Before M. M. Kumar, J

M/S UNITED ENGINEERS AND ANOTHER—*Petitioners/Tenants*

versus

NIRMAL BHASIN,—*Respondent/Landlady*

C.R. NO. 612 OF 1995

14th September, 2004

East Punjab Urban Rent Restriction Act, 1949—S. 13(2)(iii)—Code of Civil Procedure, 1908—O.XVIII Rl. 2(4)—Ejectment of tenant on the ground of material impairment of value and utility of demised premises—challenge thereto—Trial Court order allowing application for adducing additional evidence confined to prove the lease deed—Whether statement made by the witness other than to prove lease deed liable to be excluded from consideration—Held, no—Under Order XVIII Rl. 2(4) Court has power to examine any witness at any stage for proper adjudication of the issue involved—Merely because a particular witness has been examined or not, High Court has no jurisdiction to interfere with findings of fact recorded by Courts below—Cl. 5 of the lease deed permits the tenant to make alterations/additions of temporary structure with prior permission of landlady—Tenant has no right to raise such a construction which has resulted in impairment of the value and utility of the demised premises and has attracted the issuance of notice of resumption to landlady—Categoric findings of both the Courts below that tenant has materially impaired the value and utility of the building which is covered by S. 13(2)(iii)—Findings of the Courts below neither perverse nor based on no evidence—High Court has no jurisdiction to interfere with concurrent findings of facts based on evidence—Petition dismissed with costs while directing tenant to handover vacant possession of the demised premises.

Under sub-rule (4) of Rule 2 of order XVIII of the Code of Civil Procedure, the Court has been clothed with power to examine any witness at any stage. Once it is found that Shri Ujjagar Singh is an important witness for proper adjudication of the issue involved, then there is no bar on the Court to examine such a witness. It hardly makes any difference if the order dated 5th September, 1992 had

confined the additional evidence only to prove the lease deed because it would not necessarily result into a conclusion that the power of the Court was limited to examine only a witness who could have proved the lease deed. Therefore, the statement of Ujjagar Singh AW-3 has been rightly taken into consideration and cannot be excluded from the evidence on the ground that it is not authorized by the Rent Controller.

(Para 21)

Further held, that the impairment of value and utility has to be examined from the point of view of the landlord and not that of the tenant. Both the Courts below have returned categorical findings that the construction raised by the tenant- petitioner has resulted in "putting weight of girders which are placed on the walls. The complete weight of the girders and roof is on the wall weakening the very structure of the building". On the basis of the aforementioned finding, it has further been held that the tenant-petitioner has materially impaired the value and utility of the building. The Appellate Authority has further held that "removal of glazing of the room and construction of tin shed in the rear portion of the courtyard has in addition caused material impairment and utility of the premises stopping air and light to the premises and building as a whole". From the totality of circumstances and evidence on record it has been held that the construction of the shed in the courtyard by the tenant-petitioner brought a material and structural change in the demised premises which is covered by Section 13(2)(iii) of the Act.

(Para 28)

Further held, that the question whether the structure raised by the tenant without the consent of the landlord has impaired the value and utility of the demised premises is at best a mixed question of fact and law. If after examining the entire evidence keeping in view all the material factors both the Courts have recorded concurrent findings then such findings are not open to interference by this Court merely because another view is possible. It is not possible to interfere in the concurrent findings recorded by the Courts below with regard to impairment of value and utility of the demised premises.

(Paras 33 and 34)

Further held, that a perusal of clasue (V) of the lease deed would show that prior permission in writing of the landlady was required to be obtained for effecting any alterations or additions including the temporary structure like wooden partition. Admittedly, no permission by the tenant—petitioner has been obtained from the landlady—respondent for effecting any alterations or making any additions. Moreover, the additions and alterations effected by the tenant have resulted into issuance of notices which expressly indicate the construction of a temporary shed in the rear courtyard. The notice has been issued u/s 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 and it calls upon the landlady to explain as to why the demised premises alongwith the building be not resumed. Cl. (5) of the lease deed only permitted alterations/additions of temporary structure like wooden partition and that too with a prior permission of the landlady-respondent. Clause (5) cannot be construed to mean that any structure temporary or permanent sought to be raised by the tenant would include even such a structure which would violate the provisions of Rule 5 of the Punjab (Development and Regulation) Building Rules, 1952 read with Section 8-A of the 1952 Act.

(Para 38)

M. L. Sarin, Sr. Advocate with Arun Jain, and H.S. Giani, Advocates, *for the petitioners.*

S. C. Kapoor, Sr. Advocate with Rajnish Chandwal, Advocate, *for the respondent.*

JUDGMENT

M.M. KUMAR, J.

(1) This is tenants petition filed under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (as applicable to Union Territory, Chandigarh) (for brevity 'the Act') challenging concurrent findings recorded by both the Courts below holding that the tenant-petitioners have carried material alterations in the demised premises resulting into impairment of its value and utility.

(2) The landlady respondent filed ejectment application under Section 13 of the Act being R.A. No. 3/8/93 on 14th April, 1987 against the tenant-petitioners. She has averred in her application that the

tenant-petitioners were inducted as tenant in 1976 in the demised premises at a monthly rent of Rs. 1200 p.m. in addition to water and electricity charges in pursuance to a duly executed lease deed. It was alleged that the tenant-petitioners have been paying rent less than the agreed rent since March, 1977. Further ground of material impairment of value and utility of the demised premises within the meaning of Section 13(2)(iii) of the Act has also been taken by alleging that the back-yard of the demised premises is sanctioned to be kept open for smooth passage of light and air to the building on the ground floor. It was alleged that the tenant-petitioners have made big holes of eight inches deep for fixing wooden batons to support the asbestos sheets and after fixing the wooden batons they have put additional weight on the walls. The open court yard has been converted into a room where machinery and goods have been stored. On account of the construction raised by the tenant-petitioners in the rear court-yard a notice under Section 8-A of the Capital of Punjab (Development and Regulations) Act, 1952 (for brevity 'the 1952 Act') and the rules framed thereunder was issued to the landlady respondent for resumption of the building. It was further alleged that there is a laboratory situated on the ground floor which is also used for commercial purpose. With regard to first floor of the building, the allegations were that the tenant-petitioners have glazed the back side of verandah which was required to be kept open according to the bye-laws of the Chandigarh Administration. Further allegations were also levelled and it was pointed out that in order to restore the building to its proper state, for repair atleast Rs, 20,000 to Rs. 25,000 is required to be spent. The ground concerning change of user was also taken by asserting that the demised premises could only be used as a shop on the ground floor and residence on the first and second floors. It has been alleged that on the ground floor, the tenant-petitioners have installed machinery for manufacturing deep-freezer, refrigerator and has also set up a work shop for repair of these items. The use of the demised premises is alleged to be against the provisions of allotment and conditions of sale. The land-lady respondent has pleaded yet another ground of ejectment that the tenant- petitioners are a source of nuisance to the occupier of the buildings in the neighbourhood inasmuch as the workshop and manufacturing unit set up by the tenant-petitioners is creating great hardship to the neighbours.

(3) The stand taken by the tenant-petitioners in their reply was that the rent has been paid @ Rs. 1,100 p.m. which was being accepted by one Shri Rajinder Bhasin for and on behalf of the land lady respondent against receipts/ cheques. It has been further asserted that the ground floor is being used as a shop and the first and second floors for residential purposes. It was pleaded that from the very inception of the tenancy the electrical items are repaired at the demised premises. The other allegations were denied.

(4) Shri M.L. Sarin, learned counsel for the petitioners has argued that under Section 13(2)(iii) of the Act the landlady respondent is required to prove that the tenant-petitioners have raised construction which is of such a nature that it has materially impaired the value and utility of the demised premises. According to the learned counsel raising of any construction without the proof that it has materially impaired the value and utility of the demised premises would not attract ejectment of a tenant under Section 13(2)(iii) of the Act. The learned counsel has placed reliance on paras 5 and 6 of the judgement of the Supreme Court in the case of **Om Parkash** *versus* **Amar Singh (1)** and argued that in this case a partition wall was constructed without digging roof alongwith the shed. However, it was held not to be a permanent structure impairing the value and utility of the building. He has also referred to another judgement of the Supreme Court in the case of **Om Parkash** *versus* **Anand Swarup (2)** and argued that any construction raised with a view to make better use of the space without causing any structural changes in character and form of the building would not be taken to mean impairment of the value and utility of the building. For the same proposition , the learned counsel has placed reliance on another judgement of the Supreme Court in the case of **Birjinder Nath Bhargava and another** *versus* **Harsh Wardhan and others (3).** He has then referred to a Division Bench judgement of this Court in the case of **Bhupinder Singh** *versus* **J.L. Kapur (4)** and argued that after considering all the afore-mentioned judgements of the Supreme Court, the Division Bench has highlighted the basic features of Section 13(2)(iii) of the Act in para 17. The learned counsel has also referred to three other judgements

(1) AIR 1987 S.C. 617
(2) 1988 (2) P.L.J. 699
(3) 1988 H.R.R. 156
(4) 1992 (2) P.L.R. 218

of this Court in the cases of **Lachhman Dass** *versus* **Charan Kaur (5). Subhash Chander** *versus* **Valayati Ram (6)** and **Jalandhar Cooperative Printing and Publishing Society Ltd.** *versus* **Vijay Sethi (7)** and argued that in these cases despite the fact that roof was replaced of verandah was closed yet the Court has found that Section 13(2)(iii) of the Act would not be attracted. He has then referred to paras 8, 11 and 16 of the judgement of the Supreme Court in the case of **Waryam Singh** *versus* **Baldev Singh (8)** and emphasised that in addition to raising of construction it is incumbent upon the landlady respondent to adduce evidence for establishing the fact that there is material impairment in the value and utility of the demised premises. The learned counsel has maintained that by encroaching the verandah after construction of walls and placing rolling shutter in front thereof would not be sufficient to justify the inference that value or utility of the premises has been impaired. Referring to the earlier judgement of the Supreme Court in **Vipin Kumar** *versus* **R. L. Anand (9),** the learned counsel has argued that the afore-mentioned view was distinguished in **Waryam Singh's** (*supra*) on the ground that in **Vipin Kumar's case** the evidence of expert was adduced to prove the impairment of the value and utility of the demised premises whereas in **Waryam Singh's case** (*supra*) the tenant succeeded as no proof of impairment of value and utility was adduced by the landlord. Relying on the judgement of the Supreme Court in **Waryam Singh's case** (*supra*), the learned counsel has submitted that there is no evidence in the instant case to prove that air or light has been obstructed which might have diminished the value or utility of the demised premises. A contrary view taken by the Division Bench of this Court in **Narain Singh** *versus* **Bakson Laboratories (10)** was over-ruled by the Supreme Court.

(5) The learned counsel has further argued that the landlady respondent has made specific provision by incorporating Clause V in the lease deed for grant permission to the tenant-petitioners for raising of temporary structure like wooden partition etc. without any prior

(5) 1993 (1) P.L.R. 47
(6) 1994 (1) P.L.R. 701
(7) (2004) 1 R.C.R. 461
(8) 2003 (1) S.C.C. 59
(9) 1993 (2) S.C.C. 614
(10) 1981 Curr. L.J. (Civil) 414

permission in writing of the landlady respondent of any one else. He has further maintained that even the Appellate Authority in para 14 of the judgement has recorded the finding that the construction raised by the tenant-petitioners is of temporary nature. The tin-shed necessarily has to be regarded as a temporary structure and cannot be made the basis for ejectment of the tenant-petitioners. The landlady respondent has failed to prove by any evidence the adverse effect on the light and air by virtue of installation of a temporary tin-shed.

(6) Mr. Sarin has pointed out that once the landlady respondent has given express consent for raising of a temporary construction like wooden partition etc. as per clause V of the lease deed then the notice Ex.A.1 issued by the Chandigarh Administration cannot be made ground for ejectment of the tenant- petitioners. The learned counsel has referred to a Full Bench judgement of this Court in the case of **M/s Ram Gopal Banarasi Dass** *versus* **Satish Kumar (11)** and argued that once the tenant-petitioners have been granted permission in writing by the landlady respondent to raise temporary construction then the show cause notice issued under Section 8-A of the 1952 act and the rules framed thereunder would be deemed to be the act of the landlady respondent. In such circumstances, the landlady respondent is estopped from denying the fact that she had given permission to the tenant-petitioners and the act of the tenant-petitioners would be regarded as an act of the land-lady respondent. He has further pointed out that the issue of change of user was given up by the landlady respondent before the Rent Controller. In this regard he has referred to issue No. 4 and the observations made by the Rent Controller while dealing with Issue Nos. 3 and 4. Therefore, such an issue cannot again be raised before this Court by the landlady respondent.

(7) The learned counsel has then referred to the judgements on which reliance has been placed by the Appellate Authority for concluding that the tenant- petitioners were guilty of effecting material alterations which have diminished the value and utility of the demised premises. Referring to the judgement in the case of **Kasturi Lal** *versus* **Muni Lal (12)** the learned counsel has submitted that in that

(11) 1995 (2) P.L.R. 457
(12) 1994 (1) R.C.R. 519

case the verandah was converted into a room with a permanent door on the side. He has then referred to the judgement in **Vipin Kumar's case** *(supra)* where permanent wall had been constructed whereas the facts in the present case are entirely different. He has also distinguished the judgement of this court in the case **Om Parkash** *versus* **Surinder Mohan (13)** where two walls were constructed to close the front verandah which was taken to mean a material change in the structure and form of the building. He has also distinguished the judgement of this Court in the case of **Tara Rani @ Maya Devi and others** *versus* **Murti Shri Dwarka Dhish Ji Maharaj (14)** by arguing that in that case permanent construction was raised as is patent from para 4 of the judgement.

(8) The learned counsel has then argued that the testimony of AW-3 Ujjagar Singh cannot be read in evidence because on 5th September, 1992 an application for producing additional evidence was dismissed. He has referred to a detailed order at page 53 of the record of the ld. Rent Controller. He has also brought to my notice the order dated 13th February, 1990 when the evidence of the landlady respondent was closed by order and the order dated 12th November, 1990 dismissing the application for review of the order dated 13th February, 1990. According to the learned counsel by subsequent orders dated 5th September, 1992 and 12th November, 1992 the additional evidence was allowed in order to prove the lease deed but no permission was granted to produce Ujjagar Singh AW-3.

(9) The learned counsel has then argued that assuming that Ujjagar Singh AW-3 is accepted as a competent witness but his testimony does not prove the adverse effect of installation of the tin-shed or the construction which may lead to the inference that the demised building has been impaired in its value and utility.

(10) Lastly, the learned counsel has argued that the report of the Local Commissioner Ex.RW 1/C has been illegally discarded by the Courts below which beyond doubt establishes the fact that there was no construction raised much less causing impairment in the value and utility of the demised premises.

(13) 1990 (1) P.L.R. 646
(14) 1993 (1) P.L.R. 549

(11) Shri S.C. Kapoor, learned counsel for the landlady respondent has argued that the findings recorded by both the Courts below do not suffer from any legal infirmity and there is cogent evidence supporting those findings. He has referred to the statements of AW-1, AW-2 and AW-3 wherein it is categorically stated that in the back court-yard a room has been constructed. According to the learned counsel once these findings are recorded then nothing requires to be proved with regard to smooth flow of light and air which is necessarily inferable. The learned counsel has referred to the judgement of the Supreme Court in **Vipin Kumar's case** (*supra*) and argued that the situation in the instant case is exactly the same as it was in **Vipin Kumar's case** (*supra*).

(12) The learned counsel has then argued that issuance of notice by the Estate Officer, U.T. Chandigarh for resumption of plot on account of construction of a room at the back court yard has been admitted by the tenant-petitioners. He has referred to Ex.A.1 dated 12th March, 1987 which is a notice under Section 8A of the 1952 Act as amended by the Chandigarh Administration and Rule 5 of the Rules framed thereunder. According to the learned counsel, the Supreme Court in the case of **Durga Seed Farms** *versus* **Raj Kumari Chadha (15)** has taken the view that if on account of unauthorised construction raised by the tenant-petitioner the land-lady respondent is exposed to the peril of resumption of her building by the Chandigarh Administration then the tenant-petitioners are liable to be evicted. The learned counsel has drawn my attention to paras 2, 3 and 4 of the judgement in **Durga Seed Farms'** case (supra).

(13) The learned counsel has then argued that the impairment of the value and utility of the demised premises has to be seen from the point of view of the land-lady respondent and not that of the tenant-petitioners. For this proposition, the learned counsel has placed reliance on a judgement of the Supreme Court in **Vipin Kumar's** case (supra). He has also submitted that the removal of illegal construction from the first floor by the tenant-petitioners would not result into condoning the violations which he had commtted. According to the learned counsel the provisions of Section 13(2)(iii) of the Act would continue to apply even if the illegal construction

(15) 1995 (2) P.L.R. 643

raised without the consent of the landlady is even lateron removed. In support of his submission, the learned counsel has placed reliance on a judgement of this Court in the case **Dalip Kaur** *versus* **Hrbhajan Kaur (16).**

(14) Referring to the facts of the present case, the learned counsel has argued that categorical findings have been recorded by the Courts below that on load bearing walls extra load of the wooden ballies has been put which has diminished the value and utility of the demised premises. The learned counsel has stressed that there is change of user as the demised premises was rented out to the tenant-petitioners for the purposes of use as shop. However, the tenant-petitioners have started manufacturing refrigerators and atleast repairing the same by installing the Lethe machine.

(15) With regard to the statement made by Ujjagar Singh AW3, the learned counsel states that the tenant-petitioners have accepted the costs and it is only after the acceptance of the costs that the evidence of the land-lady respondent was recorded. The learned counsel has referred to the interlocutory orders dated 5th September, 1992 and 12th November, 1992 at page 21 of the record of the learned Rent Controller. Referring to Order XVIII Rule 12 of the Code of Civil Procedure, 1908, the learned counsel has argued that in any case the Court has the power to examine any witness at any stage and no objection can now be raised with regard to the admissibility of the evidence of Ujjagar Singh AW3. He has emphasised that the tenant-petitioners did not raise any objection and gladly cross-examined AW 3 Ujjagar Singh. Moreover, when costs have been accepted then the order dated 5th September, 1992 and 12th November, 1992 cannot be challenged.

(16) He has then argued that once the Courts have recorded a concurrent findings of facts which are based on evidence this Court under Section 15(6) of the Act would not ordinarily interfere in exercise of its revisional jurisdiction. He has referred to the judgment of the Supreme Court in the case of **Kailash Chander** *versus* **Om Parkash (17)** and argued that the Supreme Court has refused to interfere in the findings of facts.

(16) 2001 R.C.R. 231
(17) 2003 (3) Latest Judicial Reports 747

(17) For the sake of convenience the arguments raised by the learned counsel for the parties could be considered in the form of following issues :

(A) Whether the statement made by Ujjagar Singh, AW-3 has been rightly taken into consideration or it is liable to be excluded for deciding any issue ?

(B) Whether the landlady-respondent has been able to prove that the tenant-petitioner has committed such acts as are likely to impair materially the value and utility of the demised premises within the meaning of Section 13(2)(iii) of the Act ?

(C) Whether the permission granted by the landlady-respondent under Clause (V) of the lease deed Ex.A2 for raising construction of temporary nature could be read to mean a permission for raising of construction even in violation of bye-laws of the U.T. Administration, Chandigarh ?

RE : QUESTION (A) :

(18) The question whether the deposition of Ujjagar Singh, AW-3 could be relied upon by the landlady-respondent was raised before the Courts below. The Appellate Authority while rejecting the argument of the tenent-petitioner, has held that her application for producing additional evidence as also review of that order was rejected as has been pointed out by Mr. Sarin. However, on 5th September, 1992, application dated 29th July, 1992 for adducing additional evidence was allowed subject to costs. Highlighting the aforementioned aspect of the proceedings and rejecting the argument again raised by Mr. Sarin, the Appellate Authority has observed as under :—

> "The perusal of the record goes to show that application of the respondent-landlady for producing additional evidence as also review of the order declining the same has been rejected. However, later on,—vide dated 5th September, 1992 application dated 29th July, 1992 for leading additional evidence was allowed subject to heavy costs. It was in additional evidence that Ujjagar Singh AW-3 was examined by the respondent-landlady. The plea of the learned counsel for the appellants that deposition of

Ujjagar Singh AW-3 is not covered in the request of the respondent-landlady does not cut any ice. The documentary evidence sought to be adduced additionally by the respondent could have been proved by calling some witnesses of which Ujjagar Singh AW-3 was one. Thus examination of Ujjagar Singh AW-3 cannot be said to be without authority of the learned Rent Controller. The plea of the learned counsel for the appellants that deposition of AW-3 Ujjagar Singh should be ignored for consideration thus is totally unsustainable. His deposition cannot be ignored from consideration. It having been properly put in evidence by the respondent and also being very important goes to the root of the matter and having been admitted by the learned Rent Controller was thus rightly not ignored for consideration."

(19) The argument of Mr. Sareen for excluding the statement made by Ujjagar Singh AW-3 is based on two interlocutory order dated 5th September, 1992 passed by the Rent Controller as well as another order dated 12th November, 1992. It would be appropriate to make a reference to those two orders which read as under :

"Arguments on the application for leading additional evidence heard. The said application dated 29th July, 1992 is allowed on payment of Rs. 200 as cost for leading additional evidence,—*vide* separate order. To come upon 12th November, 1992 for repayment of cost and for additional evidence.

Sd/-R.C. 5th September, 1992"

"This is an application for leading additional evidence by the Landlord to prove the Lease Deed. Photocopy of which is already on record. On notice this application has been opposed,—vide reply dated 10th August, 1992 by Shri V.K. Bhandari, Advocate. Heard. The documents sought to be proved is already on record and it would not amount to fill up the lacuna. Thus the application is allowed since it has been filed at later stage, so the applicant-landlord is burdened with cost of Rs. 200.

Announced : 5th September, 1992. (Sd.). . .,

Rent Controller
Chandigarh".

"Previous costs about allowing of additional evidence has been paid and accepted. 2 witnesses of the petitioner in additional evidence are present and they have been examined. Their examination has been objected to as it cannot be brought in additional evidence. Heard. Since additional evidence has been allowed and costs has been accepted, let the witness Ujjagar Singh be examined subject to objection if any to be decided at proper stage.

Petitioners evidence has been closed by Shri N.K. Jain Advocate. To come for evidence of the respondent and statement of respondent on 8th January, 1993. PF, DM list of witnesses within a week.

Sd/- 12th November, 1992"

The argument which emanates from the aforementioned interlocutory orders and as projected by Mr. Sareen is that additional evidence was permitted only to prove the lease deed and a photo copy of the same was on record. Therefore, in the garb of order dated 5th September, 1992 or subsequently order dated 12th November, 1992, no other additional witness could have been examined including Ujjagar Singh AW-3.

(20) The argument raised by the learned counsel does not deserve to be accepted for a variety of reasons. Learned appellate authority has categorically held that the deposition of Ujjagar Singh has been specifically permitted by the Rent Controller and it is an important piece of evidence going to the root of the matter and, therefore, it could not be ignored from consideration. The aforementioned reasons can further be supplemented. Under sub-rule (4) of Rule 2 of Order XVIII of the Code of Civil Procedure, the Court has been clothed with power to examine any witness at any stage. It is further evident that Ujjagar Singh who has appeared as AW-3 is an important witness because he has posted as a building inspector in Sector 27-C, Chandigarh where the demised premises is situated and he has inspected the demised premises for pointing out various violations of the bye-laws. Once it is found that Shri Ujjagar Singh is an important witness for proper adjudication of the issue involved, then there is no bar on the Court to examine such a witness. I am further of the view that it hardly makes any difference if the order dated 5th September, 1992 had confined the additional evidence only to prove the lease deed because it would not necessarily

result into a conclusion that the power of the Court was limited to examine only a witness who could have proved the lease deed. It is well settled that a finding of fact recorded by the two Courts could not be interfered with merely beecause a particular witness has been examined or not examined. In this regard reliance could be placed on the judgement of the Supreme Court in **Fatmabibi Usmal Patel** *versus* **Manguben Pranbhai Thakkar, (18).**

(21) Therefore, question (A) has to be answered by observing that the statement of Ujjagar Singh AW-3 has been rightly taken into consideration and cannot be excluded from the evidence on the ground that it is not authorized by the Rent Controller.

RE : QUESTION (B) :

(22) A perusal of paragraphs 9 to 18 of the judgment of the Appellate Authority reveals that for deciding the question of material impairment to the value and utility of the building, it has placed reliance on the statement of Smt. Nirmal Bhasin, AW-1, notice dated 12th March, 1987, Ex.A1, statements of Rajinder Kumar Bhasin, AW-2 and Ujjagar Singh, Building Inspector, AW-3. Smt. Nirmal Bhasin, who herself entered the witnesses box has deposed in her examination-in-Chief with regard to the material impairment to value and utility of the building as under :—

> "The respondent has started using the premises for industrial purposes. He has installed heavy machines, lathe machines, welding machines and also carries out the work of repairs. The entire shop portion is being used for manufacturing and repair purpose. The respondent made rent at the rate of 1100 per month and did not make full tender. Till date the respondent is in arrears of rent. The respondent has carried major additions and alteration in the building. The respondent has covered the back court yard by fixing Ballis by making holes in the wall, and tin sheets have been used for the purpose of making roof. The back court yard was to be kept open and is meant as such even under by the bye laws. The respondent is using for repair purposes by converting into room. The respondent has covered the varandah on the first floor by glasses by glazing and coverted (sic converted) the same into a room

(18) 1995 Supp. (3) S.C.C. 193

and is being used as a room. The support is given by making holes, in the walls and weight is put on the walls of the said glazing and similarly load of the shed of the ground floor is also on the walls. The respondent had erected the parchitti on the back portion on the ground floor by using wooden plans and also damaged the floor of the building by negligent and careless use. The building has suffered a huge loss and it needs heavy amount for the purpose it has reduced the value and utility of the building. Due to covering of back court yard light and air cannot pass through the building and I have also received a number of notices from the Estate Office for resumption of the building."

(23) In her cross-examination, she further revealed that she has been intermittently visiting the demised premises and further corroborated her statement made in examination-in-chief as well as the pleadings in para 4 of her rent petition.

(24) The statement of landlady-respondent, AW-1 was fully supported by Rajinder Kumar Bhasin, AW-2 on all counts. During his cross-examination, nothing could be elicited which may warrant an inference to the contrary. AW-3, Ujjagar Singh, who was a building inspector posted in Sector 27 where the demised premises is situated, has given unimpeachable support to the version unfolded by landlady-respondent, AW-1 and Rajinder Kumar Bhasin, AW-2. The Appellate Authority has viewed the statement of AW-3 in paragraphs 11 and 12 which read as under :—

"11. Unabating support to the stand of the respondent-landlady is given by Ujjagar Singh, Building Inspector AW-3, who deposed from the record, the area in which the premises fall was under his charge for checking the violation, under the Capital of Punjab (Development and Regulation) Act, 1952 (hereinafter called the Act) and the rules made thereunder. He is plain and effective that there was a violation of the provisions of the Act and Rules made thereunder with regard to the covering of the rear court-yard by changing into a room. He also deposed that front and rear varandha had also been glazed. Speaking from

the original plan, it was deposed by him that these additions made were not earlier in existence and were liable to be removed. It is also clear from notice dated 12th March, 1987 (Ex. A1) that the respondent-landlady was served with a notice under Section-8A of the Act. Glazing was removed but the Courtyard continued remained covered.

12. It was also deposed effectively by him that the said rear courtyard has been covered by putting weight on girders which have been fitted inside the wall. It was also deposed by him that the walls were bearing the over and extra weight of roof as well of the girders."

(25) On the basis of the statements made by AW-1, AW-2 and AW-3 coupled with the notice Ex.A1 issued by the U.T. Administration, Chandigarh for resumption of the demised premises to the landlady-respondent, the Appellate Authority found that although the construction may be temporary in nature but it has been raised by putting weight on girders which are placed on walls. The whole weight of the girders and roof is on the wall resulting into weakening of the structure of the building. The conclusions of the Appellate Authority have been summed up in paragraphs 14 and 23 which read as under :—

"14. From the nature of construction, it is clear that the construction apparently is of temporary nature but it has been raised by putting weight on girders which are placed on the walls. Thus complete weight of the girders and roof is on the wall weakening the very structure of the building.

23. Removal of glazing of the room and construction of tin shed in the rear portion of the courtyard has in addition caused material impairment and utility of the premises stopping air and light to the premises and building as a whole. Thus from the totality of circumstances and evidence on record, it is clear that the raising of shed in the courtyard by the appellant-tenant brought a material and structure change in the tenanted premises resulting in material impairment in the value and utility of the premises."

(26) There are thus categorical findings recorded by both the Courts below that the acts of the tenent-petitioner are likely to impair materially the value and utility of the building or rented land within the meaning of Section 13(2)(iii) of the Act. The argument of the learned counsel for the tenant-petitioner is that the landlady is under an obligation to prove that the alterations and changes in the building were such which have cuased material impairment in the value and utility of the demised premises. The learned counsel had asserted that the structural changes were necessary for constituting a material impairment in the value and utility of the demised premises within the meaning of Section 13(2)(iii) of the Act and every change for better use of the building for the benefit of the tenant could not be regarded as so material and significant which would attract the application of Section 13(2)(iii) of the Act. The aforementioned arguments are required to be examined in the light of Section 13(2)(iii) of the Act which reads as under :—

"13. eviction of tenants :—

(1) xx xx xx xx

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied—

(i) xx xx xx xx

(ii) xx xx xx xx

(iii) That the tenant has committed such acts as are likely to impair materially the value of utility or the building or rented land, or

(iv) xx xx xx xx

(v) xx xx xx xx

The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application."

(27) A perusal of the above provision shows that the tenant must be proved to have committed some acts affecting the value or utility of the building. The acts of the tenant are required to be of such a nature as are likely to impair materially the value and utility of the demised premises. The provision has been subject matter of consideration of the Supreme Court in the case of **Vipin Kumar** (supra). In that case, the tenant had constructed a wall and put up a door blocking the flow of light and air. He removed certain fixtures which were found to be covered by Section 13(2)(iii) of the Act. A similar argument which is raised by the learned counsel for the tenant-petitioner was rejected by their Lordship as is evident from the following observations :—

> "Clause (iii) of sub-section (2) of Section 13 provides that "if the tenant has committed such acts are likely to impair materially the value of utility of the building or rent land", the Rent Controller may make an order directing the tenant to put the landlord in possession of the building or rented land. It the Controller is not so satisfied, he shall make an order rejecting the application. It is, therefore, clear that if the tenant had committed such acts as are likely to impair materially the value or utility of the building, he is liable to ejectment. The finding recorded by the Controller is that on account of the construction of the wall and putting up a door the flow of light and air had been stopped. He removed the fixtures. So the value of the demised shop has been impaired and utility of the building also is impaired. The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of Clause (iii) of sub-section (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb is of the utility or value of the building has (sic having) been materially impaired."

(28) It is thus evident that the impairment of value and utility has to be examined from the point of view of the landlord and not that of the tenant. Both the Courts below have returned categorical findings that the construction raised by the tenant-petitioner has resulted in "putting weight of girders which are placed on the walls.

The complete weight of the girders and roof is on the wall weakening the very structure of the building". On the basis of the aforementioned finding, it has further been held that the tenant-petitioner has materially impaired the value and utility of the building. The Appellate Authority has further held that "removal of glazing of the room and construction of tin shed in the rear portion of the courtyard has in addition caused material impairment and utility of the premises stopping air and light to the premises and building as a whole". From the totality of circumstances and evidence on record it has been held that the construction of the shed in the courtyard by the tenant-petitioner brought a material and structural change in the demised premises which is covered by Section 13(2)(iii) of the Act.

(29) The judgment of the Supreme Court in **Waryam Singh's case** (supra), on which reliance has been placed by the learned court for the tenant- petitioner, has also considered Section 13(2)(iii) of the Act and it has been held that the landlord is required to prove: (a) that the tenant had carried out the construction, (b) that the same was without the consent of the landlord, and (c) that the value or utility had been materially impaired. In **Waryam Singh's case** (supra), the only fact proved by the landlord was that verandah of the tenanted premises was enclosed and there was no other evidence. The Supreme Court held that enclosing of verandah in front of the tenant shop by putting up a rolling shutter would not constitute such an act of the tenant which would result into material impairment in value and utility within the meaning of Section 13(2)(iii) of the Act. After referring to its earlier judgments in the cases of **Om Parkash** (supra), **Birjinder Nath Bhargava and another** *versus* **Harsh Wardhan and others (19) Om Pal** (supra), their Lordship held as under :—

> "15. Thus an order for eviction can be passed only if the landlord proves (a) that the tenant had carried out the construction, (b) that the same was without the consent of the landlord and (c) that the value or utility had been materially impaired. In the present case, the first appellate court, on facts, concluded that the respondent had carried out alteration by enclosing the verandah. On facts it has been held that this has been done without the consent of

(19) 1998 1 S.C.C. 454

the appellant. The revisional court has correctly not interfered with the findings of facts. We also see no reason to take a different view on a question of fact.

16. However, the question still arises whether merely because a verandah is enclosed it can be inferred, without any further evidence or proof, that the value and utility is affected. On the question of material impairment of value or utility, the appellant has led no evidence at all. The submission has been that no evidence was required to be led as it has to be inferred that the value or utility had been diminished. We are unable to accept such a submission. In the case of a shop, particularly in a business locality, the area of the shop gets increased by the verandah getting enclosed. This would increase the value and utility of the shop. In this case their is no proof, like in **Vipin Kumar case** that free flow of light and air has been stopped. On the contrary, by putting up a rolling shutter in the front the flow of light and air is increased. In the absence of any proof of material impairment in value or utility, the High Court was right on concluding that no decree for eviction could be passed. We, therefore, see no reason to interfere with the judgment of the High Court."

(30) From the above mentioned view of the Supreme Court, it becomes evident that the findings of fact recorded by the Courts below were not interfered with as no evidence was led before the Courts for coming to a conclusion that there was impairment in value and utility of the demised premises by the acts of the tenant. It is well settled that this Court in exercise of its jurisdiction under Section 15(5) of the Act would not interfere in the findings of fact unless it could be shown that the findings were perverse and were based on no evidence. In this regard, reference may be made to the judgment of the Supreme Court in the case of **Rajbir Kaur** *versus* **S. Chokesiri and Company (20),** where the findings recorded by the Courts below on the issue of sub- letting were reversed by this Court and their Lordship did not approve the interference by this Court and restored the view taken by the Rent Controller as affirmed by the Appellate Authority. Following the view taken by Lord Reid in **Benmax** *versus* **Austin Motor Co. Ltd. (21)** and the observations of the Supreme

(20) (1989) 1 S.C.C. 19
(21) 1955 A.C. 370

Court in the case of **Sarju Pershad Ramdeo Sahu** *versus* **Raja Jwaleshwari Partap Narain Singh (22),** their Lordship first posed the question in para 35 which reads as under :—

> "The cognate question is whether the concurrent finding of exclusive possession of M/s Kwality Ice Cream is supportable on the evidence and if so, whether the High Court could, in revision, have substituted a finding of its own in the point. It is true, having regard to the language of Section 15(5) of the Act conferring revisional powers which include an examination of the legality or propriety of the order under revision, the High Court can, in an appropriate case, reappreciate evidence and interfere with findings of fact. But the question is whether that was called for or justified in the present case."

(31) After concluding that the High Court under Section 15(5) of the Act could determine the legality or propriety of an order under revision, their Lordship observed as follows :—

> "51. The area in which the question lies in the present case is the area of the perceptive function of the trial Judge where the possibility of errors of inference does not play a significant role. The question whether the statement of the witnesses in regard to what was amenable to perception by sensual experience as to what they saw and heard is acceptable or not is the area in which the well known limitation on the powers of the appellate court to reappreciate the evidence falls. The appellate court, if it seeks to reverse those findings of facts, must give cogent reasons to demonstrate how the trial court fell into an obvious error.
>
> 52. With respect to the High Court, we think, that, what the High Court did was what perhaps even an appellate court, with full-fledged appellate jurisdiction would, in the cirsumstances of the present case, have felt compelled to abstain from and reluctant to do. Contention (c) would also require to be upheld."

(22) AIR 1951 S.C. 120

(32) The aforementioned view has been followed in the cases of **Bharat Sales Ltd.** *versus* **LIC of India (23) Roop Chand** *versus* **Gopi Chand Thelia (24) and Nihal Chand Rameshwar Dass** *versus* **Vinod Restogi (25).**

(33) It is also pertinent to mention that the question whether the structure raised by the tenant without the consent of the landlord has impaired the value and utility of the demised premises is at best a mixed question of fact and law. If after examining the entire evidence keeping in view all the material factors both the Courts have recorded concurrent findings then such findings are not open to interference by this Court merely because another view is possible. For the aforementioned proposition reliance can be placed on a judgment of the Supreme Court in **Vengat Lal G. Pittie** *versus* **Bright Bros. (P) Ltd. (26).**

(34) When the facts of the present case are examined in the light of the principles laid down by the Supreme Court, it is not possible to interfere in the concurrent findings recorded by the Courts below with regard to impairment of value and utility of the demised premises. The Supreme Court has gone to the extent of observing that even the facts which have been inferred would not require to be interfered because such a inference would also constitute a question of fact and not that of law.

(35) Therefore, the second question has to be answered in favour of the landlady-respondent and the instant petition is liable to be dismissed.

RE : QUESTION (C):

(36) I do not feel the necessity of examining in detail various judgements of this Court to which reference has been made by Mr. Sareen to argue that even replacement of a roof has been held to be permissible without causing any impairment in value and utility of the demised premises, because the facts are entirely different in the instant case. The construction in the demised premises is regulated by the 1952 Act and the Rules framed thereunder. In the case cited

(23) (1998) 3 S.C.C. 1
(24) (1989) 2 S.C.383
(25) (1994) 4 S.C.C. 325
(26) (1987) 3 S.C.C. 558

by Mr. Sareen no such fact was present and the existence of this fact alone has made a vital difference in arriving at the conclusion by the two Courts below.

(37) The landlady-respondent by clause (V) of the lease deed, Ex.A2 has stipulated that the tenant-petitioner is prohibited from making any type of alterations or additions in the demised premises except temporary structure without prior permission in writing. Clause (V) of the lease deed reads as under :—

> "That the said Lessees shall not make any alterations or additions in the said premises except for temporary structure like wooden partition etc. without prior permission in writing of the Lessor or her authorised agent, during the lease period."

(38) A perusal of clause (V) would show that prior permission in writing of the landlady was required to be obtained for effecting any alterations or additions including the temporary structure like wooden partition. Admittedly, no permission by the tenant-petitioner has been obtained from the landlady- respondent for effecting any alterations or making any additions. Moreover, the additions and alterations effected by the tenant-petitioner have resulted into issuance of notices like Ex.A1, dated 12th March, 1987 which expressly indicate the construction of a temporary shed in the rear courtyard. The notice has been issued under Section 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 (for brevity, 1952 Act) as amended by the Chandigarh Administration Amendment Act No. 17 of 1973 and it calls upon the landlady- respondent to explain as to why the demised premises alongwith the building be not resumed. Clause (5) of the lease deed only permitted alterations/additions of temporary structure like wooden partition and that too with a prior permission of the landlady-respondent. Clause (5) cannot be construed to mean that any structure temporary or permanent sought to be raised by the tenant-petitioner would include even such a structure which would violate the provisions of Rule 5 of the Punjab (Development and Regulation) Building Rules, 1952 read with Section 8-A of 1952 Act. In somewhat similar circumstances, the Supreme Court in the case of **Durga Seed Farms** *(Supra)* has held that when the tenant makes unauthorised construction and has installed some machines without written permission of the landlord which violate the terms of allotment of site to the landlord then such a tenant could not save his ejectment under Section 13 of the Act. The Supreme Court has held that once

the landlord was exposed to the peril of resumption of the demised premises and building by the Chandigarh Administration, the tenant is liable to be ejected irrespective of the fact whether such acts were likely to impair the material value or the utility of the property. I find that the observations made by the Supreme Court in the case of **Durga Seed Farms** *(Supra)* are substantively fully applicable to the facts of the present case because no tenant can indulge in such acts which would result into issuance of notice to the landlord under Section 8-A of 1952 Act or the Rules framed thereunder.

(39) In view of the above, I do not find that the tenant-petitioner was within his right to raise even temporary construction without prior permission of the landlady-respondent. The construction raised by the tenant- petitioner is such which has resulted in impairment of the value and utility of the demised premises and has attracted the issuance of notice of resumption to the landlady-respondent.

(40) The argument raised by the learned counsel for the tenant- petitioner on the basis of full Bench judgment of this Court in the case of **M/s Ram Gopal Banarasi Dass** *(supra)* cannot be accepted because this Court while interpreting claused (g) and (i) of Section 41 of the Specific Relief Act, 1963 has held that a landlord cannot claim *ad-interim* injunction restraining a tenant from committing a breach in which he had acquiesced or from doing business in the demised premises for which it was let out or from the very inception of the transaction of the tenancy under which the premises were let out to the tenant. No such question is required to be adjudicated in the present proceedings because firstly the landlady-respondent has not granted any permission for raising even temporary construction by virtue of clause (5) of the lease deed nor any provision of Specific Relief Act, 1963 is involved in this case. Even if it is presumed that permission for raising temporary alternations like wooden partition has been granted by the landlady-respondent to the tenant-petitioner, it would not extend to violating the 1952 Act, rules framed thereunder and the bye-laws which resulted into issuance of notice of resumption to the landlady. Therefore, the argument raised is liable to be rejected.

(41) For the reasons stated above, this petition fails and the same is dismissed with costs of Rs. 10.000. The tenant-petitioners are directed to hand over the vacant possession of the demised premises to the landlady- respondent within a period of three months.

R.N.R.