Writ No. 4087 of 1977, annexure P.1, is that an assessee was entitled to examine his selling dealers (commission agents) to establish that the acquisition of goods by the asesee from the said dealer was as a result of transfer under a contract of agency or that it is necessary for the assessing authority even to examine such a claim, if put forward by the assessee, then, with respect, the Division Bench does not lay down the correct law and to that extent is overruled.

(21) For the reasons aforementioned, we find no merit in the writ petition and dismiss the same with Rs. 1,000 by way of costs.

Prem Chand Jain, C.J.—I agree.

I. S. Tiwana, J—I agree.

N. K. S.

FULL BENCH

Before D. S. Tewatia, J. V. Gupta and I. S. Tiwana, JJ.

HARI MITTAL, ADVOCATE,—Petitioner.

veusus

B. M. SIKKA,—*Respondent.*

Civil Revision No. 1108 of 1983.

December 2, 1985.

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 11 & 13—*Residential building let out for non-residential purposes without the permission in writing of the Rent Controller—Landlord —Whether could seek ejectment of the tenant on the ground of his* bona fide *personal requirement—Provisions of section* 11—*Whether mandatory—Prohibition contained therein—Whether applicable to the landlord also.*

Held, that a residential building let out for non-residential purpose by the landlord without obtaining the written permission of the Rent Controller in terms of section 11 of the East Punjab Urban Rent Restriction Act, 1949 would continue to be residential building and the landlord would be entitled to seek ejectment of the tenant on the ground of his *bona-fide* personal requirement.

(Para 29)

Held, that the Punjab Legislature intended to serve a purpose by inserting the provisions of section 11 of the Act so far as the use of the residential building for non-residential purpose is concerned. The injunction was intended to subserve a public policy of seeing that the residential accommodation does not fall short of the community's requirement as the shortage of residential accommodation would tend to result in unhygienic condition of the residential areas by accommodating more members than it could legitimately be intended or the extra population resorting to unhygienic of the open spaces and pavements and creating social tension and health hazards to the community. In view of this, the provisions of section 11 of by Act are mandatory in character.

(Para 17)

Held, that if the provision of section 11 of the Act was merely intended to prohibit only the persons other than the landlord from converting a residential building into a non-residential building without the permission in writing of the Rent Controller, then the Legislature would not have used the expression 'no person.........,' which is of the widest import and would leave no person out of the purview of the said provision who happens to be in control or possession or occupation of the residential premises. The injunction envisaged in section 11 of the Act is not limited to a tenant of the building, for the expression used is 'No person............'. That person may be a tenant of the building, a licensee a mortgagee, a trespasser, or the landlord himself. That the Legislature must have intended the injunction contained in section 11 of the Act to be applicable even to the landlord becomes clear when regard is had to the public policy that the said provision was intended to serve.

(Para 22)

Chattar Sain *vs.* Jamboo Pershad, 1965, Current Law Journal 143.

Faquir Chand *vs.* Ram Kali, A.I.R. 1983 Pb. & Hry. 167.

M. P. Bansal *vs.* District Employment Officer, A.I.R. 1985 Pb. & Hry. 251.

Rattan Lal *vs.* Laxmi Devi, 1971 P.L.R. 86.

OVER RULED

K. R. Padmawati Ammol *vs.* E. R. Manickan, 1981 (2) R.C.J. 617.

DISSENTED FROM

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice D. S. Tewatia and the Hon'ble Mr. Justice S. P. Goyal to a

larger Bench on April 11, 1985 for the decision of an important question of law involved in this case. The larger Bench consisting of the Hon'ble Mr. Justice D. S. Tewatia, the Hon'ble Mr. Justice J. V. Gupta and the Hon'ble Mr. Justice I. S. Tiwana, decided the important question on December 2, 1985 and remitted back the case to be disposed of on merits by the appropriate Benches in the light of the law laid down by the Full Bench.

PETITION UNDER SECTION 15 of the East Punjab Urban Rent Restriction Act for the revision of the order of the Court of Shri A. S. Garg, Appellate Authority, Chandigarh dated 4th April, 1983 affirming that of Shri K. S. Bhullar, P.C.S., Rent Controller, Chandigarh, dated the 14th December, 1982, ordering the ejectment of the respondent from the demised premises with costs. The respondent will vacate the premises and hand over vacant possession thereof to the petitioner. The tenant is granted three months time to vacate the premises from today, i.e., 4th April, 1983.

K. P. Bhandari, Senior Advocate, (Parmodh Mittal and S. P. Jain and Ravi Kapur, Advocates, with him.)

J. N. Kaushal, Senior Advocate, (V. K. Sharma, Advocate with him.)

JUDGMENT

D. S. Tewatia, J.

(1) Doubt as to the correctness of law laid down by the Division Bench in *M. P. Bansal* v. *District Employment Officer* (1), entertained by a Division Bench, led to the reference to Full Bench of three Civil Revision Petitions, namely, No. 1108 of 1983 at the instance of the Division Bench itself and Nos. 2202 of 1982 and 3063 of 1984 by J. V. Gupta, J., in the wake of the said earlier reference order by the Division Bench.

(2) Before the examination of the relevant legal queries that arise in regard to the law laid down in *Bansal's* case ,a brief resume of the facts of the three revision petitions would help in viewing the said legal queries in proper perspective.

(3) In Civil Revision No. 1108 of 1983 ,Shri Hari Mittal, Advocate, tenant-petitioner, had taken on rent House No. 1278, Sector 18-C, Chandigarh, on 21st November, 1969, at a time when he was employed as a District Attorney on deputation with the Union Territory,

Chandigarh Administration, from his landlord Shri B. M. Sikka, who too at that time was a Government employee. Shri Sikka was to retire from service on 31st March, 1980. He sought eviction of the said tenant, *interalia,* on the ground that the house was given for residence and the tenant had changed the user thereof by using it partly for his business as an advocate and that the landlord was retiring from service and wanted to settle down in Chandigarh and needed the house for his own *bona fide* use and occupation. The tenant, *interalia,* took up the stand that the East Punjab Urban Rent Restriction Act, 1949, was made applicable to the Union Territory of Chandigarh with effect from 4th November, 1972, and since the tenanted premises had been used partly for the professional business of the advocate and residence before that date, therefore, the ground of change of user for the purpose of eviction was not available to the landlord and further the tenanted premises being used partly for residence and partly for the business of the tenant-advocate, the building had acquired the character of a scheduled building and, therefore, the tenant could not be ejected on the ground of personal necessity of the landlord as well.

(4) On the strength of *Bansal's case* (supra) it is argued on behalf of the tenant before the Bench inter-alia that although the tenant at the time when the house was given for rent was a District Attorney, but since a District Attorney too had to maintain an office in the house, so it would have to be assumed that the premises had been given to him partly for non-residential purposes and, therefore, there was neither a change of user nor the tenant was liable to be evicted on the ground of personal necessity.

(5) The facts of Civil Revision No. 2202 of 1982 were that House No. 149-R, Model Town, Panipat, was taken on rent by Labh Singh, tenant-respondent, from landlord-petitioner Sant Parkash Singh for commercial purposes. The landlord had sought ejectment of the tenant, *interalia,* on the ground of his personal necessity, that is, for his *bona fide* use and occupation.

(6) Both the Courts below had found that the residential building in dispute was let out by the landlord for commercial purposes and, therefore, the said premises could not be held to be residential building and the landlord could not get it vacated on the ground of *bona fide* personal necessity.

(7) In Civil Revision No. 3063 of 1984, the facts were that the landlord had let out one room of his residential building to the

tenant. He claimed back its possession from the tenant on the ground of his *bona fide* personal requirement and also on the ground of change of user, as the room was allegedly given for residential purposes and the same was being used as a godown without his consent. The Rent Controller held that the ground of change of user was not available to the landlord, as the given room was from the very inception given to the tenant for using it as a godown. In appeal, the finding of the Rent Controller that the room was given for using as a godown from the very inception was not challenged. In the High Court, the tenant took the plea, *interalia,* that the given portion of the residential building having been let out for non-residential purposes, the same could not be got vacated on the ground of personal necessity of the landlord.

(8) This revision petition came up for hearing before J. V. Gupta, J., who, in view of the fact that an earlier decision of his in *Kamal Arora* v. *Amar Singh* (2), (in which his answer to the question involved was in the affirmative, that is, in favour of the landlord) had since been upheld by their Lordships of the Supreme Court,—*vide* their judgment dated 9th February, 1984, rendered in Civil Appeal No. 934 of 1980 and the further fact that *Kamal Arora's case* (supra), alongwith *Janak Kundra* v. *Central Board of Workers Education* (3), had been overruled by the Division Bench in *Bansal's case* (supra)—(correctness of which decision is under consideration before us)—referred the following question for consideration of the larger Bench.

> "Whether a landlord is entitled to seek the ejectment of a tenant on the ground of his *bona fide* requirement for his own use and occupation from building which is held to be residential building to all intents and purposes, but which was let out for business or trade?"

It is thus that the aforesaid three revision petitions are before us.

(9) Now the stage is set to take brief notice of the facts of *Bansal's case* (supra) and the proposition of law that emerged for consideration in that case as also the answer in the said case of the Bench to such legal questions. In that case, residential premises as in dispute were let out for the office of the District Employment Officer.

(2) 1980 (1) R.C.R. 530.
(3) (1981) 2 I.L.R. Pb. & Hary. 90.

The landlord sought ejectment of the tenant on the ground of personal requirement. The Rent Controller upheld the plea of the landlord and ordered ejectment. This order was, however, upset by the appellate authority, as the plea of personal necessity was negatived by it. The landlord took the matter to the High Court. In that case two legal points arose from the pleas of the tenant and the landlord for consideration:

"(1) Whether a building which is constructed or used as residential, on being rented either in whole or in part will remain residential or not if let out for non-residential purpose in the wake of section 11 of the Act? (The East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as the Act); and

(2) Whether the running of the office of District Employment Officer is a business or trade in terms of section 2(d) of the Act?"

On behalf of the landlord, reliance before the said Division Bench was placed on *Tara Chand* v. *Shri Sahi Bhushan Gupta* (4), *Jagan Nath* v. *Sangrur Central Co-operative Bank, Ltd.* (5), whereas on behalf of the tenant reliance was placed on *Rattan Lal* v. *Mst. Laxmi Devi* (6), *Chattar Singh* v. *M/s. Jamboo Parshad* (7), *and Faqir Chand* v. *Smt. Ram Kali* (8).

(10) At this stage, relevant provisions of section 2(a), (g) and (h) defining the 'building', 'residential building' and 'scheduled building respectively and of section 11 of the Act deserve to be reproduced for facility of reference:

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) 'building' means any building or part of a building let for any purpose whether being actually used for the

(4) 1980 (1) R.C.R. 718.
(5) 1980 (2) R.C.J. 672 (Pb. & Hary).
(6) 1971 P.L.R. 86.
(7) 1965 Cur. L.J. (Pb.) 143.
(8) 1982 (2) R.C.R. 404=A.I.R. 1983 Pb. & Hary. 167.

purpose or not, including any land, godowns, out-houses or furniture let therewith, but does not include a room in a hotel, hostel or boarding house;

* o ** * *

(g) 'residential building' means any building which is not a non-residential building;

(h) 'Scheduled building' means a residential building which is being used by a perscon engaged in one or more of the professions specified in the Schedule of this Act, partly for his business and partly for his residence;

* o ** * *

11. No person shall convert a residential building into a non-residential building except with the permission in writing of the Conlroller."

Mr. Jagan Nath Kaushal, counsel for the respondent in Civil Revision No. 1108 of 1983, who primarily argued before us the landlord's side of the case, convassed on the strength of the decisions rendered in *Janak Kundra's case* (supra); *Faquir Chand* v. *Shri Ram Rattan Bhanot* (9), and *Buschinq Schmitz Private Ltd.* v. *P. T. Menghani and another* (10), that a residential building, if rented out for non-residential purposes without obtaining the permission of the Rent Controller in terms of section 11 of the Act, does not acquire the character of a non-residential building and continues to be a residential building, which could be got vacated by the landlord, *interalia*, for his own occupation in terms of section 13(3) (a) (i) (a), whereas Mr. K. P. Bhandari, who primarily argued tenant's side of the case, besides heavily placing reliance on *Bansal's case* (supra), additionally relied on *K. R. Padmavathy Ammal (died and others* v. *E. R. Manickam*, (11), a Madras High Court decision; *Shankerlal Gupta* v. *Jagdishwar Rao;* (12), *Dr. Gopal Dass Verma* v. Dr. *S. K. Bhardwaj and another* (13), and *Murlidhar Agarwal and another* v. *State of Uttar Pradesh and others* (14).

(9) 1973 R.C.R. 221 (S.C.).
(10) A.I.R. 1977 S.C. 1569.
(11) 1981 (2) R.C.J. 617.
(12) 1980 (1) R.C.J. 618.
(13) A.I.R. 1963 S.C. 337.
(14) A.I.R. 1974 S.C. 1924.

(11) So far as this Court is concerned, the question as to whether a residential building rented out for non-residential purpose without obtaining the permission of the Rent Controller in terms of section 11 of the Act acquires the character of non-residential building or continues to remain a residential building, stands concluded in favour of the landlords by the discision of their Lordships of the Supreme Court in *Kamal Arora* v. *Amar Singh and others* (15), rendered in Civil Appeal No. 934 of 1980 which was directed against the Singh Bench judgement of this Court in *Kamal Arora* v. *Amar Singh,* (2 supra).

(12) The contention advanced in *Kamal Arora's case* before their Lordships was that the "......the definition of 'non-residential building' as set out in section 2(d) of the Rent Act clearly shows that a 'non-residential building' is one which is used solely for the purpose of business or trade provided that residence in a building only for the purpose of guarding it shall not be deemed to convert 'non-residential building' to a 'residential building' .... that landlord knowing full well that the premises in question is to be used for non-residential purpose, let out the same and therefore he is estopped from seeking possession on the ground of *bona fide* personal requirement for residence."

The premises let out was for the purpose of running a school. Their Lordships after referring to this Court's observation repelled the contention and sustained the judgment under challenge with the following observations:

> "The High Court after examining the provisions of the Capital of Punjab (Development and Regulation) Act 1951 read with Section 11 of the Rent held that statute prohibits conversion of residential building into non-residential by act inter vivos. It was said that the landlord and the tenant by their mutual consent cannot convert a residential building into a non-residential building because that would be violative of the provision of section 11. And it is admitted that building is situated in a sector falling within the residential zone. In this factual situation, coupled with the fact that the landlord has retired from service and genuinely needs the premises for his residence as found by all courts, we are not inclined to interfere with the judgment and order of the High Court."

(15) 1985 (1) R.L.R. 643.

We would, nevertheless, examine the correctness of the contention advanced by either side on merit with reference to other decided cases relied upon by the parties.

(13) *Busching Schmitz Private Ltd.'s*H *case* (supra) was a case in which the landlord had let out the premises to the tenant admittedly for commercial purposes. The landlord, a Government servant applied for ejectment of the tenant in view of the provisions of sectton 14-A of the Delhi Rent Control Act, 1958, hereinafter referred to as the Delhi Rent Act. On behalf of the tenant it was canvassed that the building having been let out for non-residential purpose, the same acquired the character of a non-residential building and, therefore, the same could not be got vacated by the landlord. The said contention was repelled and it was observed that if such a contention was allowed to prevail, then provisions of section 14-A of the Delhi Rent Act would be put to a naught and frustrated by the Government employee-landlord by renting out their residential premises for non-residential purpose.

(14) The ratio of this decision is not attracted to the present case as the decision in this case turned on the interpretation of section 14-A of the Delhi Rent Act.

(15) In *Faquir Chand* v. *Shri Ram Rattan Sharma's case* (supra), the facts were that the houses were built on lands given on long lease by the Delhi Improvement Trust to the rights, liabilities and assets of which the Delhi Development Authority had since succeeded. Under the terms of the lease, the lessees (the landlords of the houses) were to put up residential buildings on the leased land on the following conditions:

> "not to use the said land and buildings that may be erected thereon during the said terms for any other purpose than for the purpose of residential house without the consent in writing of the said lessor (Delhi Development Authority), provided that the lease shall become void if the land is used for any purpose than that for which the lease is granted not being a purpose subsequently approved by the lessor (again the Delhi Development Authority)."

The landlord, though had constructed residential buildings on the land, but they rented out the same for non-residential purpose. On coming to know that the land-owners of the said buildings had

rented out the same for non-residential purpose, that is, for running a barber's shop and a scooter repair shop, the Delhi Development Authority gave notice to them drawing their attention to the condition of the lease extracted above and the fact that they had permitted the buildings to be used for commercial purposes contrary to the terms of the lease deed and that the lease was thus liable to be determined and further called upon them to discontinue the use of the land for commercial purposes, failing which they were asked to show cause why their lease should not be determined and the land, together with the buildings thereon, re-entered upon without any compensation to them. After receiving this notice, the landlords issued notice to the tenants asking them to stop the commercial use of the buildings and when they failed to do so, the landlords initiated the proceedings for ejectment of the tenants. The question that arose for consideration was whether the landlords were estopped or otherwise prohibited from getting possession of the property from the tenants because they themselves had let it out for commercial purposes.

(16) At this stage, the relevant provisions of section 14(1)(c) and (k) of Delhi Rent Act are reproduced below to facilitate reference:

"14(1) Natwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any courts or controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, made an order for the recovery of possession of the premises on one or more of the following grounds, only, namely:—

* ° ** * *

(c) that the tenant has used the premises for a purpose other than that for which they were let—

(i) if the premises have been let on or before the 9th day of June, 1952, without obtaining the consent in writing of the landlord, or

(ii) if the premises have been let before the said date without obtaining his consent;

(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situated."

It was argued on bthalf of the tenants before their Lordships, while countering landlords effort to invoke clause (k) of section 14(1), that the said clause would be attracted only when the tenant had used the buildings for prohibited purpose after a previous notice from the landlord prohibiting them from using the rented premises for the prohibited purpose. But when both the landlord and the tenants were aware as to the use to which the building was rented out from the very inception, then there was no question of any notice from the landlord asking the tenant not to use the building for the given commercial purpose and that by merely issuing such notice, the landlord could not take advantage of clause (k).

Their Lordships repelled the aforesaid conteniton with the following observations:—

"If it is a case where the tenant has contrary to the terms of his tenancy used the building for a commercial purpose the landlord could take action under clause (c). He need not depend upon clause (k) at all. These two clauses are intended to meet different situations. There was no need for an additional provision in clause (k) to enable a landlord to get possession where the tenant has used the building for commercial purpose contrary to that terms of the tenancy. An intention to put in a useless provision in a statute cannot be imputed to the Legislature. Some meaning would have to be given to the provision. The only situation in which it can take effect is where the lease is for a commercial purpose agreed upon by both the landlord and the tenant but that is contrary to the terms of the lease of the land in favour of the landlord. This clause does not come into operation where there is no provision in the lease of the land in favour of the landlord, prohibiting its use for a commercial purpose...............

> The provision of clause (k) of the proviso to sub-section (1) of section 14 is something which has to be given effect to whatever the original contract between the landlord and the tenant.....................

Ratio of that case, in our opinion, is clearly applicable to the present case — the ratio of the decision being that if a residential building is prohibited to be used as non-residential building — in Delhi the injunction was contained in the lease deed executed between the Delhi Development Authority and the lessees requiring the lessees that they would construct only residential buildings on the leased land and further injuncting them that they would not use such buildings for non-residential purpose without the permission of the Delhi Development Authority and the prohibition was given statutory sanction by clause (k) above and in the case of the buildings covered by the East Punjab Urban Rent Restriction Act, such a prohibition is statutorily incorporated in the said Act by the provision of section 11 thereof.

(17) In our opinion the kind of purpose that clause (k) of section 14(1) of the Delhi Rent served, the same purpose appears to have been intended by the Punjab Legislature in the present case to be served by the provision of section 11 of the Act, so far as the use of the residential building for non-residential purpose is concerned. This injunction was intended to subserve a public policy of seeing that the residential accommodation does not fall short of the community's requirement, as the shortage of residential accommodation could tend to result in unhegienic conditions of the residential areas by accommodating more members than it could legitimately be intended or the extra population resorting to unhygenic use of the open spaces and pavements and creating social tension and health hazards to the community. In view of the above, the provisions of section 11 of the Act are mandatory in character.

(18) It was then argued that if section 11 of the Act was intended to subserve a public policy of the kind, then it would prohibit even a landlord from converting a self-occupied residential building into a self-occupied non-residential building, but this Court in two Division Bench decisions referred to by the Division Bench in *Bansal's case* (supra), that is *Chattar Sain's case* (supra) and *Faquir Chand's case* (supra), has taken the view that section 11 is not attracted to a residential building which is in the self-occupation of the landlord; hence the landlord could convert it into self-occupied

non-residential building without the permission of the Rent Controller in terms of section 11 of the Act.

(19) We are of the opinion, with respect, that *Chatar Sain's case* (supra) and *Faquir Chand* v. *Ram Kali's case* (supra) do not lay down the correct law and we, therefore, overrule them.

(20) The learned Judges, who decided those cases, reached that conclusion by assuming that the provisions of the Act including section 11 applied only to a building which is let out and not to a building which is not let out and is in the use and occupation of the landlord himself. Support for that assumption was sought from the definition of the expression 'building' as defined by clause (a) of section 2 of the Act.

(21) While considering the import of the various definitions given in section 2 of the Act, the Court is not to overlook the guiding warning contained in the opening words thereof, namely, '...... ....' unless there is anything repugnant in the subject or context'.

(22) If the provision of section 11 of the Act was merely intended to prohibit only the persons other than the landlord from converting a residential building into a non-residential building without the permission in writing of the Rent Controller, then the Legislature would not have used the expression 'No person..............', which is of the widest import and would leave no person out of the purview of the said provision who happens to be in control or possession or occupation of the residential premises. The injunction envisaged in section 11 of the Act, in our opinion, is not limited to a tenant of the building, for the expression used is 'No person.........' That person may be a tenant of the building, a licensee, a mortgagee, a trespasser, or the landlord himself. That the Legislature must have intended the injunction contained in section 11 of the Act to be applicable even to the landlords, becomes clear when regard is had to the public policy that the said provision was intended to serve.

(23) Now coming to the analysis of the precedents sited on behalf of the tenant. The primacy is to be accorded to Dr. Gopal Dass *Verma's case* (supra). That was a case in which residential premises were let out for the professional use of the tenant who was a doctor. The landlord sought eviction of the tenant on the ground

of personal necessity. Their Lordships examined the case of the landlord for eviction of the tenant on the ground of personal requirement in terms of section 13(1) (e) of the Delhi and Ajmer Rent Control Act, 1952 — alongwith its explanation — the explanation having provided that for the purpose of the said clause, 'residential premisses' include any premises which having been let out as a residential premises are, without the consent of the landlord used incidentally for commercial or other purpose. Their lordships were of the view that a residential building continues to be residential for the purpose of the said Act only if it is let out for residential purposes and the tenant had converted it to other uses or had put it up to a commercial or non-residential use but without the consent of the landlord. In other words, their Lordships held that if a residential building is either let out for a non-residential purpose or allowed to be so used, though initially let out for residential purpose, then such a residential building would no longer retain its character as residential building and, therefore, could not be got vacated by the landlord for his personal necessity.

(24) This view would hold good only where eviction had been sought under section 14(1)(c) or (c) of the Delhi Rent Act, but not if the eviction had been sought under section 14(1)(k) thereof. To the latter case, the ratio of *Dr. Gopal Dass Verma's case* (supra) would not be attracted. To such a case, the ratio of *Faquir Chand* v. *Shri Ram Rattan Bhanot's case* (supra) would be attracted. In this view of the matter, the ratio of *Dr. Gopal Dass Verma's case* (supra), would not be applicable even to a case to which the provisions of section 11 of the Act are attracted.

(25) In the *case of Murlidhar Agarwal and another* (supra), the facts were that the landlord rented out the residential premises to Messrs Pioneer Exhibitors and Distributors Limited who used the premises for exhibiting cinematorgraph films. That lease stood terminated by efflux of time on 30th June, 1952. The landlord, Shri Ram Swaroop Gupta, thereafter leased the premises by a deed dated 13th October, 1952, for a period of 10 years to one Ram Agyan Singh (respondent 2 before their Lordships), but there was no order allotting the said accommodation to him (to Ram Agyan Singh) under section 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, hereinafter referred to as the U.P. Rent Act. Ram Agyan Singh also used the premises for enhibiting cinematograph films. Murlidhar (appellant before their Lordships) purchased the premises in question from Ram Swaroop Gupta,—*vide* sale-deed dated 26th March, 1962. He thereafter, moved as application under section 7 of the U.P. Rent Act, read with rule 6 of the Rules made thereunder,

for release of the accommodation. The question that cropped up before their Lordships was as to whether the suit filed by the appellant-landlord for recovery of the possession of the premises, on the basis of the tenancy created by Ram Swaroop Gupta, the predecssor-in-interest of the appellant Murlidhar in favour of Ram Agyan Singh, had expired and, therefore, the appellants were entitled to recover possession of the same, was maintainable in law in view of the fact that it was instituted without obtaining the permission of the District Magistrate under section 3(1) of the said U.P. Rent Act. The matter reached the High Court which held that the suit was not maintainable in view of section 3 of the U.P. Rent Act and dismissed the suit. The material part of section 3(1) of the U.P. Rent Act is in the following terms—

> "3(1) Subject to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds ...."

Since the lease-deed in question was executed after the commencement of the U.P. Rent Act and the respondent-tenant had not obtained an allotment order under section 7(2) of the said Act in his favour from the District Magistrate, so it was contended on behalf of the landlord that the respondent was not a tenant within the meaning of that term in section 3, as the lease was created in violation of the provisions of section 7(2). Their Lordships approved the Full Bench decision of the Allahabad High Court in *Udhoo Dass* v. *Prem Parkash* (16), in which the Full Bench took the view that a lease made in violation of the provisions of section 7(2) of the said Act would be valid between the parties and would create the relationship of landlord and tenant between them, although it might not bind the authorities concerned and so their Lordships held the respondents to be tenants for the purpose of the protection of section 3, even though they were in occupation of the accommodation without an allotment order and held the suit for eviction liabile to be dismissed, as the same was instituted without the permission of the District Magistrate.

(26) Ratio of the abovesaid judgment *in Murlidhar Agarwal and another's case* (supra) is also not applicable to the present case. In that case, the primary question for consideration was as to whether a person, to whom the accommodation was leased out by the landlord on his own would or would not be considered a tenant, for the

(16) A.I.R. 1964 All. 1.

purpose of section 3 of the Act, which provision was held to be mandatory and was intended to advance and subserve a public policy. Their Lordships were of the view that the lessee would be considered a tenant so far as the landlord was concerned, although the lease deed would not be binding on the District Magistrate, as the said tenant did not held the accommodation under an order of allotment made by the District Magistrate, as envisaged by section 7(2) of the U.P. Rent Act. Provisions of section 7(2) of the said Act were intended to invest an authority in the District Magistrate to see that a deserving tetant gets the premises on lease if there were more than one applicants requiring accommodation of the premises which were available for leasing out. In other words, the said provisions put a restriction on the landlord's choice of a tenant, and were intended to serve the interest of a tenant having a better claim for accommodation of a given building than the other intending claimants.

(27) The *case of K. R. Padmavathy Ammal (died) and another* (supra), no doubt, is identical to the present cases insofar as the proposition of law under examination is concerned, in that the residential building was given by the landlord himself for non-residential use and section 21 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, hereinafter referred to as the Tamil Nadu Rent Act, which prohibits conversion of residential building into a non-residential building without the permission in writing of the Rent Controller, is *pari materia* with section 11 of the East Punjab Urban Rent Restriction Act, and the tenant in that case had contended that the landlady having given the residential building for non-residential purpose was estopped from evicting the tenant on the ground of personal necessity for residence, as the building as a result of its use as non-residential building no longer remained a residential building. The contention of the tenant prevailed with the learned Judge. The learnt Judge has based his decision on the ratio of the *cases of Dr. Gopal Dass Verma* and *Murlidhar Agarwal and another* (supra) and those two abovequoted authorities of the Supreme Court relied upon in that case have already been considered and distinguished. Hence, with great respect to the learned Judge in *K. R. Padmavathy Ammal (died)* and *another's case* (supra) we find ourselves unable to concur in the view taken in that case. We further hold that the decision in *Bansal's case* (supra) in regard to the first proposition and Single Bench's decision in *Rattan Lal's case* (supra) do not lay down the correct law, and to this extent, we overrule these two decisions as well.

(28) As far as the second proposition arising from *Bansal's case* (supra) is concerned, it may be observed that the said proposition does not arise for consideration from the reference order of J. V. Gupta, J., nor strictly does it arise from the reference order of the Division Bench, for such a question does not arise for consideration between the landlord and the tenant in the civil revision covered by the Division Bench's reference. As already noticed, the residential premises were rented out to Hari Mittal tenant, petitioner herein, in the year 1969 for his residence. He at that time happened to be in the Government employment of the Union Territory of Chandigarh as District Attorney. The residential premises were not let out to accommodate the District Attorney's office as such and so the question as to whether the residential building let out for the office of the District Attorney would or would not acquire the character of non-residential building by virtue of the definition of the expression 'non-residential building' is merely hypothetical. Hence any opinion given by us in regard to the correctness of the second proposition arising in *Bansal's case* (supra) would be *obitor dicta*. We, therefore, desist from expressing any opinion thereon in the present case. The correctness of the law laid down by *Bansal's case* (supra) in regard to the said proposition would be considered in some other appropriate case.

* o ** * *

(29) The reference made by the learned Single Judge is answered in the affirmative and it is held that a residential building let out for non-residential purpose by the landlord without obtaining the written permission of the Rent Controller in terms of section 11 of the Act would continue to be a residential building and the landlord would be entitled to seek ejectment of the tenant on the ground of his *bona fide* personal requirement.

(30) In the result, the revision petitions Nos. 2202 of 1982, 1108 of 1983 and 3063 of 1984 are remitted back to be disposed of on merits by the appropriate Benches in the light of the law laid down by the Full Bench herein. No costs.

N.K.S.

19885 HC—Govt. Press, U.T., Chd.