Societies doing that business were taken out of entry No. 43, List I, and deliberately put in entry No. 32, List II. In view of the clear wording of the two entries, I am unable to agree with the contention of the learned counsel for the petitioners, that the State Legislature has no jurisdiction to regulate the functioning of the Co-operative Societies engaged in the business of Banking.

(14) For the reasons recorded above, these petitions fail and are dismissed. There will be no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

K. S. K.

FULL BENCH.

Before Harbans Singh, C.J., R. S. Narula, and Prem Chand Jain, JJ.

THE MODEL TOWN WELFARE COUNCIL, LUDHIANA,—*Petitioner*

versus

BHUPINDER PAL SINGH,—*Respondent.*

Civil Revision No. 611 of 1969

April 19, 1971.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(f), 13(3)(a)(ii)(b) and 13(4)—Word "business" as used in section (2f), the definition of "rented land" and in section 13(3)(a)(ii)(b)—Interpretation and scope of—Landlord getting rented land vacated—Whether can raise construction over it for the purpose of his business—Such landlord—Whether bound to use the vacated land for the business carried by the tenant—Section 13(4)—Landlord raising building on the vacated rented land and not occupying it within twelve months—Tenant—Whether entitled to get back possession of the land along with the building.

Held, that the word "business" is itself not a word of art and is capable of being construed both in the wider as well as in the narrower sense depending on the context in which it occurs. Since the "landlord" within the meaning of section 2(c) of East Punjab Urban Rent Restriction Act, 1949, can include an individual as well as a juristic person and there is no special restrictive definition of the word business in the Act, the expression "business" has been used in section 2(f) of the Act (in the definition of "rented land") as well as in section 13(3)(ii)(b) in the wider

sense and not in the narrower sense. The word "business" in the above said two provisions of the Act need not necessarily be commercial business carried on with a profit motive. It includes within its scope a charitable business or a dealing in the interest of the public or a section of the public. The scope of the word is not controlled or coloured by the word 'trade' occurring alongside it in section 2(f) of the Act. Whereas every trade would be a business, the reverse of it is not true. Business is a genus, of which commercial and non-commercial business and trade are some of the species. (Para 31)

Held, that a landlord, on getting the rented land vacated under section 13(3) (a) (ii) (b) of the Act, is not bound to use it in the same condition in which it was being used by the tenant, but is entitled to raise construction over it which is necessary and needed for purpose of carrying on his own business. Such landlord is also entitled to occupy and use the same for any business of his and is not bound to use the rented land for the same business as was being carried on by the tenant or for the same business for which the rented land was given on rent to the tenant. (Para 40)

Held, that if the landlord after obtaining possession of the rented land raises construction on it for the purpose of his business, but does not occupy it within twelve months of the date of his possession, the ejected tenant is entitled to get back the possession of the rented land along with the building. The landlord cannot be permitted to circumvent the provision of the statute by his own wrongful act. For the purpose of sub-section (4) of section 13 of the Act, it will remain a rented land for the purposes of the landlord merely because the tenant may put up some construction on it. The landlord if he so desires, may remove the *malba* of the building in the same manner as the tenant may remove his. (Para 39)

Case referred by the Hon'ble the Chief Justice Mr. Harbans Singh,—vide *his order dated 3rd September, 1970, to a larger Bench for decision of an important question of law. The Division Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh and Hon'ble Mr. Justice Prem Chand Jain,*—vide *their order dated 30th November, 1970, referred the case to the Full Bench for deciding the important question of law. The Full Bench consisting of Hon'ble the Chief Justice, Mr. Harbans Singh, the Hon'ble Mr. Justice R. S. Narula and the Hon'ble Mr. Justice Prem Chand Jain, finally decided the case,*—vide *their Judgment, dated 19th April, 1971.*

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act of 1949 for revision of the order of Shri Gurcharan Singh Dhaliwal, Additional District Judge (II), Ludhiana, dated 19th April, 1969, reversing that of Shri A. C. Rampal, Rent Controller, Ludhiana, dated 20th July, 1968, dismissing the application made by the respondent for eviction of the appellant and leaving the parties to bear their own costs.

Y. P GANDHI & M. S. PANNU, ADVOCATES, for the petitioners.

H. S. GUJRAL AND MISS BHUPINDER GUJRAL, ADVOCATES, for the respondent.

REFERRING ORDER

Harbans Singh, C.J.,—The facts giving rise to this civil revision may briefly be stated as under :

> The Model Town Welfare Council, Ludhiana, (hereinafter referred to as the Society) is a Society duly registered under the Societies Registration Act, 1860. On 20th February, 1958,—*vide Exhibit* A-3, a plot of land measuring 1.29 Kanals in the Model Town, Ludhiana, was transferred by the Punjab Government to the Society free of cost, for the specific purpose of constructing a library building thereupon at its own cost within three years. The terms of transfer also provided for resumption of the plot by the Government in case of non-compliance with any term. A clear provision, however, was made that the time of three years could be extended by the Deputy Commissioner if the failure to complete the construction by the due date was due to reasons beyond the control of the purchaser.

(2) It is stated that after the transfer of the plot, the petitioner-Society constructed some shops on a portion of this land in the year 1962 and the remaining land remained reserved for construction of a library. The construction was not taken in hand immediately, because of lack of funds and meanwhile on 2nd November, 1965, the vacant part of the plot was let to Bhupinder Pal Singh respondent for running a fuel and coal stall with the specific condition that the respondent will vacate the plot when required by the petitioner-Society to do so.

(3) A notice was served on the respondent to vacate the land, which was not complied with and then an application for ejectment of the tenant-respondent was made on 1st July, 1967, *inter alia* on the ground that the plot was required by the Society for its own use "for the construction of library building". The ground for non-payment of rent was also taken, but that is not relevant now because the arrears were paid.

(4) The tenant-respondent denied that the plot was *bona fide* required by the Society for its own use or that the vacant plot was reserved for the library and it was suggested that the real object behind the whole move was to enhance the rent and also because of the enmity and illwill of some of the office bearers of the Society. It was also stated that the personal necessity should be in connection with the commercial purposes.

(5) The trial Court allowed the application of the Society. This order was, however, set aside by the Appellate Authority in view of the decision of the Supreme Court in *Attar Singh* v. *Inder Kumar*, (1). Being aggrieved, the Society has filed this revision. The question being of importance, this was directed to be placed before a Division Bench and that is how the matter is before us.

(6) It is not disputed that this vacant land falls within the definition of 'rented land'. Sub-clause (ii) of sub-section (3)(a) of section 13 of the East Punjab Urban Rent Restriction Act (3 of 1949), which is applicable to the present case, runs, as under :——

"(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) .....

(ii) in the case of rented land, 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 ; and

(c) he has not vacated such rented land without sufficient cause after the commencement of this Act, in the urban area concerned;"

Sub-clause (ii) (a) is in general terms and would give an idea that a landlord could get the ejectment of the tenant if he required the 'rented land' for his own use, which may be of any kind. This matter has, however, been set at rest by the Supreme Court in *Attar Singh's case* (1) (supra). In that case the landlord desired to have

(1) 1967 P.L.R. 83.

his rented land vacated for the purpose of constructing a residential building thereupon and then living in it. Their Lordships of the Supreme Court held that sub-clause (a) has to be read along with sub-clauses (b) and (c) and observed as follows :—

> "We are of the opinion therefore that sub-clauses (a), (b) and (c) in this provision must be read together, and reading them together there can be no doubt that when sub-clause (a) provides that the landlord requires rented land for his own use, the meaning there is restricted to use principally for business or trade....., and we have no hesitation in coming to the conclusion that the word 'for his own use' in sub-clause (a) in the circumstances must be limited in the manner indicated above as that will give full protection to tenants of rented land and save them from eviction unless the landlord requires such land for the same purpose for which it had been let i.e. principally for trade or business."

It was held that inasmuch as in the case before the Supreme Court the land was required not for business or trade but for constructing a house for himself, the landlord was not entitled to get the tenant ejected.

(7) This case of the Supreme Court came for consideration by a Division Bench of this Court in *Dhan Devi and another* v. *Bakhshi Ram and others* (2). In that case it was further held that vacant land must be required as such for business or trade.

(8) Great deal of argument was addressed to us suggesting that in *Dhan Devi's case* (2) the statement of law went far beyond than that laid down by the Supreme Court and that the rule laid down by the Supreme Court would be amply satisfied if the landlord required the premises ultimately for business or trade and, in particular, it was urged that if the landlord desired to put up a shop on the rented land with a view to carry on his business or trade therein, the requirements of sub-clause (ii) (a) of section 13(3)(a) of the Rent Restriction Act would be satisfied. Similarly, where the business of the landlord is to build houses and then sell them, the fact that the rented land is required for the purpose of erecting a building, would, it was urged, be a case fully covered by section 13(3).

(2) I.L.R. 1969 (I) Pb. & Har. 274—1968 P.L.R. 913.

(9) The argument of the learned counsel for the petitioner was that the Society not being a trading concern but merely a welfare concern, one of the business enjoined upon it by its very constitution, was "to organise libraries". This fact is not controverted anywhere during the proceedings. A copy of the constitution of the Society was also placed on the file in this Court in which sub-clause (b) of clause 3 giving the aims and objects, runs as follows:—

> "To organise recreation clubs, cultural societies, open air theatres, Reading Rooms; Libraries; Industrial and Social Welfare Centres; Health Clinics, Children's and Ladies Parks, bathing tanks; etc."

(10) Apart from this, document Exhibit A-3, by which the Government allotted this land free of costs to the Society, makes it absolutely clear that the plot was allotted for the specific purpose of "constructing a library building". As already stated, one of the aims of the Society is to organise libraries. The word 'organise' is wide enough to include not only running of libraries but also the construction of buildings for the purpose. It was, therefore, vehemently urged that construction of a library building can be said to be one of the business of the Society.

(11) 'Rented land' is defined under section 2 of the Rent Restriction Act as "any land let separately for the purpose of being used principally for business or trade". Sub-clause (ii) (b) of section 13(3) (a) uses the word 'business' only and this sub-clause runs thus:—

> "he is not occupying in the urban area concerned for the purpose of business any other such rented land."

In any case, according to the Supreme Court, a landlord can get the ejectment of a tenant from the rented land if he requires it for business or trade. The word 'business' obviously has a much wider import than 'trade' and is not restricted to something which must necessarily yield profit.

(12) In Corpus Juris Secundum, Volume 12, at page 762, the word 'business' in its broad sense is defined as follows :—

> "In its broad, its broader, or in its broadest, sense, in its more general or common use, in its primary meaning, or when used colloquially, the word 'business' carries with it a very broad meaning; and it has been said that it denotes not only all gainful occupations, but all occupations or duties in

> which men engage.....; has a common and general application to all sorts of enterprises which engage people's attention and energies; and includes nearly all the affairs in which either an individual or a corporation can be actors; and is a word in common use to describe every occupation in which men engage.....the word is commonly employed in connection with an occupation for livelihood or profit but it is not limited to such pursuits, for it has been said that the definition of 'business' by the lexicographers is sufficiently broad and comprehensive to embrace every employment or occupation,....."

(13) The very fact, that the word 'trade' has been used separately from 'business', it was urged, clearly shows that the word 'business' is used in a much wider sense than the word 'trade'. For the respondent the contention, however, was that the word 'business' as used in the Rent Restriction Act cannot be taken to mean the activities normally within the sphere of the working of a welfare society and must mean an undertaking of a commercial type involving some pursuit with an eye to profit.

(14) The point raised is of importance and may require directly or indirectly reconsideration of the Bench decision in *Dhan Devi's case* (2).

(15) Before us it was also contended that the Society does not *bona fide* require the land in dispute for the construction of the library. Though in the written statement filed by the tenant, he had attributed enmity to some of the office-bearers of the Society, nothing was brought out in the evidence to support this contention.

(16) Only two points were urged, first, that in fact, there is no intention to construct a library building, so much so that a plan has not even been got sanctioned and that the Society did not possess necessary funds to construct the building and, secondly, that the Society, in any case, has in its possession another vacant plot on which, if the Society so desired, it could construct a building. It was also urged that on the second plot, that has also been allotted to the Society, the Society has already constructed some building which if it so liked, could be used for running a library. The evidence brought on the record shows that the Society has been allotted another plot of land for the running of a club and that a building to be used as *janj ghar* and club house, has been constructed there. As already indicated,

the plot in dispute had been allotted to the Society for the specific purpose of constructing a library building. If that be the case, the Society cannot possibly construct a library building on another plot which has been allotted to the Society for a different purpose.

(17) On the first hearing of the case, the case was adjourned to enable the parties to come to a mutual settlement. As a result of that an undertaking was given by the Society that it will start the construction of the library building within a month or two of the possession being delivered to it by the tenant and that no eviction will be sought till a plan of the building has been got sanctioned from the Municipal Committee. In fact at the last date of hearing the Society produced a plan of the library building duly sanctioned by the Municipal Committee, Ludhiana. This plan was sanctioned under the order of the Administrator of the Municipal Committee, dated 19th October, 1970. According to this sanctioned plan, a library hall, with an attached verandah together with an office and a store, was proposed to be constructed in addition to a bath and a latrine in the open space left. This sanctioned plan and the undertaking given by the Society that the construction of the library building will be completed within a period of one year from the date of the taking of the possession hardly leaves any doubt about the *bona fide* of the Society, that it requires the vacant plot for the purpose of constructing a library building.

(18) Even apart from this, there was nothing on the record, barring the bare statement of the tenant, to indicate that the Society, the office-bearers of which are persons who had held respectable positions in life, did not mean to do what it says it intended to do. We are, therefore, of the view that *bona fide* requirement of the Society is fully established.

(19) In view of the above, we refer the following question for a decision by the Full Bench :—

> "Whether, in view of the facts and circumstances of this case, the requirement of rented land by the Society for the construction of a library building is covered by section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act ?"

November 30, 1970.

(20) P. C. Jain, J.—I agree.

JUDGMENT

Narula, J.—(21) Arguments have been advanced before us in this petition for revision under section 15(5) of the East Punjab Urban Rent Restriction Act (III of 1949) (hereinafter called the Act) on the following three questions which have arisen in the circumstances detailed with requisite clarity in the order of reference made by the Division Bench consisting of my Lord, the Chief Justice and my learned brother P. C. Jain, J., dated November 30, 1970, which order may be read as a part of this judgment—

(i) whether the word "business" has been used in the definition of "rented land" in section 2(f) and in clause (b) of section 13(3)(a)(ii) of the Act in the restricted sense of commercial business carried on with the motive of earning profit or in the larger sense in which the expression includes everything which engages the time, talent and interest of a man, i.e., something in which a person proposes to engage himself either as a duty or in discharge of the responsibilities of his office;

(ii) whether in order to successfully sustain an action for obtaining a direction against a tenant to put the landlord in possession of rented land under section 13(3)(a)(ii) of the Act, it is essential for a landlord to allege and prove that he would use the rented land after obtaining its possession in the same condition in which he obtains it without putting up any building or structure on it for carrying on his own business, or whether there is no bar to the landlord putting up such construction on the rented land after obtaining its possession and occupying it as may be called for in order to enable him to carry on his business on that land; and

(iii) whether in a case where the very business of the landlord for which he requires the rented land is such as envisages, as an essential part of that business, the putting up of a particular structure or building on the rented land, anything contained in section 13 of the Act prohibits the landlord from making such a claim under section 13(3)(a)(ii).

(22) The relevant facts proved to the satisfaction of the Division Bench, as mentioned in the order of reference on which the above

questions have to be answered, may first be recapitulated. The landlord, who is the petitioner before us, is a Society registered under the Societies Registration Act, and is not a commercial institution. (I will refer to the landlord-petitioner as the 'Society' in this judgment). It is claimed that one of the businesses of the Society specifically mentioned in clause (b) of paragraph 3 of its constitution (already reproduced verbatim in the order of reference) is to organise libraries. The plot of land in question has been given to the Society by the Government free of charge for the specific and exclusive purpose of setting up a library and is liable to be resumed by the State in case the Society does not put up a library building thereon. The plot in dispute is admittedly "rented land" within the meaning of section 2(f) of the Act as it is land which was let separately to the respondent for his business of sale of firewood, coal etc. The Society has claimed that it requires the rented land for its own use viz. for the construction of a library building. It is in this background that Mr. Y. P. Gandhi, the learned counsel for the Society, submitted that all the requirements of section 13(3) (a) (ii) and 13(3) (b) have been satisfied and an order should be made directing the respondent to put the Society in possession of the rented land because (i) the premises in dispute are rented land, (ii) the said land is required by the Society for its own use for construction of its library building, (iii) the Society is not occupying any other such rented land in the urban area of Ludhiana for the purposes of putting up a library on it, (iv) the Society has not vacated any such rented land in Ludhiana after the commencement of the Act, and (v) the Division Bench has already held (in the course of the order of reference) that the claim of the Society is *bona fide*. On behalf of the respondent it was admitted that the premises are 'rented land', but it was denied that the alleged requirement thereof for putting up a library building thereon can be said to be a requirement "for business". He did not contest items (iii) to (v) of Mr. Gandhi's contentions. Mr. Gujral, the learned counsel for the tenant has vehemently contended that—

(i) the business of organising or constructing libraries by a society for the benefit of the residents of a locality without any profit motive and not as a commercial transaction is not business within the meaning of section 2(f) and section 13(3)(a)(ii) (b) of the Act, as the word "business" used in those provisions must take its colour and complexion from the word "trade" used along side it in section 2(f) ;

(ii) the mere object of constructing one library cannot be called "business" even in the larger sense as it is only a course of

dealings of the particular type that makes an enterprise a business and a solitary dealing of any kind cannot be called a 'business'; and

(iii) rented land can be got vacated from a tenant under section 13(3)(a)(ii) of the Act only if the landlord alleges and proves that after occupying it he is going to use the land for his business in the same state as such rented land without putting up any structure or building thereon which may merge the rented land in a building or a part thereof, as held by a Division Bench of this Court in *Smt. Dhan Devi and another* v. *Bakshi Ram and others* (2).

(23) In fact it was in order to reconsider the correctness of certain observations made by me in the *case of Smt. Dhan Devi and another* (2) (supra) (with which Shamsher Bahadur, J., as he then was, concurred), that this reference has been made to a Full Bench. I will first take up the question of the correct interpretation and true scope of the word "business" as used in the relevant provisions referred to above.

(24) Wherever the word "business" is defined in a particular statute, it is to be given the meaning ascribed to it in that definition. The question whether the word "business" has been used in a narrower sense or in a larger sense arises in a case where no statutory definition of that expression has been given in the relevant piece of legislation. At page 164 of Aiyar's Law Lexicon of British India (1940 Edition), the word "business" in its larger sense has been stated to mean "an affair requiring attention and care; that which busies or occupies one's time, attention, and labour as his chief concern." In the same passage the word 'business' is mentioned to convey, in the narrower sense, "mercantile pursuits; that which one does for a livelihood; occupation; employment; as, the business of a merchant; the business of agriculture." It has finally been stated that "the word 'business' is of large signification, and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors." Referring to the larger sense of the word, it has again been stated at page 165 that "business is that which engages the time, talents and interest of a man; it is what a man proposes to himself; what belongs to a person to do or see done, that is properly his business; and a person is bound either by the nature of his engagements, or by private and personal motives, to perform a service for another."

(25) In Stroud's Judicial Dictionary, Volume I at page 364, it has been stated, *inter alia*, that "business" has a more extensive meaning than the word "trade". Though it has been said that ordinarily speaking "business" is synonymous with trade, reference has also been made by Stroud to the business of a mutual benefit society the object of which is to lend money to its members only. It has also been observed (at page 365) that the definition of "business" given by Jessel, M. R., in *Smith* v. *Anderson*, (3), about anything which occupies the time, attention and labour of a man for the purpose of profit, is confined to cases under the Companies Act or of a like kind. It has been observed by Stroud in that connection as below :—

> "It is indeed clear law that there may be a 'business' offending against a prohibitory covenant, without pecuniary profit being at all contemplated. In such a connection, especially, 'business' is a very much larger word than 'trade'; and the word 'business' is employed in order to include occupations which would not strictly come within the meaning of the word 'trade'—the larger word not being limited by association with the lesser (per Pearson, J., *Rolls* v. *Miller*, (4)."

(26) At the appellate stage in *Rolls* v. *Miller* (5) it was held that where the lease of a house contained a covenant that the lessee should not use, exercise, or carry on upon the premises any trade or business of any description whatsoever, running of a "Home for Working Girls", a charitable institution, where the inmates were provided with board and lodging, whether any payment was taken or not, was a business, and came within the restrictions of the covenant. It was held that it is not essential that there should be payment in order to constitute a business; nor does payment necessarily make that a business which without payment would not be a business. *"In the matter of the duty on the estate of the incorporated council of law reporting for England and Wales"* (6), it was held that where by the memorandum of association all the property and income of the association were applicable solely to the promotion of preparing and publishing under gratuitous professional control, reports of judicial decisions; and no part of the income could be paid as dividend, bonus or otherwise to any member, the association was established for a trade or business within the meaning of sub-section (5) of section 11 of the Customs and Inland Revenue Act, 1885 and was,

(3) 15 Ch. D. 258.
(4) 53 L.J. Ch. 101.
(5) 27 (1884) Ch. D. 71.
(6) 1889 (22) Q.B.D. 279.

therefore, entitled to exemption from the duty imposed by that section.

(27) Mr. Harbans Singh Gujral, referred to some old decided cases under section 20 of the Code of Civil Procedure and emphasised that no definition of the word "business" occurring in section 20 having been given in the Code, the meaning assigned to that expression in various decisions construing the word "business" in section 20 of the Code should be applied to the present case also. The Judgment of the Division Bench in *Govindarajulu Naidu* v. *Secretary of State* (7) and of Hilton, J. in *R. J. Wyllie & Co.* v. *Secy. of State* (8) laying down that the word "business" in section 19 in Madras case and in section 20 in Lahore case is used in the sense of commercial business and not a business of the State or the Government are no longer good law in view of subsequent authoritative pronouncement of their Lordships of the Supreme Court in *Union of India and another* v. *Sri Ladulal Jain* (9), Raghubar Dayal, J. who prepared the judgment of the Supreme Court held in that case that mere fact that expression "carries on business" is used in section 20 of the Code along with other expression like "personally works for gain" does not mean that it would apply only to such persons to whom the other two expressions regarding residence or of personally working for gain would apply. The learned Judge proceeded to observe that it is the nature of the activity which defines its character and that running of railways by the Government is such an activity which comes within the expression "business". It was held that the fact as to who runs the railways and with what motive cannot affect it. It was specifically decided that profit element is not a necessary ingredient of carrying on business, though usually business is carried on for profit. In fact, even earlier than the pronouncement of the Supreme Court, a Division Bench of the Assam High Court had held in *Pratap Chandra Biswas* v. *Union of India* (10), that the State is not excepted from the operation of any part of section 20 and that the section would apply even where the defendant is Government or the State. It was clarified that the Governmental functions like the exercise of its police powers would not be business within the meaning of that word used in section 20 of the Code but would include commercial undertakings of the Government. Ours is

(7) A.I.R. 1927 Mad. 689
(8) A.I.R. 1930 Lah. 818.
(9) A.I.R. 1963 S.C. 1681.
(10) A.I.R. 1956 Assam 85.

not a Police State but a welfare State wherein Government has a right to embark and actually engage itself in huge projects which are commercial in nature. In that context it was held that to say that the Government is not carrying on business for purposes of section 20 of the Code, even when actually it is engaged in the business of transport, is to introduce a legal fiction into law, which Courts have no power to do.

(28) *In the State of Andhra Pradesh* v. *M/s. H. Abdul Bakhi and Bros.* (11), Shah, J. speaking for the Court held that the expression "business" though extensively used, is a word of indefinite import. It was observed that in taxing statutes the expression in question is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. It was emphasised that to regard an activity as business, there must be a course of dealings either actually continued or contemplated to be continued with a profit motive and not for sport or pleasure, observations to that effect were made in connection with the word "business" as it occurs in the Hyderabad General Sales Tax Act which is a taxing statute.

(29) In "Re *Williams' Will Trusts, Chartered Bank of India, Australia and China and another* v. *Williams and others*" (12) the Chancery Division was concerned with the interpretation of a stipulation in the will which authorised net proceeds of a specified share in the estate of the testator being paid to the testator's son upto a limited extent "for purpose of starting my said son in business or for the advancement of any business with which he may be concerned." The son became qualified as a medical practitioner. Out of the amount which was authorised by the will to be paid to the son for the purpose of starting him in business or for the advancement of any business with which he may be concerned the trustees of the will of the testator purchased a dwelling house for the son and his family to be used in connection with his prospective medical practice. It was held that the word "business" included medical practice, and, the possession of a residence convenient (either by reason of its situation or because its accommodation included a surgery) for the purpose of practice being an importannt element in the advancement in the profession of a medical practitioner, the trustees had acted within the authority vested in them by the will.

(30) I may now advert to some cases dealing with the legislation relating to landlord and tenant. In an action commenced by a

(11) A.I.R. 1965 S.C. 531.

(12) 1953 (1) All. England Law Reports 536.

landlord for evicting his tenant under section 7(3)(a)(ii) of the Madras Building (Lease and Rent Control) Act, 1946, the tenant took up, *inter alia* the defence that the premises he was occupying were not required for the purpose of the business which the landlord was already carrying on or had intended to carry on in the near future as he was wanting the premises for carrying on business of automobile factory which business he had not yet started and the previous business carried on in the adjoining part of the land was of manufacture of cement blocks and tins. The Rent Controller repelled the tenant's contention and held that the very act of building a factory at a huge cost was itself an act of running the business. That order was confirmed in appeal by the Additional District Judge, Madras. The tenant's revision against that order was dismissed by Ramaswami, J. in *P. K. Kesayan Nair* v. *C. K. Babu Naidu* (13). The learned Judge held as follows :—

> "Applying these judicial definitions to the facts of the present case, we find that the respondent has been carrying on automobile business and towards that end he has been performing several acts like building the factory at a cost of six or seven lakhs of rupees at No. 230 Thiruvottiyur High Road, Tondiarpet, shifting of the machinery from Calicut and applying for the issue of licence to the Corporation of Madras for running the factory."

The learned Judge observed that the word "business" had no technical meaning but is to be read with reference to the object and intent of the Act in which it occurs. It was held that the term "business" means an affair requiring attention and care; that which busies or occupies one's attention and labour as his chief concern; mercantile pursuits; that which one does for a livelihood; occupation; employment. In *Arjan Singh Chopra* v. *Sewa Sadan, Social Welfare Centre, Ferozepur Cantt.* (14), Mehar Singh, C.J.' (as he then was); held that the activity of maintaining and running a school by engaging teachers as also some other ministerial staff comes within the scope of the term business or trade even if there is no profit motive and the building in which the school is run is a non-residential one. In *P. Vairamani Ammal v. K.N.K. Rm. Kannappa* (15), Kailasam, J., was faced with the question as to whether the conducting of a charity which consisted of distribution of water (thanneerpandal) is or is not business within the meaning of section 10(3)(a)(iii) of the Madras Buildings (Lease and Rent Control)

(13) A.I.R. 1954 Mad. 892.
(14) I.L.R. 1967 (II) Pb. & Hr. 645.
(15) 1970 (II) M.L.J. 689.

Act (XVIII of 1960). It was held that the legitimate activity by the landlord would be his business and the ordinary meaning of the word "business" would apply and there is no warrant for construing the word business in a very restricted way and to confine it to commercial activities or activities of trade alone. The judgment of the Supreme Court in *Co-operative Central Bank Ltd. and others etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.* (16), was cited before us but it does not appear to be relevant for purposes of this case. What fell for decision before the Supreme Court in that case was the meaning of the expression "dispute touching business of society" which occurs in sections 16 and 61 of the Andhra Pradesh Co-operative Societies Act (7 of 1964). Their Lordships of the Supreme Court held that dispute relating to alterations of conditions of servce of the employees of the Co-operative Society was not contemplated to be dealt with under section 62 of the Andhra Pradesh Act and was, therefore, outside the scope of section 61 as alterations of conditions of service of its employees could not be said to be the business of the Society. It was in that context that the Supreme Court observed that the word business is equated with the actual trade or commerce or similar business activities of the Society and since it would be difficult to subscribe to the proposition that laying down the conditions of service of its employees can be said to be a part of its business, it would appear that a dispute relating to the conditions of service of the workmen cannot be held to be a dispute touching the business of the Society.

(31) After carefully considering the law laid down in all the above cases, I am inclined to hold :—

(1) That the word "business" is by itself not a word of art and is capable of being construed both in the wider as well as in the narrower sense depending on the context in which it occurs.

(2) Since the "landlord" within the meaning of section 2(c) of the Act can include an individual as well as a juristic person and there is no special restrictive definition of the word business in the Act, the expression "business" has been used in section 2(f) of the Act (in the definition of "rented land") as well as in section 13(3)(a) (ii) (b) in the wider sense and not in the narrower sense.

(16) A.I.R. 1970 S.C. 245.

(3) The word business in section 2(f) and section 13(3)(a)(ii) of the Act need not necessarily be commercial business carried on with a profit motive. The word includes within its scope a charitable business or a dealing in the interest of the public or a section of the public.

(4) The scope of the word 'business' in the aforesaid provision of the Act is not controlled or coloured by the word 'trade' occurring alongside it in section 2(f) of the Act. Whereas every trade would be a business, the reverse of it is not true. Business is a genus, of which commercial and non-commercial business and trade are some of the species.

(32) The next question that calls for decision is whether in the light of the findings on the legal aspect of the first issue which faces us, the building of a library on the rented land in question can or cannot be held to be the business of the Society. This is a pure question of fact. Taking into consideration the memorandum and Articles of Association of the Society and the terms and conditions of the allotment of the plot by the Government to the Society it is held that the organising of a library including the construction of its building is one of the businesses of the Society.

(33) In fairness to Mr. Gujral, I must take notice of one objection of a somewhat preliminary nature on which he insisted for defeating the claim of the Society on the purely technical ground that no specific plea had been taken by the Society in its petition for eviction about the organising of libraries being one of the businesses of the landlord Society. The relevant pleadings of the parties have already been quoted in the order of reference. The Society did not state in the petition that to organise libraries was one of its businesses. In fact, the Society did not even mention the fact that the rented land was required for its business. It merely gave particulars of the precise purpose for which the rented land was required to be vacated. The reason for such course having been adopted is obvious. According to the law which had been settled by this Court at the time when the petition for eviction was filed in July, 1967, it was not necessary for a landlord to claim that the rented land would be required and used for his business. No one was, therefore, expected to take up a specific plea to that effect at that time. It is really fortunate for the Society to have stated with such definiteness about the purpose for which the rented land was required to be vacated. According to the judgments of this Court

which held the field at that time, to which a reference is hereinafter made, it was not necessary to plead or prove the purpose for which the rented land was required by the landlord. The respondent also took no objection to the want of such a plea when he filed his written statement dated August 17, 1967. He can, however, justify not taking up the plea in question at that stage on the same ground viz. that the judgment of this Court in the case of *Municipal Committee, Abohar* v. *Daulat Ram of Abohar* (17), was known to hold the field till then. But he has no valid justification for not raising an objection to that effect when he filed his application dated July 8, 1968 for leave to amend his written statement (to take up the objection regarding want of notice terminating the tenancy) as the judgment of the Supreme Court dated November 4, 1966, in *Attar Singh's case* (1) had been reported in 1967 and his application under Order 6 Rule 17 of the Code was based on a decision of the Supreme Court reported in a Law Journal of 1967. In this situation it can even be argued that he has waived the objection at the trial stage. Moreover, when this case came up before my Lord the Chief Justice sitting alone and his Lordship referred it to a Division Bench an application (Civil Miscellaneous 5171 of 1970) was made by the Society praying for permission to place the constitution of the Society on the record of this revision petition for the decision of the reference as it was necessary to refer to the aims and objects of the Society. In the application it was stated that a printed copy of the constitution was shown to the learned Chief Justice in Single Bench and a prayer was made to admit the same into evidence but the learned Chief Justice had observed in the order of reference to Division Bench that the Society may make an application for that purpose. With that application a printed copy of the constitution of the Society and a copy of the relevant extract therefrom was filed. The Division Bench (Harbans Singh, C.J. and P. C. Jain, J.) by its order dated September 14, 1970, allowed the application subject to all just exceptions. Copy of the application was served on the counsel for the otherside. No exception was taken on behalf of the respondent to the admission of the said documents into evidence. When this objection was raised by Mr. Gujral before us, my Lord the Chief Justice reminded him that the Division Bench had asked the respondent's previous counsel (who had since died) if he wanted to lead any evidence in rebuttal and that the said counsel had replied in the negative. To be on the safe side, we again asked Mr. Gujral, to avoid any possible prejudice to his client, to let us know even at this stage

(17) I.L.R. 1959 (XII) 1131.

if he wants to lead any additional evidence on account of the copy of the constitution of the Society having been admitted into evidence at the revisional stage. Mr. Gujral did not offer to lead any such evidence. The constitution of the Society is registered with the Registrar of Societies. The genuineness of the copy of the constitution produced before us and the correctness of the relevant aims and objects of the Society mentioned therein have not been disputed before us. Moreover, the strict rules relating to pleadings contained in the Code of Civil Procedure have no application to proceedings before the Rent Control authorities. We do not in these circumstances find any force in this technical objection of Mr. Gujral.

(34) This takes me to the third main point urged by Mr. Gujral. As long ago as on Apirl 7, 1961, Grover, J., (as Judge of this Court) had held in *Partap Singh* v. *Santokh Singh* (18) that the language employed in sub-clause (ii) of sub-section (3)(a) did not exclude use of rented land by putting up a suitable structure there for the purpose of carrying on one's business, trade or vocation. In that case, the appellate authority was of the view that because the landlord wanted to construct a building on the rented land it could not be said that the landlord required it for his own use. The construction which had to be put on the rented land by a landlord was for the purpose of carrying on his business. Grover, J., held in that case as below :—

> "The only other question which requires determination is whether the leraned District Judge was justified in holding that according to the relevant provisions contained in section 13 of the East Punjab Urban Rent Restriction Act even if the premises happened to be rented land, the petitioners were not entitled to claim eviction because the conditions laid down in sub-clause (iii) of sub-section (3)(a) of section 13 were not satisfied. In order to successfully seek ejectment, the petitioners had to show in terms of sub-clause (ii)(a) that the premises were required for their own use. The learned District Judge was of the view that because the petitioners wanted to construct a building on the rented land, it could not be said that they required it for their own use. In this connection the statement of the petitioner has not been

(18) C.R. No. 165 of 1960 decided on 7th April, 1961.

taken into consideration. It was stated by Partap Singh, A.W. 9, that on the land in dispute a *tabela* would be constructed, on top of which the accommodation would be residential. The *tabela* was to be built for the purpose of petitioner Raj Karan Singh carrying on his business there as he was an electrician. Raj Karan Singh himself stated that he had no shop or land for the purpose of carrying on his work of repairing and wiring as an electrician. Now, if an electrician has to carry on his work, he will have to put up some sort of structure and for that purpose if a *tabela* has to be constructed, I do not see how that will not be covered by sub-clause (ii)(a). He certainly requires the land for the purpose of carrying on his business and if he cannot carry on that business without putting up any structure, he will be fully entitled to make such construction as would enable him to make proper use of the land for the purpose of carrying on his vocation there. I cannot see how the language employed in sub-clause (iii) of sub-section 3(a) excludes the use of rented land by putting up a suitable structure there for the purpose of carrying on one's business, trade or vocation. I am not at all satisfied that by doing what the petitioners proposed to do, the rented land will cease to be required for their own use."

The above-quoted observations of Grover, J., no doubt support the view now taken by me. At the time of deciding *Dhan Devi's case*, (2), I had erroneously thought that this view was not consistent with the pronouncement of the Supreme Court in *Attar Singh's case*, (1). On a reconsideration of the matter, I, however, think that this is not so. As observed a little later, this question did not fall for determination before their Lordships of the Supreme Court in *Attar Singh's case*, (1).

(35) The question of *bona fide* requirement of the Society has already been decided by the Division Bench and is no more before us for consideration.

(36) The question whether a landlord could ask for an order against the tenant to hand over possession of rented land for purposes other than carrying on his own business came up for consideration before Khosla, A.C.J., and Dulat, J., in *Municipal Committee*

Abohar v. *Daulat Ram of Abohar*, (17). The learned Judges held that the expression "use" in section 13(3)(a)(ii)(a) has not been defined or restricted and a landlord seeking eviction under that clause is not required to show that he would live on the rented land himself by putting up a construction on it and all that he need show is that he requires it for such use as the rented land can be put to. Their Lordships went on to state that the landlord may erect a building which may be used as the town hall or the office of the Municipal Committee, it may use the land for parking the cars of its officials belonging to the Municipality and in all those cases the Muncipality, who was the landlord in that case, would be converting the rented land to its own use. It was held that the word "use" had a very extensive meaning in the context of section 13(3)(a)(ii)(a) and in the case of rented land the use must of necessity be given a wider meaning than that assigned to a residential building. The Division Bench further proceeded to hold (which view has subsequently been held by the Supreme Court to be erroneous) that the definition of rented land does not preclude its being used for purposes other than business or trade. The correctness of the above view came up for consideration before the Supreme Court in *Attar Singh* v. *Inder Kumar*, (1). Their Lordships held that in sub-clause (a) of section 13(3)(a)(ii) of the Act the words "for his own use" are not qualified and at first sight it may appear that a landlord can ask for eviction from rented land if he requires it for his own use. Whatever may be the use to which he may put it after eviction; but sub-clause (a) has to be read in the light of sub-clauses (b) and (c) of the sub-section and reading the three sub-clauses together there can be no doubt that when sub-clause (a) provides that the landlord requires rented land for his own use, the meaning there is restricted to use principally for business or trade. It was held that the tenant is saved from eviction unless the landlord requires such land for the same purpose for which it had been let, i.e., principally for trade or business. It was clarified that a landlord cannot get the rented land vacated for constructing a residential house. In that case rented land had been let out for the purpose of a fire-wood stall. The landlord filed an application for ejectment of the tenant on. *inter alia*, the ground that he needed the land for erecting thereon a residential house. The Rent Controller repelled the claim for eviction on that ground because the landlord did not require the rented land for his business. The appellate authority allowed the landlord's appeal following the judgement of the Division Bench of the High Court in *Municipal*

Committee, Abohar v. *Daulat Ram of Abohar,* (17) (supra). The High Court dismissed the tenant's revision petition and thereupon he went to the Supreme Court and succeeded there. All that was decided by the Supreme Court in *Attar Singh's case,* (1), was that a landlord cannot claim eviction of a tenant from rented land under the relevant clause for using such land for any purpose whatsoever, e.g., putting up a residential building and that eviction can be claimed under the provision in question only if the landlord wants to carry on his own business on the rented land after getting it vacated. The question whether the landlord is or not permitted to put up a building on the rented land for the purpose of carrying on his business did not come up for consideration before the Supreme Court and was not decided. This question did, however, subsequently come up before a Division Bench of this Court consisting of Shamsher Bahadur, J., and myself in *Smt. Dhan Devi and another* v. *Bakhshi Ram and others,* (2). Three petitions for revision of the orders of the appellate authority were disposed of by that common judgment. In one of the cases the landlord had stated that he would use a portion of the rented land for his business and would use some portion for the purpose of his residence. In the second case the landlord had stated that he wanted to shift to Amritsar (where the rented land was situated) and start business there and as such he required the rented land in a *bona fide* manner "for his own use and occupation". He had produced a sanctioned plan of the construction which he wanted to put up on the rented land after getting its possession. The landlord admitted that he had not got any sanction for building any shops on any portion of the plot. It was stated on the plan that it showed "proposed plan of bungalow to be constructed" on the plot in question. The appellate authority following the judgment of Division Bench of this Court in *Municipal Committee, Abohar* v. *Daulat Ram of Abohar,* (17) (supra) allowed the eviction of the tenant in each of those cases. All of the three revision petitions filed against the orders of eviction were allowed, the orders of the appellate authority directing the eviction of the tenants were set aside and applications for ejectment were dismissed by the Division Bench on the ground that the landlord had not proved in any of those cases that the rented land sought to be obtained from their respective tenants, was required principally for the business of the landlord. To that extent no fault can be found with that judgment. It cannot therefore be said that those cases were wrongly decided. But in the course of that judgment (with which Shamsher Bahadur, J., had agreed) I observed

that the judgment of Grover, J., in *Partap Singh* v. *Santokh Singh,* (18) (supra) was no longer good law in view of the subsequent decision of the Supreme Court in *Attar Singh's case* (1); and I further held as follows :—

> "The law permits the landlord to evict a tenant from rented land only if he requires to use the said land itself for purposes of his own business or trade and not if he says that he intends to use the land in question after converting it into a building". "The landlord can succeed in his application under section 13(3)(a)(ii) of the Act for obtaining possession of any rented land from a tenant only if he alleges and proves that he requires the rented land from which the tenant is to be evicted for carrying on his own business or trade on the rented land itself. The landlord cannot succeed in a claim for ejectment under that provision if his case is that he would not use the rented land, i.e., the land separately let to the tenant, but a building to be constructed on it for his business or trade."

(37) It is the correctness of the two observations made above that was doubted by the learned counsel for the landlord on account of which the Division Bench referred the case to a still larger Bench. It is not disputed that if the landlord has to carry on the business itself on the rented land, he can get it vacated.

(38) On the strength of the decision in *Dhan Devi's case* (2), it was urged that even if it was held that organising of a library was a business of the Society, still it was not permissible for the Society to raise construction of the library building for carrying out that purpose and that the Society, after obtaining the eviction order, could use the plot in dispute only as a rented land. In substance, the contention of the learned counsel was that for raising construction of the library building, the eviction order could not be obtained by the Society. In the light of the findings given by the Division Bench in *Dhan Devi's case* (2), which have been reproduced above, no exception could be taken to this contention of the learned counsel and I would have had no other alternative, but to hold that the rented land had to be used as such by a landowner for his own business after obtaining an eviction order. But the correctness of this view of the Bench was challenged and it was reiterated by Mr. Gandhi, learned counsel,

that there was no warrant for holding that after obtaining an eviction order, the landlord was bound to use the rented land as such and that for the purpose of carrying on his business, he could not raise any construction over it.

(39) After giving thoughtful consideration to the entire matter, I am of the view that the above-quoted observations made in *Dhan Devi's case* (2), have gone a little too far. In *Attar Singh's case* (1), it has been held by their Lordships of the Supreme Court that in sub-clause (a) of section 13(3)(a)(ii) of the Act, the words 'for his own use' are not qualified and at first sight it may appear that a landlord can ask for eviction from rented land if he requires it for his own use, whatever may be the use to which he may put it after eviction; but sub-clause (a) has to be read in the light of sub-clause (b) and (c) of this sub-section and reading the three sub-clauses together there can be no doubt that when sub-section (a) provides that the landlord requires rented land for his own use, the meaning there is restricted to use principally for business or trade. In the wake of this decision the landlord can obtain an eviction order if he satisfies all the conditions given in section 13(3)(a)(ii). But it is nowhere provided in the statute as to how and in what manner the landlord after obtaining possession would carry on his business on the rented land. If the nature of the business of the landlord is such that he cannot do that business without raising a building, there is no prohibition in the Act for doing so. It was not disputed before us that the business for which the landlord wants the rented land need not be the very business which had been carried on by the tenant on the said land nor has it to be the business for which the tenant took the rented land on lease. It is also undisputable that the business which the landlord wants to do on the land, may not be a business in which he has already been engaged for some time, but may even be a new business which he wishes to start. If it is held that the landlord after obtaining possession can use the rented land only as such, then in numerous cases the order of eviction would become meaningless for the landlord due to the nature of his business which he cannot do in open without putting up a building. Under sub-section (4) of section 13, the requirement is that if a landlord obtains possession of a rented land on the ground that he requires it for his own occupation, then he is bound to occupy it himself for at least 12 months after he obtains possession. By doing his business, the landlord is occupying the rented land. How and in what manner does he carry on his business, is nowhere provided in the statute, nor is it the concern of the tenant. The tenant can

take benefit of sub-section (4) only if after obtaining possession the landlord does not occupy the rented land for a period of 12 months. In *Dhan Devi's case* (2), I had thought that section 13(4) imposes a restriction on the landlord's right to use the rented land only in that condition after obtaining its possession. I now find that this is not so. Another thing which weighed with me in *Dhan Devi's case* (2), was as to what would happen if the landlord after obtaining possession raises construction on the rented land and does not occupy it? In that case how will the tenant get back possession of the rented land as it would not exist any more? On a reconsideration of the matter, I think that the tenant will get back possession of the rented land along with the building. The landlord cannot be permitted to circumvent the provision of the statute by his own wrongful act. For the purpose of sub-section (4) it will remain a rented land in the same way as it would not cease to be rented land for the purposes of the landlord merely because the tenant may put up some constructions on it. The landlord if he so desires, may remove the *malba* of the building in the same manner as the tenant may remove his. It was observed in *Dhan Devi's case* (2), that construction on the rented land by the tenant for the purpose of doing his business will not change the character of the rented land. The tenant cannot be permitted to change the nature of the rented land nor can he commit any act which may take away the land from the definition of rented land. If that is permitted then it is bound to lead to disastrous results, e.g., a tenant may raise building over rented land for doing his own business and when an eviction application is filed under section 13(3)(a)(ii) he may resist the same by saying that it is not a rented land and is a non-residential building and that application does not lie under section 13(3)(a)(ii) as under the Act a non-residential building cannot be got vacated on the grounds on which rented land can be got vacated. In this manner a clever tenant by spending a few hundred rupees can evade eviction from the rented land. This could never be the intention of the legislature.

(40) On a reconsideration of the matter I am further of the opinion that clause (iii) of section 13(3)(a) is of no help in holding that rented land has to be used as such after obtaining the eviction order. This clause gives additional grounds for seeking eviction of the rented land, and a landlord can seek eviction of his tenant only if he has 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. This clause appears to be

independent of clause (ii) of section 13(3)(a). Both the clauses deal with independent grounds of eviction and are not controlled by each other. Under clause (ii), the landlord requires the rented land for his own use and gets an eviction order if he satisfies all the three conditions stated therein; but under clause (iii), eviction is sought by the landlord at the instance of an authority like Government, Improvement Trust, or local authority. In the light of what I have said above, I would now hold that:—

(a) a landlord, on getting the rented land vacated, is not bound to use it in the same condition in which it was being used by the tenant, but is entitled to raise construction over it which is necessary and needed for purpose of carrying on his own business; and

(b) a landlord on getting a rented land vacated, is entitled to occupy and use the same for any business of his and is not bound to use the rented land for the same business as was being carried on by the tenant or for the same business for which the rented land was given on rent to the tenant.

(41) It is apparent from the findings recorded above that the Society has satisfied all the requirements of section 13(3)(a)(ii) and is, therefore, entitled to succeed. I would accordingly allow this petition, set aside the order of the appellate authority and restore that of the Rent Controller and direct the respondent to put the petitioner Society in possession of the rented land on or before July 15, 1971. In the peculiar circumstances of the case the parties are left to bear their own costs throughout.

HARBANS SINGH, C.J.—I agree.

P. C. JAIN, J.—I also agree.

K. S. K.

2240 I.L.R. Govt. Press Cdh.