petitioner, in favour of Rattan Lal cannot, therefore, be taken as a good ground for ejectment of the former on the ground of subletting of the rented land and the observations made by Narula C.J. in *Banarsi Dass's case* (supra) are correct. We are unable to agree with this contention. The position of the tenant of a rented land would not undergo any change with the construction that may be made by him thereon. In the event of the building constructed on the rented land being let out, it cannot be said that the subletting of the land therein is not involved. The building constructed on the rented land cannot conceivably be let out without subletting the land thereunder. In this situation, with respect, we are unable to subscribe to the observations made by Narula, C.J., in *Banarsi Dass's case* (supra), which have been reproduced above. We, therefore, hold that the obervations made in *Banarsi Dass's* (supra) do not lay down a good law.

(5) The file of this case he laid before the learned Single Judge for disposal of Civil Revision No. 1873 of 1977.

Prem Chand Jain, J.—I agree.

H. S. B.

Before S. S. Sandhawalia C.J. and S. S. Kang, J.

NARINDER SINGH and another,—*Petitioners.*

versus

STATE OF HARYANA and others,—*Respondents.*

Criminal Miscellaneous No. 1251 *of* 1980.

September 24, 1980.

Code of Criminal Procedure (II of 1974)—*Section* 145(1)—*Existence of a dispute likely to cause breach of peace—Executive Magistrate recording a preliminary order under section* 145 *in regard thereto—Omission to record the grounds of his satisfaction—Whether vitiates the whole proceedings.*

Held, that though compliance with the provisions of section 145(1) of the Code of Criminal Procedure 1973 is desirable, yet a failure to do so is not a defect of jurisdiction which is either incurable or one which would vitiate the whole proceedings. Unless grave prejudice can be shown by the aggrieved party, the proceedings

would not be vitiated by a mere defect in the form of preliminary order under section 145 (1) of the Code. (Paras 3 and 7).

Sri Ram and others vs. *State and others, A.I.R.* 1958 *Punjab* 47. *Neti etc.* vs. *State of Haryana,* 1976 *Current Law Journal (Crl.)* 97. OVERRULED.

Petition under section 482 *of the Criminal Procedure Code, praying that the impugned orders dated* 26*th December,* 1979 *may be set aside.*

It is further prayed that during the pendency of the petition further proceedings pending before the learned Executive Magistrate be set aside.

Cr. Misc. No. 1251 *of* 1980.

Petition under section 482 *of the Criminal Procedure Code praying that during the pendency of the petition the filing of the certified copy of the above order be dispensed with.*

C. B. Kaushik, Advocate, *for the Petitioner.*

Bhoop Singh, Additional A. G. Haryana, *for the State.*

C. B. Goel, Advocate, *for respondent No.* 3.

S. S. Sandhawalia, C.J.

1. Whether the mere omission to record the satisfaction and the grounds of his being so satisfied, by an Executive Magistrate with regard to the existence of the dispute likely to cause a breach of peace in the preliminary order under section 145 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') would vitiate the whole proceedings is the significant question which has been re-agitated in this reference.

2. In a question so pristinely legal, the facts pale into relative insignificance. It suffices to mention that on the materials placed before him, the Executive Magistrate, Kaithal, recorded the following preliminary order under section 145 (1) of the Code :—

> "The file was presented before me today. The police report was examined. Notice to the parties be issued for 16th

January, 1980 according to law. The parties should be present in court on that date and the written statement as well as other documentary evidence be produced."

The aforesaid order stands challenged by the petitioners primarily because the satisfaction of the Executive Magistrate and the express grounds therefor have not in terms been incorporated in the order aforesaid. The matter, in the first instance, came up before K. S. Tiwana, J., who has referred the matter for an authoritative decision in view of a conflict of precedents noticed in his order of reference.

3. That there is a plethora of precedent on the point before us appears to be indisputable. Inevitably in the mass of judicial cases, divergent and discordant notes do appear. However, it appears to us that at least within this Court, the matter is so well covered by binding precedent that it would be wasteful and indeed an exercise in futility to launch on an examination on principle. An identical issue had arisen for determination in *Ajaib Singh and another* v. *Amar Singh and others,* (1). The impugned order of the Magistrate under Section 145(1) of the Code, in the said case, was in the following arms :—

"The calendar has been produced today. It should be registered. Notice should issue to the parties for 4th July, 1961, for filing their documentary evidence and affidavits and for producing persons on whose statements they rely."

Therein also the matter had come up before Khanna, J., sitting singly and noticing the conflict of authority, it was referred for decision by a larger Bench. The Division Bench then examined the matter both or principle and also after an exhaustive survey of precedent on the point. Upholding the impugned order of the Magistrate, H. R. Khanna, J. (with whom Gurdev Singh, J., concerned) concluded as follows :—

"I would, therefore, hold that the omission of the Magistrate to pass an order in accordance with sub-section (1) of Section 145 of the Code is an irregularity which can be cured under section 537 of the Code unless it can be shown

(1) I.L.R. 1964 (1) Pb. & Hy 1.

that it has caused prejudice to any party, of which there is no proof in the present case .....".

I am in respectful agreement with the aforesaid view and it would suffice to say that one can hardly add usefully to the lucid exposition of the law in the illuminating judgment of the Division Bench recorded by H. R. Khanna, J. With respect I am unable to agree with the vague doubt expressed by the learned referring Judge that the concurring remarks of Gurdev Singh, J., in *Ajaib Singh and another's case* (supra) in any way diverge from the view expressed in the main judgment. Gurdev Singh, J., had expressly spelled out his agreement and his observations have been made to emphasise that though compliance with the provisions of section 145(1) of the Code is desirable yet a failure to do so, is not a defect of jurisdiction which is either incurable or one which would vitiate the whole proceedings. I am unable to read any hint of dissent in what is expressly a concurring judgment.

4. It may then be highlighted that the learned counsel for the petitioner did not and in fact could not offer any meaningful criticism to the judgment in *Ajaib Singh and another's case* (supra). The correctness of the view there was not seriously assailed. However, the matter no longer rests at that because it appears to us that the seal of the approval of this view has now been set by the final Court itself. In *R. H. Bhutani* v. *Miss Mani J. Desai & Ors.* (2), a similar challenge to the preliminary order, under section 145(1) of the Code, of the Magistrate was made. The Magistrate therein had not recorded his satisfaction or reasons therefor in the order. The High Court set aside the order. On appeal, their Lordships reversed the High Court with the following observations :—

"The satisfaction under sub-section (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous

(2) 1968 (1) Cr. A.R. (S.C.) 223.

that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of material which has satisfied the Magistrate.

The question is whether the preliminary order passed by the Magistrate was in breach of section 145(1), that is, in the absence of either of the two conditions precedent. One of the grounds on which the High Court interfered was that the Magistrate failed to record in his preliminary order the reasons for his satisfaction. The section, no doubt, requires him to record reasons. The Magistrate has expressed his satisfaction on the basis of the facts set out in the application before him and after he had examined the appellant on oath. That means that those facts were *prima facie* sufficient and were the reasons leading to his satisfaction."

It appears to me that the aforesaid observation conclude the issue against the petitioner. If the omission of the grounds or the reasons for satisfaction is not an infirmity which would vitiate the proceedings, I am unable to see how a mere matter of form or absence of the use of the word 'satisfaction' would be at a higher pedestal. The requirement of the statute with regard to the stating of the grounds of the magistrate's satisfaction, is the substance of the matter and if failure to comply therewith is curable, then obviously a mere lack of form or the failure to use the word 'satisfaction' would be equally so.

5. Now adverting inevitably to precedent I would eschew reference to the innumerable judgments of other High Courts and confine myself primarily to the view within this Court. In *Faqir Chand* v. *Bhana Ram and others,* (3), which has been quoted in the order of reference, the core of the matter was whether the Magistrate was in error in declining to receive oral evidence before passing the order under section 145(1) of the Code of Criminal Procedure. It was held to be so and the order of the Magistrate was set aside on that ground with the direction that the petitioner therein may be

(3) 1957 P.L.R. 404.

enabled to place material on the record in support of his application under section 145, Criminal Procedure Code, before the Magistrate. Though there are observations in this judgment that the Magistrate must set out the grounds of his satisfaction in the preliminary order it has not been expressly held that a failure to do so would either vitiate the proceedings, or would bring in the stigma of the total lack of jurisdiction. This judgment is, therefore, in my view distinguishable. Similarly in *Gappu and others* v. *Surjan* (4), there occur observations to the effect that before passing preliminary order under section 145 (1) of the Code the Magistrate must give a clear finding that there was a likelihood of the breach of peace and the reasons therefor. What deserves notice herein also is that it has not been held that a failure to do so would necessarily vitiate the proceedings. This judgment also can, therefore, be clearly distinguished.

6. However, in *Sri Ram and others* vs. The *State and others* (5) Tek Chand J., took the view that the requirements of recording satisfaction and also the grounds therefor were so mandatory in character that an omission to observe the same would vitiate the entire proceedings. Reliance was primarily placed on judgments of other High Courts as also some of the earlier judgments of the Lahore High Court whilst dissenting with the view of Din Mohammad J., in *Rattan* v. *Tika* (6), as also the authorities mentioned therein. Some of these authorities relied upon were expressly noticed by the Division Bench in *Ajaib Singh and another's case* (supra). Even though *Sri Ram and other's case* was not specifically noticed by the Division Bench its ratio is now in direct conflict therewith as also with the view of their Lordships in *R. H. Bhutani's case* (supra). In view of this it can no longer be held as good law and is hereby overruled. Again in *Neti etc.* v. *State of Haryana etc.* (7), the learned Single Judge took a similar view. It appears that the counsel were sorely remiss is not bringing to the learned Single Judge's notice the judgment in *Ajaib Singh and another's case* (supra) as also *R. H. Bhutani's case* (supra). In view

(4) 1970 P.L.R. 118.
(5) A.I.R. 1958 Pb. 47.
(6) A.I.R. 1939 Lah 233.
(7) 1976 Curr. Law Journal (Crl.) 97.

of the aforesaid judgments, *Neti's case* (supra) also can no longer hold the field and is therefore, overruled.

7. In the light of the aforesaid discussion, the answer to the question posed at the outset is returned in the negative. Unless grave prejudice can be shown by the aggrieved party, the proceedings would not be vitiated by a mere defect in the form of the preliminary order under action 145(1) of the Code.

8. Applying the aforesaid principle, the impugned order of the Executive Magistrate in the present case and the proceedings consequent thereto are unassailable. It may be mentioned that even an attempt was not made by the learned counsel for the petitioner to show any prejudice far from establishing it.

9. The revision petition is without merit and has to be dismissed.

N. K. S.

Before J. V. Gupta, J.

JANAK KUNDRA,—*Petitioner.*

versus

CENTRAL BOARD OF WORKERS EDUCATION,—*Respondent.*

Civil Revision No. 1284 *of* 1979

September 30, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(d) & (g), 11 and 13(3) (a) (i)—'Residential building' used as an office from the very begining of the tenancy—Such building—Whether becomes a 'non-residential building'—Conversion of residential building into non-residential—Whether permissible without the order of the Rent Controller.

Held, that every activity other than residential activity cannot be said to be an activity of business or trade for the purposes of East Punjab Urban Rent Restriction Act, 1949. Simply because the tenant is using the premises as an office from the very beginning does not make it a non-residential building as it cannot be said that it is either a commercial activity or is being used solely for business or