision petition filed by a landlord, who has failed to obtain an order for the ejection of his tenant both before the Rent Controller and the Appellate Authority.

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 Harijan  
 and another  
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There were a number of grounds on which ejection was sought including non-payment of rent and subletting, but only two have now been raised before me, conversion of user and alleged encroachment. The premises in dispute consist of a shop with a *platform* and a back room in addition to the room actually used for business. On the former point both the learned Rent Controller and the learned Appellate Authority have found that Kalu Ram, originally leased the shop for the purpose of carrying on his trade, which is that of a barber, but that while he still carried on his trade in the front part of the premises he had been living with his family in the back part since a time before the premises were purchased by the present landlord Inder Singh, from the previous owner, under whom Kalu Ram became a tenant. The finding, therefore, was, though it does not appear to have been very clearly expressed, that there had been no conversion of user.

It is argued on behalf of the petitioner that even if there had been a partial conversion of user of the premises in the time of the previous landlord, the tenant was nevertheless liable to ejection because it was neither alleged nor proved that the consent of the previous landlord had been obtained in writing. The relevant provisions of section 13 of the East Punjab Urban Rent Restriction Act read—

“(2) (ii) that the tenant has after the commencement of this Act without the written consent of the landlord—

(a) \* \* \* \*

(b) used the building or rented land for a purpose other than that for which it was leased.”

It has undoubtedly been held by this Court in cases of subletting covered by section 13(2)(ii)(a) that on a change of landlords the tenant is liable to ejection for subletting even if the subletting had <sup>not</sup> taken place in the time of the landlord, who instituted the ejection proceedings unless there had been any consent in writing after the commencement of the Act.



The question which arises is, therefore, whether if a tenant takes a shop for purposes of his trade, and, while still carrying on his trade in part of the premises, uses part of them for residential purposes, he can be said to have 'used the building' for a purpose other than that for which it was leased. 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 ejection was rightly refused on this ground.

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The alleged encroachments consist of the erection of a corrugated iron cover over the verandah in front of the shop and some structures including another corrugated iron roof on a vacant space behind the back room which is alleged not to be included in the leased premises.

It is, however, clear that nowhere in section 13 of the Act is encroachment of premises not included in the lease mentioned as a ground for the ejection of a tenant though it might give rise to some other action, and the learned counsel for the petitioner sought to bring the case under section 13(2)(iii) "that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land". I cannot see how any of the alleged encroachments can be said to have any such effect. I accordingly dismiss the revision petition, but leave the parties to bear their own costs.

B.R.T.