opportunity to procure raw material in the shape of wool yarn by the appellants was, in my opinion, not part of the goodwill of the partnership Jain Bodh Hosiery, which goodwill was left with Shadi Lal, respondent in consequence of dissolution of that partnership firm.

(5) In the approach as above, the appeals of the appellants are accepted and, reversing the decrees of the learned Single Judge, the decrees of the first appellate Court are restored so that the claims of the appellants stand decreed in the terms of the decrees of the first appellate Court, but, in the peculiar circumstances of these appeals, there is no order in regard to costs.

R. S. NARULA, J.—I agree.

R. N. M.

REVISIONAL CIVIL

Before Mehar Singh, C.J., and R. S. Narula, J.

DR. PIARA LAL KAPUR,—*Petitioner.*

versus

KAUSHALYA DEVI AND ANOTHER,—*Respondents.*

Civil Revision No. 738 of 1967.

January 22, 1970.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(a) and 13(3)(a)(iii)—Portion of a demised building in dangerous condition—Such portion—Whether constitutes 'building' for the purpose of section 13(3)(a)(iii)—Removal or demolition of unsafe and unfit portion of the building—Whether takes the case out of the section.

Held, that the 'building' has been defined in section 2(a) of East Punjab Urban Rent Restriction Act to mean "any building or part of a building let for any purpose---." A portion of building which forms tenancy premises, in respect of which the question of its dangerous condition etc. has to be decided is a 'building' for the purpose of sub-clause (iii) of clause (a) of sub-section (3) of section 13 of the Act, irrespective of the fact whether the rest of the building belonging to the landlord is or is not in a dangerous condition.

(Para 7)

Held, that for the applicability of sub-clause (iii) of clause (a) of section 13 (2) of the Act, it is not necessary that the entire demised

premises must be proved to have become unsafe or unfit for human habitation before the order for eviction can be passed under this clause. Moreover, the mere fact that the unsafe and unfit portion of a demised premises has been demolished or removed would not take the cause out of the mischief of this sub-clause. The expressions "unsafe" and "unfit for human habitation" in section 13 (3) (a) (iii) are separated by the word "or" and not "and". It is, therefore, obvious that eviction under the relevant clause can be ordered where either of the two ingredients of the clause is proved, that is, where either it is proved that the premises have become unsafe or (even if it is proved that they are not unsafe) if it is proved that they have become unfit for human habitation. It is not acceptable on the language and scheme of the statute and on general principles that only that portion which is unsafe or unfit for human habitation may be got vacated and the landlord be asked to carry out the necessary repairs so as to make them safe and fit for human habitation, leaving the rest of the building with the tenant. (Para 12)

Petition under Section 15(5) of the East Punjab Urban Rent Restriction Act for revision of the order of Shri Sewa Singh, Appellate Authority, under the East Punjab Urban Rent Restriction Act, 1949, Amritsar, dated the 14th August, 1967, reversing that of Shri O. P. Aggarwal, Rent Controller, Amritsar, dated the 6th December, 1966 and ordering the tenant to put the landlords in possession of the demised premises within one month from this date and further ordering that the respondent shall pay costs of both the courts to the landlords. Pleaders' fee Rs. 32.

CH. ROOP CHAND, ADVOCATE, for the petitioner

H. L. SARIN, AND V. C. NAGPAL, ADVOCATES, for the respondents.

JUDGMENT

Narula, J.—Mst. Kaushalya Devi and her son, respondents (hereinafter referred to as the landlord) filed a petition for eviction of Dr. Piara Lal Kapoor (hereinafter called the tenant) from a three roomed shop situate in chowk katra Dulo, Amritsar, which formed part of the bigger building belonging to the landlord. Eviction of the tenant was sought on the solitary ground that the demised premises had become unsafe and unfit for human habitation. In support of that claim it was alleged that the landlord had received several notices from the Amritsar Improvement Trust under sections 113/114 of the Punjab Municipal Act, as amended by the Punjab Damaged Areas Act, requiring the landlord to remove the danger immediately by demolishing the dangerous property. The abovesaid relevant ground for eviction is contained in section 13(3))a) (iii) of the East Punjab Urban Rent Restriction Act (3 of 1949) (hereinafter called the Act). Though reference was made in the application for eviction

dated May 17, 1966, to the requirement of the landlord for the purposes of carrying out building work etc. at the instance of the Amritsar Improvement Trust, it has been conceded by Mr. Harbans Lal Sarin, the learned counsel for the landlord, that though this additional ground was pressed before the Rent Controller, and was put into issue, his client is unable to press her claim on that ground any further. Exhibit R. 2 is a copy of the site plan which shows that the three rooms of the shop are placed in one straight line with the only entrance thereto from the bazar from over a platform which forms part of the shop. Only the rear-most room is separated by a door intervening between that room and the front portion. That is why the tenant in his reply to the application for eviction stated that the shop consisted of two rooms. In his said reply, dated June 30, 1966, the tenant denied that the property in question was unsafe or unfit for human habitation, and suggested that the notices had been procured by the landlord herself from the Improvement Trust. In paragraph 5 of his written statement he further stated that the landlord had demolished some portion of the roof and some portion of the front wall above the gate, and that he had, therefore, made an application to the Rent Controller for directing her to make repairs to the same. From the pleadings of the parties, the learned Rent Controller framed the following issues:—

"(1) Whether the applicants *bona fide* require to rebuild the demised premises in dispute at the instance of the Amritsar Improvement Trust, Amritsar, and whether the same have become unsafe and unfit for human habitation?

(2) Whether the application is liable to rejection on the grounds as detailed in paragraphs 1 and 2 of the preliminary objections of the reply ?

(3) Whether the applicants are estopped to bring the present application as alleged in paragraph 5 of the reply on merit?

(4) Whether the present application is a frivolous one and the respondent is entitled to special costs?

(5) Whether the present application is not maintainable for the reasons as detailed in paragraph 2 of the additional pleas of the reply ?

(6) Relief."

I have not mentioned about the various pleas of the tenant to which reference is made in the above-quoted issues as no argument whatever was advanced before us by either of the parties in relation thereto except to the extent hereinafter indicated.

(2) Notices Exhibits A-1 to A-4 received by the landlord from the Amritsar Improvement Trust requiring her to demolish the dangerous property were duly proved. Besides recording the evidence led by the parties, the learned Rent Controller himself inspected the spot and made note of his observations in his inspection report, dated December 4, 1966. He found that the roof of the inner room and the roof of a portion of the outer room of the shop in dispute were in good condition, but a portion of the outer room measuring approximately $11' \times 8'$ was mostly without roof as the same had been removed. He further noticed that the roof over the entrance door and a small portion above the entrance door stood removed.

(3) By his order, dated December 6, 1966, the learned Rent Controller held that the premises in dispute were neither required to be rebuilt at the instance of the Amritsar Improvement Trust nor had the same become unsafe or unfit for human habitation. Issues Nos. 2, 3 and 5 were not pressed by the tenant and the pleas giving rise to the same were given up by him in his statement made to the Rent Controller on December 3, 1966. Though no special costs were awarded, the application for eviction was dismissed with costs.

(4) The appeal of the landlord against the order of the Rent Controller was allowed by the order of Shri Sewa Singh, District Judge, Amritsar (the Appellate Authority under the Act), dated August 14, 1967. The Appellate Authority held that since the frontal wall and part of the roof of the demised premises were admittedly non-existent on account of the same having been demolished by the landlord in compliance with the notices served on her by the Improvement Trust, it was clear that the premises in dispute had become unsafe and unfit for human habitation unless the same were reconstructed. It was further observed that the landlord had applied to the Municipal Committee for permission to reconstruct the entire building and the proposed construction plan had already been sanctioned and approved by the municipal authorities. The contention of the tenant to the effect that the landlord should be required to repair the demolished roof and the frontal wall was rejected. It was further held that the *bona fides* of the landlord had been established. In that context notice

was also taken of the offer made by the landlord to the tenant to provide the latter with the shop after its reconstruction according to the plan Exhibit A. 6. As a result, the appeal was allowed with costs of both the Courts and the tenant was directed to be evicted.

(5) When this petition for revision of the order of the Appellate Authority came up before my Lord, the Chief Justice on November 15, 1968, it appears to have been conceded that at least a portion of the demised shop had become unfit or unsafe for human habitation, but it was contended that the unsafe and dangerous portion of the building having been removed, no eviction could be ordered under sub-clause (iii) of clause (a) of sub-section (3) of section 13 of the Act unless it could be found that the whole of the building had become unsafe or unfit for human habitation. It was contended that no eviction could be ordered as whatever remained of the building was in a good and safe condition and was neither dangerous nor unsafe for human habitation. My Lord thought at that time that the situation created in this case was rather anamalous and the peculiarity of the case was such that it would be very appropriate if it was heard by a larger Bench. It is in pursuance of the abovesaid order of reference, dated November 15, 1968, that this revision petition has come up for hearing before us today.

(6) It appears to be necessary at this stage to quote the relevant part of sub-clause (iii) of clause (a) of sub-section (3) of section 13 of the Act. The relevant portion reads :—

> "A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession in the case of any building or rented land, if it has become unsafe or unfit for human habitation."

(7) The first contention of Mr. Roop Chand Chaudhary, the learned counsel for the tenant is that in the absence of any indication in the abovementioned provision about liability to eviction being incurred even in case of part of the building being unsafe or unfit for human habitation, it should be held that unless the whole of the building is in such a condition no eviction can be ordered. For this proposition he relied on a Division Bench judgment of this Court, to which my Lord the Chief Justice was a party, in *Smt. Naranjan Kaur* v. *Dr. Siri Ram Joshi* (1). That case had arisen out of a claim

(1) 1969 R.C.R. 169.

of the landlord to evict his tenant from a shop in Jullundur under sub-clause (b) of clause (ii) of sub-section (2) of section 13. Clause (ii) of sub-section (2) of section 13 is in the following terms :—

> "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 application, is satisfied that the tenant has after the commencement of this Act without the written consent of the landlord—
>
> (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or
>
> (b) used the building or rented land for a purpose other than that for which it was leased."

The argument advanced in that case was that though subletting of even a portion of the building or rented land would be a good ground for ejectment under clause (a), conversion of user of the building or rented land had to relate to the entire building or the entire rented land in order to justify an order for eviction in view of a distinctly different phraseology used in the two clauses (clause (a) on the one hand and clause (b) on the other). Reliance was placed for that proposition before the Division Bench hearing *Smt. Naranjan Kaur's case* (1) on the judgment of a learned Single Judge in *Inder Singh* v. *Kalu Ram and another*, (2). *In Inder Singh's case* (2), it had been held earlier that a partial conversion of user was not covered by the provisions of the Act, and support was derived for that view from the different way in which clauses (a) and (b) of section 13(2)(ii) had been framed. The Division Bench differed from the view of the learned Single Judge in *Inder Singh's case* (2), and held that in view of the definition of the expression "non-residential building" contained in section 2(d) of the Act, it was not permissible to hold that conversion of user of a part of the demised premises could not result in the eviction of the tenant from the whole of the tenanted premises. We are unable to find as to how the decision of the Division Bench in *Smt. Naranjan Kaur's case* (1), can be of any help to the tenant in the case now before us. "Building" has been defined in section 2(a) of the Act to mean "any building or part of a building let for any purpose....." This means that the

(2) 1965 P.L.R. 58.

shop which formed the tenancy premises in the instant case was the "building" in respect of which the question of its dangerous condition, etc. had to be decided irrespective of whether the rest of the building belonging to the landlord was or was not in a dangerous condition.

(8) Chaudhary Roop Chand then came to the main question on account of which this reference was necessitated and urged that the parts of the demised premises which were dilapidated and answered the description of unfit or unsafe premises for human habitation having been removed, and the remaining part of the demised premises not having been proved to be unfit or unsafe for human habitation, no order under section 13(3)(a)(iii) can be passed or sustained against his client. Relying on the law laid down in the following cases, the learned counsel contends that this is a fit case in which an order could be made by the Rent Controller under section 12 of the Act (on the application of the tenant) for necessary repairs to the demised premises by reconstructing the front wall and by making a new roof in place of the one which had been demolished in pursuance of the notices of the Improvement Trust :—

(i) *Chandu Lal* v. *Har Lal*, (3).

(ii) *Ullal Dinkar Rao* v. *M. Ratna Bai*, (4).

(iii) *Augustine* v. *Chandy and others*, (5), and

(iv) *R. Govindaswami Naidu* v. *G. Pushpalamal and another*, (6).

(9) In *Chandu Lal's case*, (3), Grover, J., held that what is excluded from the operation of section 12 of the Act are "structural alterations", and the repairs of a roof which may involve its replacement if it is in such a bad and damaged condition that it requires replacement, cannot be regarded as "structural alterations". It was in that context and on the facts of that case that the learned Judge observed that the expression "necessary repairs" would include the replacement of a roof of a room if that is essential for making the room habitable. While so holding, Grover, J., had followed the judgment of A. R. Somnath Iyer, J. of the Mysore High Court in *Ullal*

(3) 1966 P.L.R. Short Note 36.
(4) A.I.R. 1958 Mys. 77.
(5) A.I.R. 1953 Tra. Cochin 462.
(6) A.I.R. 1952 Mad. 181.

Dinkar Rao's case (4) (supra). Section 11(2) of the Madras Buildings (Lease and Rent Control) Act (25 of 1949) to which that case related is in the following terms:—

> "If a landlord fails to make the necessary repairs to the building within a reasonable time after notice is given by the tenant, it shall be competent for the Controller to direct on application by the tenant that such repairs may be made by the tenant and that the cost thereof may be deducted from the rent which is payable by him."

The learned Judge held that the meaning which was to be given to the word "repair" depended upon the context in which it occurred and that repair may require renewal or replacement though all replacements or renewals were not necessarily repairs. Following the judgment of an English case in *Lurcott* v. *Wakely and Wheeler*, (7), the learned Judge held as follows :—

> "While the restoration of the stability or safety of a subordinate or subsidiary part of a building or any portion of it, can in law be considered as a repair, the reconstruction of the entirety of the subject-matter cannot be so regarded."

The observations of Gangadhara Menon, J. of the Travancore-Cochin High Court in *Augustine's case* (5) (supra) do not appear to us to be relevant at all as those related to the interpretation of section 108(f) of the Transfer of Property Act and the case related to a thatched hut (chhapra) which had been demolished by the tenant and in the place of which he had put up a new one.

(10) The Division Bench judgment of the Madras High Court in *R. Govindaswami Naidu's case* (6) (supra) related to the interpretation of the expression "act of waste" contained in section 7 of the Madras Buildings (Lease and Rent Control) Act (15 of 1946). It was in that context that it was observed that it cannot be laid down as a rule of law that a demolition of any wall in a building must necessarily be deemed to be an act of waste which is likely to impair materially the value or utility of the building. The question whether a building, that is the demised premises are in fact unsafe or unfit for human habitation is necessarily a question of fact to be decided

(7) (1911) 1 K.B. 905.

on the basis of evidence led in a given case. It is neither possible nor advisable to lay down any rules of guidance for arriving at a correct decision of a matter like this. An order for repairs can be made in an appropriate case on an application made by a tenant under section 12 of the Act. If the repairs are such without which the premises have neither been rendered unsafe nor unfit for human habitation, no difficulty can arise in the disposal of such an application. Even if repairs are called for to render a building which has become unsafe or unfit for human habitation as fit for the same and an application is made by a tenant under section 12, and it is found that what is required to be done for making the premises fit and habitable would merely amount to repairs and not to structural alterations, an order can be passed in favour of the tenant if the landlord has not exercised his right under section 13(3) (a) (iii) to evict the tenant on account of the premises having become unsafe or unfit for human habitation. Though the Act has been passed for protecting the tenants against eviction, it must be remembered that the fundamental right to property includes the right to its possession, and any reasonable restriction placed on the same by a valid Act of the Legislature has to be strictly construed. Keeping this principle in view, it must be held that if a landlord succeeds in making out a case to the effect that the demised premises have become unsafe or unfit for human habitation, he is entitled as of right to obtain an order for eviction of the tenant even if it would be possible to make the building fit or habitable by carrying out extensive repairs therein. But, as already stated, each case must in the nature of things depend on its own facts.

(11) None of the cases cited by Mr. Roop Chand lays down the proposition of law for which he is canvassing. No case has been cited before us where it might have been laid down that the entire demised premises must be proved to have become unsafe or unfit for human habitation before the order for eviction can be passed under the relevent clause. A finding of fact has been recorded in the present case by the Appellate Authority to the effect that at least a portion of the premises in dispute had in fact become unfit and unsafe for human habitation. The mere fact that the unsafe and unfit portion has been demolished or removed would not, in our opinion, take the case out of the mischief of sub-clause (iii) of clause (a) of sub-section (3) of section 13 of the Act. A shop of the type with which we are concerned, of which a part has been demolished including a part of its roof, cannot in any sense be said to be fit for human habitation. The expressions "unsafe" and "unfit for human

habitation" in section 13(3) (a) (iii) are separated by the word "or" and not "and". It is, therefore, obvious that eviction under the relevant clause can be ordered where either of the two ingredients of the clause is proved, that is, where either it is proved that the premises have become unsafe or (even if it is proved that they are not unsafe) if it is proved that they have become unfit for human habitation. Even if it could be said that the remaining premises are by themselves no more unsafe for human habitation, a situation emphatically denied by the landlord, it is clear that they have become unfit for human habitation before demolition of a portion of its frontage and roof, and mere demolition of the imminently dangerous portion has not made the shop either safe or fit for habitation.

(12) In *Shrimati Shakuntla Devi* v. *Daulat Ram,* (8), Dua, J., held, *inter alia,* that one of the aspects which deserves to be fully kept in view when the question of a building being unsafe or unfit for human habitation is examined, is that apart from the danger to those who use the building, it must be remembered that to postpone its reconstruction or effective repairs is likely to cost more in terms of money to the owner. It was further observed in that case that merely because a building may not be so imminently dangerous as to be likely to fall down within a few weeks or months, it should not induce the Court to hold that it can by no means be considered to be a building which is unfit or unsafe for human habitation. Mr. Sarin then referred to the judgement of I. D. Dua, J. in *Shri Madan Lal Kapur and others* v. *Shri Nand Singh* (9). The learned Judge while dealing with this precise clause in the Act held in that case as follows :—

> "In my opinion, section 13(3) (a) (iii) providing for an order of ejectment in case where a building has become unsafe or unfit for human habitation has been inspired in part at least by the same sense of public good which has necessitated various provisions of law for the purpose of giving protection to the citizens against unhygienic and dangerous abodes of residence. It is unnecessary to mention the various statutory provisions extending such protection to the citizens even against their own

(8) 1967 P.L.R. 251.

(9) 1966 Curr. L.J. (Pb.) 772.

ill-advised or dangerous acts both of commission and omission. Whether a building is unsafe or unfit for human habitation is obviously a question of fact and indeed in the present case it is not disputed that a part of the building in question is unsafe for human habitation. The argument that only those rooms which are unsafe or unfit for human habitation may be got vacated and the landlord be asked to carry out the necessary repairs so as to make them safe and fit for human habitation, leaving the rest of the building with the tenant, seems to be wholly unacceptable on the language and scheme of the statute and on the general principles. Plain reading of the provision in question does not support this argument and then there may be several practical difficulties in adopting this construction an enquiry on which it is not necessary on the present occasion to enter. The tenant is after all only protected to retain his tenancy against *mala fide* devices of the landlord in pretending to utilise the provisions of the statute in cases which are otherwise not covered by those provisions. In case a landlord uses the premises in question for a purpose which is hit by provisions of this Act, then the tenant has ample remedies provided by the statute itself to enforce his right. but this Court cannot impose terms on the landlord as to how, when and in what manner he should repair or reconstruct his property because this is a factor which depends on various aspects which the landlord alone can take into account and decide. It must never be forgotten that the ownership of the property vests in the landlord and the relationship between him and his tenant for the purpose of ejectment is governed by the statute and this Court cannot travel outside the statute for imposing any such terms."

We agree with that view. We are also in respectful agreement with the view expressed by a Full Bench of the Delhi High Court in *Sant Ram* v. *Mekhu Lal & Co.*, (10) to the effect that it is not necessary for a landlord, when applying for being put in possession of his building under section 13(3) (a) (iii) of the Act to plead and establish that he requires the same in order to carry out any

(10) A.I.R. 1968 Delhi 299.

building work, and that it is enough to justify an order of eviction under that clause if it is proved that the building has become unsafe or unfit for human habitation.

(13) Mr. Harbans Lal Sarin, the learned counsel for the landlord, referred to the judgement of the Supreme Court in *Neta Ram and others* v. *Jiwan Lal and another,* (11), which related to section 13(3) (a) (iii) and (b) of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, a clause which entitles a landlord to obtain an order for eviction of a tenant on the ground of *bona fide* requirement for reconstruction, and argued that the right conferred on the tenant under sub-section (4) of section 13 of the Act to apply to the Controller for an order directing the landlord to restore the possession of the building to the tenant in case the landlord puts the building to any use, or lets it out to any tenant other than the tenant evicted from it after reconstruction, are sufficient safe guards for the tenant's interest. Besides referring to the statutory guarantee contained in section 13(4) of the Act Mr. Sarin also assured us that if the tenant so desires, his client would give to the tenant a shop which is constructed at the place of the present one though a little smaller on the same rent as was being charged from the tenant for the premises in dispute immediately after the reconstruction of the building. The tenant would certainly be entitled to avail of this offer if he so desires.

(14) In view of what has been stated above, no fault can be found with the order passed by the Appellate Authority under section 13(3)(a) (iii) of the Act, directing the tenant to put the landlord in possession of the demised shop. We have, therefore no hesitation in affirming the appellate order, and while upholding the same we dismiss his petition for revision though without any order as to costs. The tenant shall not be evicted from the shop in dispute in execution of the order for eviction for a period of one month from today.

Mehar Singh, C.J.—I agree.

(11) A.I.R. 1963 S.C. 499.

R. N. M.