REVISIONAL CIVIL

Before Shamsher Bahadur and R. S. Narula, J.J.

DHAN DEVI AND ANOTHER,—*Petitioners*

versus

BAKHSHI RAM AND OTHERS,—*Respondents*

Civil Revision No. 120 of 1966

May 24, 1968

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(3)(a)(ii)—Application of the land-lord under—When can succeed—Proof of the user by the land-lord of the rented land itself—Whether necessary—Intention to use a major portion of the land for residence and small portion for office—Whether sufficient to obtain order for ejectment—Tenant building super-structures on the rented land—Such land—Whether ceases to be land—Section 15(5)—Petition for revision under—Scope for interference by High Court—New question of fact or a mixed question of law and fact—Whether can be raised for the first time in revision—Code of Civil Procedure (Act V of 1908)—Order 22—Provisions relating to abatement of actions—Whether applicable to petitions for Revision under Section 15(5) of the Rent Act—Order for eviction passed by Rent Controller and upheld by the appellate authority—Whether lapses because of the death of the land-lord—Right to evict a tenant from rented land—Whether a personal right of action—Heirs of a deceased land-lord—Whether entitled to continue the suit for ejectment on the ground on which it was instituted.

Held, that a land-lord can succeed in his application under section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction 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 has to be evicted for carrying on his own business or trade on the rented land itself. The land-lord 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. Similarly, a land-lord cannot obtain an order against tenant for possession of the rented land on the ground that he intends to use a major portion of the land for residence and only a small portion for his office.

(Para 31)

Held, that rented land given to a tenant does not cease to be such land so as to defeat claim of the land-lord under section 13(3)(a)(ii) of the Act merely because the tenant has, subsequent to the commencement of the tenancy, made some super-structres on the land for his own use. (Para 31)

Held, that the scope of a petition for revision under section 15(5) of the Act is much narrower than that of a first appeal under the Act and the power of interference by the Appellate Authority is much wider than the revisionary jurisdiction of the High Court.

(Para 31)

Held, that the High Court will not normally allow a new question of fact or even a mixed question of law and fact being raised by a party for the first time during the hearing of a petition for Revision under section 15(5) of the Act, particularly when the point has not been taken up even in the grounds for revision in the High Court. (Para 31)

Held, that provisions of Order 22 of the Code of Civil Procedure relating to abatement of actions on account of the death of a party do not apply to petitions of revision under section 15(5) of the Act, and the plea of an unsuccessful tenant revision-petitioner about the eviction proceedings having abated by the death, pending the revision, of the land-lord who had secured an order for eviction, cannot be entertained by the High Court in the course of the proceedings under section 15(5) of the Act. (Para 31)

Held, that an order for eviction passed by a Rent Controller and upheld by the appellate authority, does not lapse merely because of the death of the original land-lord (who initiated the action for eviction) pending a petition for revision filed by the tenant in the High Court. (Para 31)

Held, that the right to evict a tenant from rented land is not an *actio-personalis* right of action—which may come to an end with the death of the land-lord, who filed the application for eviction. In the absence of some exclusive personal ground on which eviction may be sought by a land-lord in a particular case, the benefits of which ground are not available in law and to his legal representatives because of some statutory bar, the heirs of a deceased land-lord are normally entitled to continue the suit for ejectment on the ground on which it was instituted, as his legal representatives, irrespective of the ground for eviction being contractual or statutory. Similarly, the legal representatives of a successful land-lord can support the order for eviction of the land-lord in a revision petition during the pendency of which the original land-lord dies. (Para 31)

The case was referred by the Hon'ble Mr. Justice J. N. Kaushal by order dated 20th December, 1966 to a larger Bench for decision of an important question of law.

Petition under section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 for revision of the order of Shri A. D. Koshal, District and Sessions Judge, Amritsar, dated 27th December, 1965 affirming that of Shri O. P. Aggarwal, Rent Controller, dated 28th May, 1965, passing on order of eviction.

H. L. Sarin, Senior Advocate with H. S. Awasthy, B. S. Malik and A. L. Bahl, Advocates for the Petitioners.

Bhagirath Dass with B. R. Jhingan and S. K. Hirajee, Advocates, for the Respondents.

JUDGMENT

NARULA, J.—Since two common questions of law arise in all these three petitions for revision under section 15(5) of the East Punjab Urban Rent Restriction Act (East Punjab Act No. III of 1949), hereinafter called "the Act", it would be convenient to dispose of all of them together by a common judgment. The first of the questions relates to the interpretation and scope of sub-paragraph (ii) of paragraph (a) of sub-section (3) of section 13 of the Act. The second question, which has been raised for the first time before us and in the nature of things could not have been raised any earlier, is as to the effect of the death of a successful landlord pending a revision petition against an order for ejectment passed in his favour on the ground of personal requirement.

(2) The three cases arise out of three separate applications for ejectment filed by Bakhshi Ram (original respondent in these petitions—since deceased—and now represented by his widow and adopted son, to whom I will refer in this judgment as the landlord) against his tenants in respect of three separate plots of land originally rented out to each of them for carrying on the business of the respective tenant. Though there are some points of difference relating to the dates of commencement of the respective tenancies and some such other minor matters, all those points of difference are wholly immaterial for our purposes and it would be enough to survey the facts of the first of the three cases, i.e., *Dhan Devi and another* v. *Bakhshi Ram,* Civil Revision No. 120 of 1966, for appreciating the circumstances in which the questions in dispute have arisen.

(3) The application for ejectment filed by the landlord in June, 1964 against Dhan Devi, widow of Ajaib Singh, the original tenant, was later amended in January, 1965 so as to add to the array of respondents the name of Jasbir Bedi, a daughter of Ajaib Singh, in order to meet an objection raised in that behalf. The only ground on which ejectment has ultimately been ordered in this case (as also in the connected case CR 121 of 1966) was pleaded in paragraph 2(ii) of the application for ejectment in the following words:—

> "That the petitioner wants the rented land for his own use and occupation as he has to put up a building over the same and carry on his office at Amritsar. The petitioner

is not in possession of any other rented land or any other non-residential premises in the urban area concerned nor has he vacated any. As such he requires the rented land in a *bona fide* manner for his own purpose."

The claim of the landlord was contested by the tenant on various grounds. From the pleadings of the parties the Rent Controller framed three issues, out of which we are concerned with issue No. 2 only, which was in the following terms:—

"Whether the applicant *bona fide* requires the rented land in dispute for his own use and occupation and complies with the other terms and conditions as laid down in section 13(3)(a)(ii) of the Punjab Act III of 1949?"

(4) Shri O. P. Aggarwal, Rent Controller, Amritsar, by his order dated May 28, 1965, held that the need of the landlord for the rented land in dispute was *bona fide* because conditions in Srinagar, where he was then carrying on his business, were disturbed and it was proved that he wanted to shift his business to Amritsar which was his original place of residence. Regarding the right of the landlord to use the rented land straightaway for business premises, after getting it vacated from the tenant, or his having the right of putting up a building on the same for commercial as well as residential purposes it was held by the Rent Controller that the landlord is "fully entitled to make such construction on the rented land to enable him to make proper use of the land for the purposes of carrying on his vocation there; that by putting up a suitable structure on the rented land, the rented land could not be said to have ceased to be required by the landlord for his own use". For this proposition reliance was placed by the Rent Controller on an unreported Judgment of Grover, J., in *S. Partap Singh and another* v. *Santokh Singh and another* (1), The unsuccessful tenant's appeal was dismissed by the order of Shri A. D. Koshal, District and Sessions Judge, Amritsar, dated December 27, 1965. On the main question, on account of which this reference has been made to a Division Bench, the learned District Judge held as follows:—

"Lastly it was contended for the appellants that the respondent could not be allowed to have the rented land for the purpose of putting up a building thereon. It is no

(1) C.R. 165 of 1960 decided on 7th April, 1961.

doubt true that the respondent has stated expressly that he would carry on his business and take up his residence in the land in dispute after *constructing a building on it.* I do not see, however, how the fact militates against his assertion that the land in dispute is required *'bona fide* for his own use'. If he cannot start his business and take up his residence in the said land without constructing a building thereon, he is fully entitled to construct the same and it cannot be said that by doing so the rented land would cease to be required by him for his own use."

(5) The tenant then invoked the revisional jurisdiction of this Court under sub-section (5) of section 15 of the Act. When this revision petition along with the connected case, Civil Revision No. 121 of 1966, came up before J. N. Kaushal, J., (as he then was) the only contention which was pressed by Mr. H. L. Sarin, the learned counsel for the tenants, was that "in the case of rented land (which is the property in dispute in this case) eviction can be sought for only on the ground that the landlord requires the rented land for his own use as rented land" and that "if the landlord wants to construct a building on the rented land and then carry on his business, it did not meet the requirement of law as laid down in section 13(3)(a)(ii) of Act 3 of 1949". The learned Judge observed in his order of reference dated December 20, 1966 that in asmuch as the point raised was of considerable importance and was likely to arise in a number of cases, it was only proper that these two revision petitions (Civil Revisions Nos. 120 and 121 of 1966) be decided authoritatively by a larger Bench. It is in pursuance of the above said order of Kaushal, J., that these two cases have been placed before us. When the third case, Civil Revision No. 144 of 1967—*Mehta Munshi Ram* v. *Bakhshi Ram* (where the landlord is the same)—came up before Mehar Singh, C.J., at the motion stage it was directed that it may be heard with Civil Revision No. 120 of 1966. That is how all these cases have been heard together by us.

In order to appreciate the second question raised by Mr. Sarin with our permission, only one additional fact has to be mentioned. This is, that after the order of reference by the learned Single Judge Bakhshi Ram landlord died on February 5, 1967 and on an application by the tenants the widow and adopted son of the landlord have been brought on the record of all these three cases as the legal representatives of the original landlord. The contention of

Mr. Sarin is that the ground of ejectment provided in section 13(3)(a)(ii) is personal to the landlord who applies for ejectment and dies with him and that this Court must take into consideration even at the revisional stage the subsequent event of the death of the landlord and proceed to allow these petitions and to dismiss the applications for ejectment on the short ground that the person who wanted to carry on his business in the rented land in question cannot possibly fulfil his object and what was the need of the deceased cannot *ipso facto* be the need of his legal representatives. In order to appreciate the arguments of the learned counsel on both the points referred to above, it is necessary to set out at this stage the relevant provisions of law contained in section 13(1) and section 13(3)(a)(ii) of the Act:—

"13. (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

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(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;"

It is also necessary to take notice of the statutory definition of "rented land" contained in section 2(f) of the Act:—

" 'rented land' means any land let separately for the purpose of being used principally for business or trade;"

(6) There is no disagreement between the learned counsel for the parties on the point that we cannot be called upon to reopen these cases on facts or to allow the petitioners to challenge any finding of fact recorded by the appellate rent control authority. We have, therefore, to decide the two questions of law raised before us on the basis of following findings of fact:—

(i) that Bakhshi Ram was the owner and landlord of the tenant;

(ii) that Shrimati Kamlavati and Vijay Kumar are the widow and adopted son, respectively of the original landlord and they are the legal representatives of Bakhshi Ram;

(iii) that Bakhshi Ram was carrying on business in Srinagar where conditions were disturbed and he *bona fide* required the rented land in dispute in each of these cases for carrying on his business at Amritsar after making a building on the land according to sanctioned plan, exhibit A. 1 (in the trial Court record of Civil Revision No. 144 of 1967);

(iv) that the landlord did not intend to carry on his business on the rented land as such after getting it vacated from the tenants but had to do so in a part of the building which he proposed to construct on the three plots in question, the rest of which building he was intending to use as his residence;

(v) that the landlord was not occupying in the urban area of Amritsar any other rented land for the purpose of his business; and

(vi) that the landlord had not vacated any such rented land within the urban area of Amritsar after the commencement of the Act.

(7) Mr. Sarin has drawn our attention to the statement of the landlord as A.W. 5, wherein he stated *inter alia*—

> "I want to construct a shop and some residential premises in these premises, * * * * *
>
> * * * * *
>
> I would use a portion of this vacant site for my business purposes and would use some portion for my residential purposes. Shri Munshi Ram Coal Depot-holder and Shri Gobind Ram are also tenants in the vacant plots of land. Keeping the frontage of the shop towards the road side I would use the entire vacant sites in occupation of the three tenants for business premises and residential portion. Shri Gobind Ram is a tenant in the portion which is towards the frontage of the road Thereafter Shri Munshi Ram is in occupation of the plot of land and last of all are the respondents. It is correct that on the three sides of the vacant site in dispute there are residential houses. There is a market at distance of only one house which intervenes in between the vacant site in dispute and the market. *
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> * * * * *
>
> * * * * *"

(8) Reference was then made to the deposition of Badri Nath, A.W. 1, but we have not been able to find anything in the statement of that witness which may be relevant for the purpose of deciding any of the points which have been canvassed before us.

(9) So far as the question of the affect of the death of the petitioning landlord is concerned, the arguments of Mr. Sarrin were based on the Roman Maxim *"actio personallis moritur cum persona"* —a personal right of action dies with the person. Counsel submitted that the main ingredient of the relevant exception contained in section 13(3)(a)(ii) to the blanket protection granted to tenants by sub-section (1) of section 13 of the Act is "requirement for his own use" of the landlord who "may apply to the Controller or an order directing the tenant to put the landlord in possession" and that the said requirement being personal to the landlord who applies to the Controller for an order of eviction, the cause of action for continuing such a personal action does not survive to the legal representatives of such a landlord. Reliance was placed on an unreported decision of

Bishan Narain J. (as he then was) in *Shri Som Nath and others* v. ***Sardar Harbans Singh*** (2). An order for ejectment had been passed by the Rent Controller in that case on the ground that the landlord *bona fide* required the premises for his personal occupation because he was suffering from a heart disease and wanted to move to Ludhiana City where the premises in dispute were situate and wanted to leave the village where he was then residing. An additional ground on which eviction was allowed by the Rent Controller was that there was no college near the village in which he was living, and he wanted his son and daughter to be educated in a college at Ludhiana. During the pendency of the tenant's appeal against the order of eviction the landlord died. His son and other representatives were brought on the record of the appeal. The appeal was accepted by the District Judge and the application filed by the original landlord was dismissed on the ground that it had abated by the death of the landlord and the right to sue had not survived to his heirs. In a revision petition filed by the legal respresentatives of the original landlord, Bishan Narain, J., held that the only question that arose in case was—

> "Whether or not the right to sue had survived to the heirs of Shadi Ram (the original landlord) on the latter's death ?"

The point was then disposed of with the following observations—

> "It appears to me that the right mentioned in section 13(3) (a) is a personal right given to a landlord, because the words 'his own occupation' indicate that the premises are required for his personal occupation. If the premises are required for the occupation of the landlord's heirs or a particular heir, then a suit may survive. It is always a question of fact whether the right to sue in a given case survives to the heirs or not. This depends on the consideration as to whether the relief sought can be availed by the legal representatives. In the present case, the nature of the ground on which eviction was required by the landlord was that he was suffering from heart disease and wanted to live in Ludhiana. Obviously, this ground is not available to his son or to his other heirs. The other ground was that he wanted to educate his son and daughter in Ludhiana. This ground is also

(2) C.R. 333 of 1959 decided on 30th December, 1960.

a personal one. A grand-father may require his grand-children to be educated in Ludhiana, but it would not necessarily follow that these children of the father have also to move for that, particularly when the father is carrying on a cloth shop in Sirhind. It is not open to the legal representatives to take up a ground for eviction of the tenant which had not been taken by their predecessor-in-interest, and, therefore it is not open to Som Nath, son of Shadi Ram to take up a ground which his father had not taken up. In my opinion,, the grounds on which Shadi Ram sought eviction of the tenant in the present case did not survive on his death. It was, therefore, rightly held by the learned District Judge that the appeal had abated."

(10) On the analogy of the judgment of Bishan Narain, J., in *Som Nath's case Mr.* Sarin wants us to hold that it was the personal requirement of Bakhshi Ram to shift his business from Srinagar to Amritsar and it does not follow *a fortiori* that his legal representatives must also necessarily require to shift their ancestral business from Srinagar to Amritsar. On the other hand, Shri Bhagirath Dass, Learned counsel for the landlord, contended that the judgement of Bishan Narain, J. is contrary to law and we should so hold. He referred to the judgment of Gangeshwar Prasad, J. in *Noor Mohammad* v. *Prem Pal Mital and others* (3), wherein it was held that the heirs of a deceased landlord are entitled to continue the suit for ejectment as his legal representatives irrespective of the grounds—personal or otherwise—on which the permission had been granted. The learned Judge held that eviction of the tenant by the landlord after obtaining the necessary permission is the enforcement, not of a right granted by the permission to file the action for ejectment but of the right inherent in the ownership of the accommodation if and when it becomes free from the fetters imposed on it by the Rent Restriction Act. It was further held that the subsistence of the ground for permission to eject a tenant throughout the pendency of the suit becomes as much irrelevant for the purposes of the heirs of the landlord as it is for the landlord himself unless there is something in the permission itself to curtail its scope, effect or duration. Reliance was then placed by the learned counsel on a judgment of the Court of Appeal in England in *Goldthorpse* v. *Bain* (4). The

(3) I.L.R. (1964) 2 All. 948.
(4) (1952) 2 All. E.R. 23.

Country Court Judge held in that case that the order for eviction of the tenant which the landlord's mother had obtained was personal to the mother and was not available to her personal representatives, or, on their assent, to the daughter beneficiary under the will of the mother and that, therefore, the daughter was not entitled to possession because the case showed that the basis of the application had disappeared The gronud on which eviction had been ordered was—

> "* * for occupation as a residence for himself (landlord); or any son or daughter of his over eighteen years of age; or his father or mother."

Eviction had been ordered by the Country Court Judge on the finding that the mother (who had initiated the action for eviction) required the premises for occupation "as a residence for herself and her family". In appeal Somervell, L.J., posed the question to be answered by the Court of Appeal—

> "Owing to the nature of the order obtained by your mother and the ground on which it was obtained you are not entitled to enforce it";

and held—

> "I accept the submission of the counsel for the landlord that a landlord of a rent restricted house who applies for possession has a number of obstacles placed in his way by the Rent Acts which he has to overcome if he is to get an order, but if, on the evidence and considering what is reasonable and the various matters proved at the hearing, the county court judge makes an order for possession, that is an order which devolves to the landlord's personal representatives, heirs, or beneficiaries according to the circumstances. It is not an order which ceases on his death. It may be said there is a certain illogicality about that, and there is, of course, force in the consideration which moved the country court judge to come to an opposite conclusion. There must, however, be finality at some stage It could never have been suggested that if a landlord, who had obtained an order such as the present, died before he had time to move in, the tenant could claim that the *status quo* ought to be re-established."

Jenkins, L.J., agreed with the conclusion arrived at by Somervell, L.J., and further added:—

"At first sight the view is attractive that, if a landlord has been given an order for possession on the ground that he wants the premises for his own occupation as a residence and the landlord dies before possession is actually given up, then, *prima facie*, the order should lapse as the ground for it has lapsed. But, as I have said, I find it impossible so to hold, and I do not think that by so holding the kind of difficulty here in question would be met. There are cases in the schedule to the Act of 1933 where circumstances, personal not merely to the landlord himself, but to somebody else, are in question. One need go no further than para. (h) of the schedule, which includes the case where the landlord requires the premises 'as a residence for ..... any son or daughter of his over eighteen years of age; or his father or mother'. In a case such as that the landlord might get an order for possession because he wanted the premises as a residence for his father or mother and in the meantime before the date fixed for giving up possession under the order the father or mother might die. In such a case the reasoning which commended itself to the country court judge in the case of the landlord dying would, as it seems to me, require with equal force that, although the landlord was still alive, his order should cease to have effect because the ground on which he had obtained it had ceased to exist. In my view, that is an impossible conclusion. I think the question in the present case is in some degree obscured by the change of parties, brought about by the death of the landlord, but really the view taken by the county court judge amounts, as I think, to this, that the court should satisfy itself that the statutory ground for ordering possession exists and should also satisfy itself on the question of reasonableness, and, where applicable, on the question of greater hardship, not simply at the date when the case is tried and judgment is given, but over again at any time when a tenant against whom an order for possession has been made may apply for an extension of time under section 5(2). In my view, that cannot be

right. It would prevent any finality in these cases. Issues of greater hardship or reasonableness, or the landlord's need of the premises as a residence for himself or some other qualified person, could be tried over and over again and orders under the Act could thus be varied in their operation without limit or even rescinded after what, in effect, would amount to a re-hearing of the whole case. In my view, therefore, one should adhere to the principle that the conditions required to enable an order for possession to be made should be judged at the date when the case is heard and judgment is delivered. and that the validity of the order is not to be affected by any subsequent event."

(11) After carefully considering the entire law on the subject we are in substantial agreement with the views expressed by the Court of Appeal in England in *Goldthorpe's case* and also with the law laid down by the learned Single Judge of the Allahabad High Court in *Noor Mohammad's case*. It may be different matter that in any particular case the solitary ground on which ejectment is sought may be entirely personal to the landlord and may be of such a nature as would not survive him. In such a case the question that might arise would really relate to the abatement of the suit and such a question can in our opinion arise normally either at the trial stage or at the appellate stage as an appeal is always considered as a re-hearing or continuation of the original cause. Mr. Bhagirath Dass has contended that even in a case of the type where such a question might arise, a High Court while exercising its revisional jurisdiction under section 15(5) of the Act would refuse to take notice of such a subsequent event if it has taken place after the disposal of the final appeal against the order for eviction. He has relied in this connection on the observations of a Full Bench of this Court in *Chanan Dass* v. *Union of India and others* (5). In that case the question of the retrospective operation of the amendment of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955, whereby rule 30 had been abrogated, was being considered. The question that came up for decision was whether the amendment would affect cases up to the appellate stage or would also affect cases pending at the revisional stage. Mehar Singh, C.J., (with whom

(5) I.L.R. (1967) 1 Pb. & Hry. 41 (F.B.)=1967 P.L.R. 1 (F.B.).

Mahajan, J., agreed, and from which view Dua, J., dissented) held that the amended rule 30 being retrospective operates to affect "pending proceedings to the stage of appeal" and that the legislature having treated the powers of revision under sub-sections (1) and (4) of section 24 of the Displaced Persons (Compensation and Rehabilitation) Act 44 of 1954 and the revisional powers under section 33 of that Act as distinct from those in an appeal the revisional powers could not possibly be of the same amplitude as an appeal. On that basis it was held by the majority in *Chanan Dass's* case that the retrospective operation of amended rule 30 was limited up to the stage of appeal and did not apply at the revisional stage. In order to arrive at that conclusion the learned Chief Justice referred to the catena of authorities on the question of the power of the High Court to take into account subsequent and changed situation at the stage of a revision under section 35 of the Delhi and Ajmer Rent Control Act 38 of 1952. After referring to the original view of Falshaw, J., in *Bimal Parshad Jain* v *Shri Naidarmal* (6), to the effect that a revision petition in a rent case is merely a continuation of the original suit and, therefore, the ordinary principle that retrospective changes of the law will apply to such appeals and revisions remains applicable; and then referring to the subsequent Division Bench judgment (Dulat and Gosain, JJ.) in *Man Mohan Lal* v. *B. D. Gupta* (7), taking the contrary view (the view taken by the Division Bench was that no revision, whether it is under the Civil Procedure Code or any other law, can be treated as a rehearing of the suit inasmuch as the party itself has no right to have such a re-hearing), the learned Chief Justice relied on the principles underlying the distinction between appellate and revisional jurisdiction brought out by their Lordships of the Supreme Court in *Garikapati Veeraya* v. *N. Subhia Chaudhry* (8), and to the pronouncement of the Supreme Court in *Hari Shankar* v. *Rao Girdhari Lal Chowdhury* (9), and came to the conclusion that the view taken by the Division Bench of the High Court in *Man Mohan Lal's case* was finally affirmed by their Lordships of the Supreme Court. It was concluded that in spite of the larger amplitude of the power under section 35 of the Delhi Rent Act of 1952 as compared

(6) I.L.R. (1960) 2 Pb. 438=1960 P.L.R. 664.
(7) I.L.R. (1962) 1 Pb. 558=1962 P.L.R. 51.
(8) A.I.R. 1957 S.C. 540.
(9) A.I.R. 1963 S.C. 698.

to the revisional power of the High Court under section 115 of the Code, the Supreme Court has now affirmed (a) that the power of revision is not the same as an appeal; and (b) that a revision is not a rehearing of the original proceedings. To adopt the language of the Supreme Court in *Garikapati Veeraya's case*, there is no intrinsic unity of proceedings to the stage of revision which the suit or original proceedings has to the stage of appeal.

(12) Our attention was also invited to the judgment of Tek Chand, J., in *Jowala Singh Prem Singh and others* v. *Malkan Nasirpur and others* (10), wherein it was held that the provisions for abatement of actions did not apply to petitions for revision. In this stage of law we are of the opinion that whatever may be said to be the effect of the death of a landlord during the pendency of an appeal against an order of eviction passed by the Rent Controller in his favour in any particular case where the order has been passed on a ground entirely personal to the original landlord, such an event, i.e., the death of the successful landlord after the final disposal of the appeal under section 15 cannot be called into aid by the petitioning tenant in support of his claim under sub-section (5) of section 15 for revision of the appellate order of eviction. Whether a petition for ejectment based on even a personal ground should or should not be held to abate on account of the death of a successful landlord during the pendency of his appeal would depend on the facts of each case and it is neither proper nor possible to lay down any hard and fast rule in that respect. For the foregoing reasons we cannot entertain this plea as it appears to be outside the scope of our jurisdiction under section 15(5) of the Act. Moreover, it cannot be held as a matter of law that the ground of ejectment contained in sub-paragraph (ii) of paragraph (a) of sub-section (3) of section 13 of the Act is a ground personal to the landlord who originally files the action for ejectment. The ground relates to the landlord and should in the normal course be available to the landlord who files the application for ejectment as well as to his successors-in-interest. Mr. P. N. Aggarwal, the learned counsel for the tenant, in Civil Revision 144 of 1967 further emphasised that the expression "his own" in clause (a) of sub-paragraph (ii) of paragraph (a) of sub-section (3) of section 13 refers to the requirements of the premises for the use of the very same landlord who filed the application for

(10) I.L.R. 1958 Pb. 886=A.I.R. 1958 Pb. 171.

ejectment and cannot refer to his successors-interest. We find no force whatever in this contention. In the absence of any clear indication to the contrary, "landlord" in the Act includes the successors-in-interest of the landlord and the expression "his own" or himself relates to the landlord and not to the particular applicant for eviction. I am inclined to think that ordinarily the rights of a landlord-decree holder under an order of eviction obtained by him are heritable and devolve after his death on his legal representatives. If the heirs of the successful landlord were to be required to establish the grounds on which the claim for ejectment was based at every stage when the person in whose favour the order was passed dies, it would be impossible to attach finality to any legal decision (of the kind with which we are concerned) for a long, long time. In any case, so far as the consideration of a matter of this type at revisional stage is concerned, I would hold that the jurisdiction of this Court under sub-section (5) of section 15 of the Act to pass any different order than that passed by the District Judge (appellate Authority) on the ground that the High Court thinks fit to pass such different order is founded on and is absolutely dependent upon the fulfilment of a condition precedent, i.e., the recording of a proper finding to the effect that the order under revision was either not legal or not proper. The High Court cannot under section 15(5) normally upset or reverse a decision of the appellate Rent control authority on the ground that though the order under revision is proper and according to law, the subsequent death of a party pending the revision petition has made some factual difference in the basis of the action initiated by the landlord.

(13) It is, therefore, held that if the case of Bakhshi Ram, the original landlord, is found to fall squarely within the relevant provisions entitling him to evict the tenants and if it is found that the orders of the District Judge, Amritsar were perfectly correct, legal and proper when those were passed, the mere fact of the subsequent death of Bakhshi Ram during the pendency of the revision petition would not disentitle his widow and adopted son to support the judgments and orders of the Appellate Authority and to claim possession of the rented lands in pursuance thereof.

(14) Before taking up the second main point common to the three cases it appears to be appropriate to dispose of at this stage some of the additional arguments addressed by Mr. P. N. Aggarwal, in Civil Revision No. 144 of 1967. Though the relevant facts of the

cases from which Civil Revisions Nos. 120 and 121 of 1966 have arisen are in *pari materia*, there are some salient distinctive features in the case of Mehta Munshi Ram (Civil Revision No. 144 of 1967). The relevant ground of ejectment was contained in paragraph 4(b) of Bakhshi Ram's application for ejectment in this case in the following words:—

> "That the petitioner wants the rented land for his own use and occupation as he has to put up a building over the same and carry on his profession at Amritsar. The petitioner is not in possession of any other rented land or any other non-residential premises in the urban area concerned for the purposes of his business. The petitioner carried on business at Srinagar for a pretty long time but due to disturbed condition and political circumstances he wants to shift to his native city and start business and as such he requires the rented land in a *bona fide* manner for his own use and occupation. He has also got plan sanctioned from the Municipal Committee, Amritsar for putting up the building."

(15) While in the witness-box Bakhshi Ram, A.W. 7 (the landlord) stated that he was the owner of a plot of land measuring 1,262 sq. yards of which the site plan is Exhibit A. 3, the said site plan proved by the landlord himself showed that the entire compact plot referred to by him (which includes the rented land in the tenancies of the three tenants before us as well the plot of land immediately behind them which is already in the possession of the landlord) has a frontage of 65′—9″ on the Lawrence Road. A portion of the plot to the extent of 100′—3″ × 65′—9″ (marked "B" in the plan, Exhibit A. 3) is in the tenancy of Mehta Munshi Ram. A small portion of the very same plot in the south-western corner (marked "A" in Exhibit A. 3) is in the tenancy of Gobind Ram, petitioner in Civil Revision No. 121 of 1966. The next portion of the plot measuring 42′—0″ × 65′—9″ (marked "C" in the plan, Exhibit A.3) is in the tenancy of Dhan Devi, etc., the petitioners in Civil Revision No. 120 of 1966. As already stated the eastern most portion of the plot, i.e. the portion behind Dhan Devi's lease-hold measures 30′—0″ × 65′—9″ (marked "D" in the plan, Exhibit A. 3) and is admittedly in the possession of the landlord. The whole plot measuring 1,262 sq. yards referred to by A.W. 7 finishes at that place and is then adjoined on the east by the bungalow of S. Mohan Singh Makkar. On the north of the entire plot is the bungalow of M/s. Dalmia Brothers, etc. On the south of the plot runs the road leading to Dyanand Nagar. I

have already mentioned that Lawrence Road is towards the west of the plot. The landlord then stated in his cross-examinaion that construction of building had been sanctioned on the entire piece of land as shown in the plan, Exhibit A. 1, but that the portion crossed out with red pencil in the plan. Exhibit A. 1, was not to be constructed. He also admitted that he had not got any sanction for building any shops on any portion of the plot but wanted the Court to believe that he would construct an office in that plot. When he was asked to specify the dimensions of the office which he wanted to build he stated that "the dimensions of the office are according to the site plan (Exhibit A. 1)". The plan, Exhibit A. 1, which has been erroneously described as site plan at some places in the record of this case, is admittedly the proposed construction plan which is said to have been sanctioned by the appropriate authority. It is described as "proposed plan of bungalow to be constructed on plot No. 762/X III at Lawrence Road near Jethuwal Distributary, Amritsar belonging to Shri Bakhshi Ram Seth. * * *". It contains the site plan as well as the proposed construction plan. It bears out the correctness of the situation of the various portions comprised in the tenancies of the three petitioners before us as disclosed in the site plan, Exhibit A. 3. The proposed constrcution plan shows the proposal of the main building on the ground-floor as well as of the annexe on the ground-floor. The annexe has been scored out in red pencil denoting, according to the deposition of the landlord before the Rent Controller, that he was not going to construct the same. It has not been disputed that according to the landlord himself what he wants to construct after obtaining possession of the rented land from the three tenants is "the main building" on the ground-floor according to the plan, Exhibit A. 1. The plan shows that the proposed main building would consist of a bed room 15′ × 12′ with an attached bath-room 8′ × 8′, another bed room 12′ × 14′, a stair hall, a combined dinning-cum-drawing room 24′—6″ × 15′, a kitchen 12′ × 8′, a pantry 9′ × 7′, a store 9′ × 8′—4½″, a study room 9′ × 10′ a guest room 12′ × 8′, a prayer room 12′ × 8′, a record room with an attached bath and an office room 11′ × 13′. The argument of Mr. Aggarwal was that even if the evidence in this case may not be read as evidence in the other two connected cases it is clear from the relevant averments in the application for eviction (already quoted) read with the deposition of the landlord in Court and the details of the plan, Exhibit A. 1, that the landlord wants to construct on the plot in question after obtaining possession of the rented land is an entirely or at least mainly or principally a residential bungalow

even if the office room shown in the plan is treated as something distinct from the premises required for residence. We think that the case of Mehta Munshi Ram falls squarely within the ratio of the judgment of the Supreme Court in *Attar Singh* v. *Inder Kumar* (11), to which detailed reference will hereinafter be made, as it cannot be possibly inferred legally from the admitted evidence on record that the landlord requires the rented land principally for business use of his own. Even if it is held that section 13(3)(a)(ii) covers a case where the landlord does not want to use rented land as such after getting it vacated from the tenant and he is entitled to put up a building on it before using it himself, it is clear from the evidence in this case and particularly from the admissions of the landlord himself that at best he would be using only the office room for some undisclosed "profession" but that the rest of the extensive building which he intends to put up on the plot is entirely residential. This cannot be classed as an intention to mainly or principally use the rented land even after constructing a building on it for purposes of business or trade.

(16) While disposing of this matter the learned District Judge (the Appellate Authority) relied on the judgment of this Court in *Municipal Committee, Abohar* v. *Daulat Ram* (12), wherein it was held that the landlord is entitled to evict a tenant under section 13(3)(a)(ii) if he requires the rented land for his own use and the use to which he would put the land after taking possession thereof is irrelevant. The said judgment of this Court has been expressly overruled by the Supreme Court in *Attar Singh's case.* The learned counsel for the landlord submitted that the evidence, to which reference has been made by me here-in-above, was led by the landlord in view of the law as it was understood in view of the judgement of this Court in *the case of Municipal Committee Abohar* and it was not the fault of the landlord that a different view has subsequently found favour with the Supreme Court in *Attar Singh's case.* Whether the landlord is or is not at fault, the fact remains that in the face of the authoritative pronouncement in *Attar Singh's case* the order for the ejectment of Mehta Munshi Ram based on the judgement of this Court in *Municipal Committee, Abohar's case* cannot be sustained. Mehta Munshi Ram is, therefore, entitled to succeed on this short ground.

(11) (1967) 2 S.C.R. 50.
(12) I.L.R. 1959 Pb. 1131.

(17) Mr. P.N. Aggarwal then argued that his client had taken up a specific plea in his defence which was repelled by the Rent Controller as well as by the Appellate Authority to the effect that the landlord having admitted in his application for ejectment as well in his deposition before the Rent Controller that he had obtained orders for the ejectment of Dhan Devi etc. and of Gobind Ram from their respective rented lands no order for ejectment could subsequently be passed against Mehta Munshi Ram as it would be hit by clause (b) of sub-paragraph (ii) of paragraph (a) of sub-section (3) of section 13 of the Act. The relevant clause has already been quoted. By merely obtaining an order for eviction in respect of two other pieces of rented land the landlord cannot be deemed to be occupying the said rented land of which he may or may not have got possession. The learned counsel for the landlord was right in referring to the judgement of Gurdev Singh, J. in *Bachan Singh* v. *Shamsher Singh* (13). In that case it was held that the landlord was entitled to recover possession of the entire plot including the portion which was in the tenant's possession and the mere fact that he had obtained possession of some portions of that plot in execution of orders of ejectment against other tenants did not bar his executing the order of eviction obtained by him against the tenant. The learned Judge further observed that there was no justification for holding that if the landlord secured possession of only a part of the land, he would lose his right to obtain the possession of the remaining part, especially when the purpose for which he got the land vacated was not fulfilled for recovery of possession of the other part . The case before us is even stronger inasmuch as the landlord has not up till today obtained possession of the rented land which was with Gobind Ram and Dhan Devi etc.

(18) Mr. Aggarwal then sought our leave to raise a new point based on a string of authorities of the Supreme Court to the effect that no tenant could be evicted without termination of his tenancy by a notice under section 106 of the Transfer of Property Act. He admitted that this plea had not been raised by Mehta Munshi Ram either before the Rent Controller or before the Appellate Authority and that no such point has been mentioned even in the grounds of revision filed in this Court. He, however, relied on certain observations in *T. K. Siddarama Setty* v. *V. K. Kalappa* (14) and in a some

(13) C.R. 1003 of 1965 decided on 15th July, 1966 [1966 P.L.R. 59 (short note) at page 31].

(14) A.I.R. 1950 Mysore 63 at P. 64.

what ancient judgement of the Bombay High Court in *Krishna Ji-Ramchandra* v. *Anta Ji Pandurang* (15) in support of the proposition that a plea about want of a statutory notice can be taken up by the aggrieved party at any time. As the provisions of the Transfer of Property Act are not themselves applicable to Punjab and can be invoked only on principles of justice, equity and good conscience and as the point had not been raised at any earlier stage and would have involved a remand of the case if our finding on the main point had been against the petitioner, we declined to allow Mr. Aggarwal to raise this new argument.

(19) The last additional submission made by Mr. Aggarwal in his case was that the District Judge should have held that the land from which eviction of the petitioner was sought was not "rented land" as defined in section 2(f) of the Act but fell in the category of "non-residential building" as defined in clause (d) of section 2 of the Act. The ground on which this argument was sought to be advanced was that the tenant had admittedly constructed some rooms on the rented land with the permission obtained by him from the landlord after about a year of the tenancy or in any case in or about 1956. There is no force in the contention of the learned counsel for the landlord that the finding of the authorities below on this question is a pure finding of fact and cannot be reversed by us. This is because there is no dispute about the facts relevant for the decision of this point and the only question is whether on the facts proved the land from which Mehta Munshi Ram is sought to be evicted has ceased to be rented land, though it was admittedly so at the time of the tenancy. We take this view of the objection advanced on behalf of the landlord because of the authoritative pronouncement of the Supreme Court in *Moti Ram* v. *Suraj Bhan and others* (16), wherein it was held that under section 15(5) of the Act the High Court has jurisdiction to examine the legality or propriety of the order under revision and that includes the legality or propriety of the finding as to the requirement of the landlord under section 13(3) (a) of the Act. Against the merits of the contention of Mr. Aggarwal in this behalf: reliance was placed by Mr. Bhagirath Dass on the judgement of Pandit J. in *Ram Saran and others* v. *Harbhajan Singh and another* (17) wherein it was held that for the determination of the question

(15) I.L.R. 18 Bomb. 256.
(16) A.I.R. 1960 S.C. 655.
(17) I.L.R. (1964) 2 Punj. 62=1964P.L.R. 377.

as to whether the property included in the tenancy is "premises" or not within the meaning of the Delhi Rent Control Act 59 of 1958; it has to be seen as to what was actually let by the landlord in a particular case and that where the landlord had only leased out a vacant piece of land; the more fact that some temporary constructions had been raised by the tenant for his own use would not in any way convert the same into a building. The judgement of the Madras High Court in *J.H. Irani* v. *T. S. P. I. P. Chadambaran Chettiar* (18) was distinguished by the learned Judge on the ground that the original lease in that case comprised of buildings as well as lands. This matter is in fact now beyond the pale of controversy in view of the pronouncement of the Supreme Court in a recent unreported judgement in *A.R. Saleh Mohammad Sait* etc. v. *Jaffar Mohamed Sait's Memorial Dispensary Charity & others* (19).

Their Lordships held:—

> "It seems to us therefore that neither in form nor in substance was there a letting of any building. In the first case; there were some structures on the land in 1941 but the landlord had no interest thereon and the tenant unless he made default in payment of rent could remove them at any time within two months after the expiry of the lease the building materials by demolishing the structures. In the second case; although the structures were to become the property of the landlord at the end of the term the letting was only of the vacant land. The landlord did not let out any building which could come within the mischief of the Act."

(20) We have, therefore, no hesitation in affirming the finding of the District Judge; Amritsar; on this point and in upholding the contention of the landlord to the effect that his claim relates to ejectment from rented land as defined under section 2(f) of the Act in spite of the fact that the tenant has constructed some rooms on the part of the rented land subsequent to the commencement of the tenancy; even if the construction has been made with the implied consent of the landlord.

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(18) A.I.R. 1953 Mad. 650.

(19) C.A. 880 and 881 of 1968 decided on 25th March, 1968. [1968 S.C.N. 246 at Page 171].

(21) Field is now clear to deal with the main point which necessitated this reference to a larger Bench. As already indicated, the question is whether a landlord can get rented land vacated from a tenant under section 13(3) (a)(ii) of the Act only if he undertakes to occupy the same for his business without changing the status of rented land into that of non-residential building or whether he can successfully evict a tenant under that provision on the ground that after obtaining possession of the rented land he would put up a commercial building on it in which he would carry on his own business. If the law laid down by the Division Bench of this Court in the *case of Municipal Committee, Abohar* (G. D. Khosla A.C. J. and Dulat J.) (12) had held the field, there would have been no difficulty in holding that the user to which the landlord would put the land subsequent to its obtaining the possesison is wholly irrelevant to a claim for ejectment under the relevant provision. As already stated, the said judgment has been expressly overruled by the Supreme Court in *Attar Singh's case.* A claim for ejectment of the tenant from rented land was made in that case mainly on the ground that the landlord required the land himself to erect a residential house; and this claim was made under section 13(3)(a)(ii) of the Act. The Rent Controller dismissed the application on the view that the landlord could only obtain an order under the said provision of the Act to have the land vacated if he needed it for business purposes. The Appellate Authority reversed that finding and held that it was open to the landlord to get a tenant ejected whatever may be the purpose for which he required the land for his own use. The decision of the Appellate Authority was upheld by the High Court on the basis of the earlier Division Bench judgment of this Court in *Municipal Committee, Abohar* v. *Daulat Ram* (12), (supra). In tenant's appeal by special leave to the Supreme Court it was held that this Court had not considered the effect of sub-clauses (b) and (c) on the meaning to be given to the words "for his own use" in sub-clause (a) and this Court seemed to have proceeded as if sub-clauses (b) and (c) were not there at all. Wanchoo J. (who wrote the judgment of the Court) held that sub-clause (a) has to be read in this provision along with sub-clauses (b) and (c) and it has to be seen whether the presence of sub-clauses (b) and (c) makes any difference to the meaning of the words "for his own use" in sub-clause (a), which is otherwise unqualified. It was observed that if sub-clauses (b) and (c) were not there, a landlord could ask for an order directing the tenant to put him in possession in the case of rented land if he required it for his own use

and in such a situation it would have been immaterial as to what was the use to which the landlord intended to put the rented land after he got possession of it so long as he used it himself. The learned Judge held that under the provision, as it stands, the landlord cannot get possession of the rented land merely by saying that he requires it for his own use, whatever may be the use to which he may put it after getting possession of it but that also he has to show before he gets possession, firstly, that he is not occupying in the urban area concerned for the purpose of his business any other such rented land and, secondly, that the landlord has to prove in addition that he had not vacated any rented land without sufficient cause after the commencement of the Act. After referring in detail to the various clauses in the relevant provision, Wanchoo J., held:—

> "It clearly follows from this that the intention when the words 'for his own use' are used in sub-clause (a) is that the landlord requires the rented land from which he is asking for eviction of the tenant for his own trade or business."

And again:—

> "It should, therefore, be clear that 'for his own use' in sub-clause (a) means use for the purpose of business principally, for otherwise we cannot understand why, if the landlord had given up some rented land which he had taken for business principally, he should not be entitled to recover his own rented land if he required it (say) as in this case, for constructing a residential building for himself."

(22) Mr. H. L. Sarin, laid great emphasis on the implications of the observations of the Supreme Court in *Attar Singh's case* quoted above and again to the observations to the effect that—

> "The very fact that sub-clauses (b) and (c) require that the landlord should not be in possession of any rented land for his own business and should not have given up possession of any other rented land, i.e., land which he was principally using for business, show that he can only take advantage of sub-clause (a) if he is able to show that he requires the rented land for business."

(23) We find great force in the contention of Mr. Sarin to the effect that the judgment of the Supreme Court indicates that one of

the results of conjunctive reading of clauses (a), (b) and (c) of the relevant sub-paragraph is that the landlord can succeed only "if he is able to show that he requires the rented land for business or trade". In all the petitions before us the case of the landlord has been that he does not need the rented land itself for business in its present state, but he wants it for being constructed upon and intends to use a part of the building put up by him for business. In *Mehta Munshi Ram's case* he has indicated that it is only one room described as office which he would use for business. In the other cases he has merely said that he would use the building put up on it for business and a portion of it for a residence without clearly specifying whether he would use the newly constructed building principally for the business and only incidentally for residential purposes or *vice versa*.

(24) The next ground on which we have been persuaded to agree with Mr. Sarin on this point is that as held by the Supreme Court in *Attar Singh's case*, the Act is ameliorative piece of legislation meant for the protection of tenants and, therefore, the scope of the relevant provision justifying ejectment of a tenant must be limited within the circumscribed limits of the relevant provision so as to give full protection to the 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 out, i.e., principally for trade or business (page 55 of the upreme Court Reports in *Attar Singh's case*).

(25) Force is also found in favour of Mr. Sarin's contention on the ground that clause (b) of the relevant provision debars a landlord from obtaining possession of rented land from a tenant if the landlord is himself a tenant of some other rented land in the urban area in which the premises in dispute are situated. This condition precedent for claiming eviction, on which great emphasis has been laid by the Supreme Court in *Attar Singh's case*, would have been wholly irrelevant and meaningless, if the legislature had intended to allow the landlord to get rented land vacated for putting up commercial building thereon, may be for his own use. When the Supreme Court referred to the landlord not being permitted to get rented land vacated for putting up a "residential building" in *Attar Singh's case*, they were not considering the point which calls for our decision and were not using the words "residential building" in contradistinction to a commercial building but were in our opinion using that expression, in the context in which it was used, for the purpose of distinguishing residential user from commercial one.

(26) Indication as to the intention of the legislature in using the particular phraseology in the relevant clause is also available from section 13(3)(a)(iii) of the Act which provides—

> "13(3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—
>
> * * * * * *
> * * * * * *
> * * * * * *
>
> (iii) in the case of any building or rented land, if he requires it 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 or if it has become unsafe or unfit for human habitation;"

(27) The argument of Mr. Sarin was that if possession of rented land could be obtained from a tenant for the purposes of putting up commercial building for the use of the landlord under section 13(3)(a)(ii), it would have been wholly unnecessary to restrict the circumstances in which the tenant can be evicted from the rented land for making a building to cases in which the Government or Local Authority or an Improvement Trust requires the landlord to carry out any building work. This argument is also not without substance.

(28) Whatever little doubt there could be in the view that has commended itself to us on this point has been removed by reference to sub-section (4) of section 13, the relevant part of which, when extracted from the main provision, would read as follows:—

> "Where a landlord who has obtained possession of rented land in pursuance of an order under sub-paragraph (ii) of paragraph (a) of sub-section (3) does not himself occupy it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such rented land and the Controller shall make an order accordingly."

(29) The above-quoted provision contains a sanction for depriving a successful landlord of the fruits of an order for eviction obtained by him in case he does not occupy "the rented land" himself for his business after obtaining its possession from the tenant who is evicted under the relevant provision. The use of the word 'it' in section 13(4) is significant in this behalf. If section 13(3)(a)(ii) could be construed to entitle a landlord to obtain possession of rented land for the

purposes of putting up a commercial building thereon, it would be impossible for a tenant to avail of the statutory right conferred on him by sub-section (4) of section 13 in case the landlord were to let out the whole commercial building constructed by him on the rented land obtained from the tenant under an order of the Rent Controller or were to actually make a residential building thereon in place of a commercial building or were not to occupy the same but sell it out. Such a construction canvassed on behalf of the landlord would, in our opinion, completely defeat and nullify the statutory provision contained in sub-section (4) of section 13. Mr. Bhagirath Dass suggested that in such an eventuality the tenant could claim an order against the landlord to pull down the building constructed by him and to give him vacant possession of the rented land. We see no warrant for any such claim being made by the tenant in exercise of his rights under sub-section (4) of section 13. The right conferred on the tenant by section 13(4) is consistent with the construction placed by Mr. Sarin and Mr. Aggarwal on section 13(3) (a) (ii) of the Act and is wholly inconsistent with the interpretation of the said provision which found favour with the learned District Judge. It is a well settled rule of interpretation of statutes that the Court must endeavour to harmonise different provisions in the same Act and prefer an interpretation which would lead to a harmonious construction rather than to lead to inconsistency. If we were to accept the interpretation suggested by Mr. Bhagirath Dass it would be impossible to harmonise the provision contained in section 13(4) of the Act with the ground of ejectment in dispute.

(30) Lastly it is significant that eviction under the relevant clause can be sought only if "the rented land" is required for the personal business or trade use of the landlord. "Rented land", as already noticed, must be land which is "let separately" and is distinct from "non-residential building". The land on any part of which a building is put up would cease to be rented land within the meaning attributed to that expression by section 2(f) of the Act. What the landlord should require for his own use and put to such use must itself be rented land and not land with a building thereon. Though none of the counsel for the landlord chose to rely on the unreported judgment of Grover, J., in *Partap Singh, etc.* v. *Santokh Singh, etc.* (1) it appears necessary to deal with it as reference to same has been made in the order of the Rent Controller. Eviction from "rented land" was sought in that case by Raj Karan Singh landlord for running his own business by putting up a building on the rented land after getting

it vacated from the tenant. The relevant defence to the action of the landlord was that he was not entitled to get the rented land vacated for the purpose of building on it and later using that building for his business. Grover, J., held on that point as below:—

"The only other question which requires determination is whether the learned 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 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 a 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."

(31) With the greatest respect to the learned Judge I do not think it fit to be possible to any more subscribe to that view in the face of the latest pronouncement of the Supreme Court in *Attar Singh's case*. In my opinion, the land from which the tenant is evicted would cease to be a "rented land" within the meaning assigned to that expression in section 2(f) of the Act after it is built upon. 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.

As a result of the above discussion it is held:—

(i) that the right to evict a tenant from rented land under section 13(3)(a)(ii) of the Act is not an *actio personalis*—a personal right of action—which must come to an end with the death of the landlord who filed the application for eviction;

(ii) that in the absence of some exclusively personal ground on which eviction may be sought by a landlord in a particular case, the benefits of which ground are not available in law to his legal representatives because of some statutory bar, the heirs of a deceased landlord are normally entitled to continue the suit for ejectment on the ground on which it was instituted as his legal representatives irrespective of the ground for eviction being contractual or statutory: Similarly, the legel representatives of a successful landlord can support the order for eviction of the tenant in a revision petition, during the pendency of which the original landlord dies;

(iii) that an order for eviction passed by a Rent Controller and upheld by the Appellate Authority does not lapse merely because of the death of the original landlord (who initiated the action for eviction) pending a petition for revision filed by the tenant in the High Court;

(iv) that the scope of a petition for revision under section 15(5) of the Act is much narrower than that of a first appeal under the Act and the power of interference by the Appellate Authority is much wider than the revisory jurisdiction of this Court;

(v) that the provisions of Order 22 of the Code of Civil Procedure relating to abatement of actions on account of the death of a party do not apply to petitions for revision under section 15(5) of the Act;

(vi) that the plea of an unsuccessful tenant-revision-petitioner about the eviction proceedings having abated by the death, pending the revision, of the landlord who had secured the order for eviction cannot be entertained by this Court in the course of proceedings under sub-section (5) of section 15 of the Act;

(vii) that 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 itseif. 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;

(viii) that the landlord cannot obtain an order against a tenant for possession of rented land under section 13(3) (a) (ii) on the ground that he intends to use a major portion of the land for residence and only a small portion for his office;

(ix) that rented land given to a tenant does not cease to be such land so as to defact the claim of a landlord under section 13(3)(a)(ii) of the Act merely because the tenant has subsequent to the commencement of the tenancy made some super-structures on the land for his own use; and

(x) that this Court will not normally allow a new question of fact or even a mixed question of law and fact being raised by a party for the first time during the hearing of a petition for revision under section 15(5) of the Act, particularly when the point has not been taken up even in the grounds for revision in this Court.

(32) For the foregoing reasons all the three petitions (Civil Revisions Nos. 120 and 121 of 1966 and 144 of 1967) are allowed, the order of the District Judge, Amritsar, and of the Rent Controller, Amritsar, in each of the respective cases are set aside and the applications of the landlord for ejectment of the petitioners are dismissed without any order as to costs.

SHAMSHER BAHADUR, J.—I agree.

K.S.K.