as the oil produced from the cotton-seeds is used in industry for the manufacture of Vanaspati ghee which is meant for human consumption. The writ petitions are, therefore, accepted and the assessing authority is directed to amend the impugned orders in so far as they relate to cotton-seeds, in the light of the observations made above, that is, considering cotton-seeds as oil-seeds. Since the point involved was not free from difficulty, I leave the parties to bear their own costs.

N.K.S.

REVISIONAL CIVIL

Before Harbans Singh, Acting Chief Justice and Prem Chand Jain, J.

TELU RAM,—*Petitioner*

versus

OM PARKASH GARG,—*Respondent.*

Civil Revision No. 222 of 1967.

August 7, 1970.

East Punjab Urban Rent Restriction Act (III of 1949)— Section 13(2) (ii) (b)—Application for ejectment under—legal proposition as to the interpretation of the section—Stated—Demised shop rented for sale of "general store"—Tenant installing printing press in substantial part of the premises—whether liable to be ejected.

Held, that where a landlord makes an application for ejectment under section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act 1949, while interpreting the section, the following propositions of law emerge:—(a) that if only a small part of a building is used for a purpose other than the one for which it was originally let, that, by itself, may not render the tenant liable to be evicted under clause (b) of Section 13(2) (ii) of the Act. In any case, a tenant would not be so liable if the purpose complained of can be said to be 'part of the purpose' for which the premises were originally let; (b) that if the result of the use of even a small portion of a building is such that the category of the premises is changed from residential, non-residential and scheduled, and it becomes a category different from the one for which the same had been let, the clause would be attracted; (c) that if a substantial part of the demised premises is being utilized for a purpose other than the one for which the same had been leased, the tenant would render himself liable to eviction; whether, in a particular case, there has been a substantial conversion of the premises for a purpose different from the one for which the same were let, would be a question of fact to be determined in each particular case; (d) that in determining whether the change has been

substantial or not *inter alia*, it will be necessary for the Court to direct itself to the question whether at the time of letting of the premises the landlord would or would not have agreed to the premises being used for the changed purpose; and (e) that if the entire premises are used for a purpose other than the one for which the same were originally let, the clause would be attracted. (Para 10)

Held, that where a shop has been rented out for the purpose of sale of 'general store' and the tenant instals a printing press in the substantial part of the premises, he is liable to be ejected under section 13(2)(ii)(b) of the Act. The reason being that whereas the premises which were originally let out only for a commercial purpose of sale of general merchandise which may include the sale of books, the tenant using the premises for an industrial purpose by installing a printing press has used it for a purpose other than for which it was leased. Hence section 13(2)(ii)(b) of the Act is attracted. (Para 11)

Case referred by Hon'ble Mr. Justice Bal Raj Tuli, on 9th September, 1969 to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consiting of .Hon'ble Mr. Justice Harbans Singh Acting Chief Justice and Hon'ble Mr. Justice Prem Chand Jain, on 7th August, 1970.

Petition under section 15 *of East Punjab Urban Rent Restriction Act for revision of the order of Shri Banwari Lal Nagpal, Appellate Authority, (District Judge), Patiala, dated* 21st *December,* 1966 *affirming that of Shri Gurpartap Singh Chahal, Rent Controller, Nabha, dated the* 16*th March,* 1966 *dismissing the appeal.*

J. N. KAUSHAL, ADVOCATE WITH M. R. AGNIHOTRI, ADVOCATE, for the petitioner.

R. N. MITTAL AND B. S. KAMTHANIA, ADVOCATES, for the respondents.

ORDER

HARBANS SINGH, A.C.J.—This revision petition against the decisions of the Rent Controller and the Appellate Authority, dismissing the application of the landlord for ejectment of his tenant, has been placed before this Bench on a reference by the learned Single Judge on the ground that the case involves an important question of law.

(2) The facts of the case briefly are that the tenant-respondent got on lease the shop in dispute, which was owned by Jatinder Kishore, sometimes before 1953. On October 18, 1953, at the request

of that landlord the tenant executed a rent-note, which is Exhibit A. 1. *Inter alia* it was stated therein by the tenant that he "will use the shop mainly for the purpose of a general store". The evidence on the record shows that prior to the execution of this rent-note and even thereafter the tenant carried on the business of selling books and stationary. He continued this business till 1958 when he put up a printing machine in the back portion of the shop and obtained electric power connection for the purpose of running the same. Jatinder Kishore had, however, by means of a sale-deed, dated November 9, 1964, sold the disputed premises to Telu Ram petitioner, who brought the application, out of which the present petition has arisen, for the ejectment of the tenant *inter alia* on the ground that the tenant has used the building for a purpose other than that for which it was leased. The plea taken by the tenant was that he had fixed the printing press with the consent of Jatindar Kishore, the previous landlord, and that in any case the fixing of the printing press in a small portion of the demised premises did not amount to using the building for a purpose other than that for which it was leased and, therefore, he was not liable to ejectment as provided under section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949, hereinafter to be referred to as the Act. The two issues which concern us in this petition were as follows.—

"1. Whether the printing press was installed in the demised shop with the consent of the previous owner and the landlord of that shop?

2. * * * * * *

3. Whether the printing press stands installed in only a small portion of the rented shop and to what effect?"

The Rent Controller found that the printing press was installed without the consent of the previous owner, but as the same had been installed only in a small portion of the rented shop, the case was not covered by sub-clause (b), of section 13(2)(ii) of the Act. The application was consequently dismissed, and the appeal filed by the landlord before the Appellate Authority was also dismissed. Hence this revision petition by the landlord.

(3) Before us an effort was made on behalf of the tenant to show that the printing press was, in fact, installed with the consent

of the previous owner. In this connection the tenant had summoned R.W. 3, Line Superintendent of the State Electricity Board, Nabha, along with the relevant record on the basis of which the electric power connection had been given to the tenant at the premises in dispute. The tenant apparently wanted to prove that this connection was obtained with the consent of the then landlord. In the examination-in-chief this witness stated that whenever a tenant has to obtain an electric connection, he has to get the written consent of the landlord. He further stated that sometimes the signatures of the landlord are obtained on the form on which the application is made and sometimes a separately given written consent is added to the form of application. So far as the application form in question was concerned, he stated as follows—"On the disputed application form Om Parkash (that is the tenant) indicated himself not to be the owner. So far as the column for written consent being added is concerned, there is no cutting." He then went on to say as follows—"From this it appears that this connection was obtained without such consent." Although this statement of the witness, which was adverse to the respondent, was made in the examination-in-chief, no clarification was sought and the original form was also not brought on the record of this case nor was got exhibited by the tenant. In cross-examination, however, a form marked as P.1 and another form marked as P.2 were produced, and this is what he stated—"Column No. (iii) in form P.1 has not been scored out and there are the signatures of Om Parkash. In this the column of permission No. (ii) is scored out. Respondent got the connection on form P.2 Both forms P.1 and P.2 relate to one and the same connection. Consent could have been given on the form itself and against column No. (ii) the word 'yes' could have been written, and consent could have been kept with himself. In form P.2 the word 'yes' has not been written with regard to the consent..... ." It appears that although Exhibits P.1 and P.2 were marked on some original forms, this witness was allowed to take away the file with him. In this Court, therefore, an application was made on behalf of the respondent, after the matter had been referred by the learned Single Judge to a Division Banch, that these two documents, Exhibits P.1 and P.2, may be ordered to be summoned from the Sub-Divisional Officer, Punjab State Electricity Board, Nabha. Full particulars of the file were also given. This file has been received in this Court along with a covering letter from the Sub-Divisional Officer to the following effect——"It is submitted that original file

is not traceable in this office. As per order of the Board, new cases were opened in lieu of the old files which were not traceable. Hence this file is being sent . . ." The documents contained in this file, it was conceded by the learned counsel for the respondent, are of no help to the respondent. He, however, contended that as stated by the Line Superintendent, the normal rule is that the consent of the landlord is obtained before an electric connection is given and, therefore, it should be presumed that the landlord did give such a consent. In this connection he also placed reliance on the statement of Jatindar Kishore, the previous landlord, examined as A.W.I. In examination-in-chief he clearly stated that he never gave consent for the fixing of the printing press and that he did not give any consent for an electric power connection either. In cross-examination, however, he stated that he did not remember that while taking an electric connection he gave any written consent to the Electricity Department and may be that such a consent may have been given. I am afraid this sort of vague statement cannot be of any assistance to the respondent, particularly because his own witness appearing as R.W.3 had definitely stated in the examination-in-chief as well as in cross-examination that from the forms brought by him there was no indication of consent having been given by the landlord. In the absecne of any proper material on the record the respondent must be taken to have failed to discharge the burden which was on him to prove issue No. 1. Consequently the findings of the learned Rent Controller that the printing press was installed without the consent of the landlord must be upheld.

(4) This now takes us to the other issue viz., whether the printing press stands installed in only a small portion of the rented shop and to what effect? Sub-section (2), of section 13 of the Act details the grounds, which are equally applicable to a building or rented land, on which a tenant can be ordered to be ejected by the Rent Controller. We are here concerned only with clause (ii), which runs as under.—

> "13(2)(ii). That the tenant has after the commencement of this Act without the written consent of the landlord—
>
> (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or
>
> (b) used the building or rented land for a purpose other than that for which it was leased."

In the present case the finding of the Rent Controller is, and that is also clear from the inspection note recorded by him, that the printing machine is fixed in the back portion of the ground-floor of the shop, the area of this back portion being nearly one-fourth of the total ground-floor area. In the front portion the tenant has kept racks containing books and stationery. On the first-floor there are two Chaubaras. According to the inspection note of the Rent Controller "the work of composing is being carried on in the Chaubara." There is no indication as to what was being done in the other Chaubara. However, with regard to this there is some indication in the statement of R.W.4, Prem Lal, who is himself a book-seller and has a shop near the disputed premises. In cross-examination he stated—"On the first-floor of the shop there are two Chaubaras. Composing is being done in the upper portion. The composing material is kept in the upper Chaubara and paper and ink, which is stocked for printing purposes, is kept in the front part". R.W.5 is another book-seller, but he could not say which portion of the Chaubara is being used for the purpose of composing. He, however, stated in cross-examination that "for the last one year the respondent lives in Chandigarh and he publishes his own books for B.Ed., M.Ed. and J.B.T. classes." Om Parkash respondent himself stated that he did not stock printing material and that he purchased only that much material which he needed. From the above it is quite clear that the back portion of the ground-floor and the Chaubara above that ground-floor are being exclusively used for the purpose of printing press and the work connected therewith. So far as the front Chaubara is concerned, nothing has been said by the respondent himself as to what use the same is being put. One would, however, be inclined to believe the statement of his witness (R.W.4) that the respondent is keeping some stock of printing material and ink and that he stocks this in the front Chaubara. That being so, one thing is clear that a substantial part of the demised premises is being used exclusively for printing, and, out of the first-floor area, some part is being used exclusively for this purpose and its front portion is also used for stocking material in connection with the printing work. The front portion of the shop is continuously being used for the purpose of selling books and stationery.

(5) To begin with, the learned counsel for the landlord suggested that the premises in question were leased for carrying on the business of a 'general store' and the business of selling books and

stationary cannot be said to be a part of the 'general store' business. However, the material on the record shows that prior to the execution of the lease-deed, Exhibit A.1, the respondent was carrying on the business of selling books and stationery and even after the execution of that rent note he continued to do the same business for a number of years before he fixed the printing press. It would, therefore, be obvious that the landlord and the tenant, at the time of execution of the rent-note, Exhibit A.1, did consider the business that was being carried on by the tenant as part of 'general store' business. This point was not, therefore, pressed by the learned counsel for the respondent.

(6) On behalf of the tenant-respondent two contentions were raised. First, that before it can be said that the tenant has used the building for a purpose other than that for which it was leased, it must be found that a building, which was to be used as 'non-residential building', or 'residential building' or 'scheduled building' comes to be used for a purpose other than the one for which it had been leased. In short his argument was that all the buildings have been categorised into three types, namely, 'non-residential building', which expression is defined in clause (d), of section 2 of the Act to mean a building which is being used solely for the purpose of business or trade, or 'residential building', meaning any building which is not a non-residential building [see clause (*g*) of section 2], and 'schedule building', being a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to the Act, partly for his business and partly for his residence [see clause (h), of section 2], and, therefore, the words 'for a purpose' as used in clause (ii)(b) of sub-section (2) of section 13 of the Act mean one of the purposes covered by these three categories. He consequently urged that as the shop in dispute was let out for carrying on the business of 'general store' it must be taken to fall in the category of 'non-residential building', because the same was leased out to be used solely for the purpose of business or trade. By adding a printing press, it was argued, the tenant has not converted the building from non-residential to a residential or to a schedule building, and, therefore, he cannot be said to have altered the purpose for which it had been let.

(7) The basic idea of the clause is that the tenant should not be allowed to make use of a building for a purpose for which the landlord may not have agreed to give the same on lease. A landlord

may have no objection to giving a shop on rent to a person who wants to carry on the business of sale of books and stationery or other general merchandise, but may not like to let out the same to a person who wants to carry on the business of a *halwai* or a hotel-keeper, or who wants to run a school therein, or do some other manufacturing process. So the Act, in a way provides that the landlord and tenant may agree between themselves as to the purpose for which the building would be used, and if later on the tenant wants to use the premises for a different purpose, he must obtain the consent of the landlord to do so. In order to take this matter beyond all controversy, it has been provided that such a consent should be in writing. Dua, J., as he then was, in *Ideal Charitable Hospital Trust* v. *Madan Gopal*, (1), held that "the language used in section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act seems to prohibit the conversion of user of the building to different purpose without the landlord's written consent, the object apparently being to protect the property from being spoiled or damaged by using it for a purpose for which the landlord would perhaps have not agreed to lease. "A number of decided cases were cited before us, but not a single case was brought to our notice where the tenant changed the original purpose altogether and it was held that the change would not fall within clause (ii)(b) of section 13(2) of the Act. However, there are a large number of cases in which complete change of the purpose has been held to fall within the mischief of the above-mentioned clause. In *Cement Pipe Factory* v. *Daulat Ram Narula* (2), decided by Kapur J., as he then was, in the premises which were demised for manufacturing cement pipes, a printing press was set up and it was held that this amounted to misuser. Following this case the same learned Judge in *Ram Nath* v. *Firm Badri Dass-Radhelal* (3), held that the conversion of the user of the premises let from the manufacture of buttons to the manufacture of thread balls is a misuser. Both these cases were under section 9(1) (b) (i) of the Delhi and Ajmer-Merwara Rent Control Act, 1947, which provision was similar to the one with which we are concerned in the present case. In *Balwant Singh* v. *Brij Mohan* (4), Dulat J. held that where the premises were left for fixing handlooms but later on powerlooms were fixed, that amounted to user of the premises for a purpose

(1) 1966 P.L.R. 644.

(2) C. R. No. 416 of 1950 decided on 12th December, 1950.

(3) A. S. R. 1951 Pb. 435.

(4) C. R. No. 645 of 1961 decided on 16th March, 1962.

different from the one for which the same were leased. The learned Judge in this connection observed—"The point of the provision in the East Punjab Urban Rent Restriction Act is apparently this that before a landlord agrees to let the premises, he must know the purpose for which it is let and if he agrees to a particular purpose which means that he consents that the building may be used in a particular manner that purpose or manner cannot be substantially altered unless his written consent to the change has been obtained." The learned Judge repelled the argument that the purpose of letting the premises was fixing of handlooms and it did not make any difference whether the power used for working the looms was manual power or electric power. In this connection the learned Judge observed——" .....it is clear that what has come to exist after this change is a proper factory in the modern sense, for new machines run with power have been set up for a certain manufacturing process, while the letting itself was expressly for the purpose of setting up *khaddis* or handlooms, which is a very different kind of activity." In another case decided by the same learned Judge, *Pandit Ram Swarup* v. *Om Parkash* (5), it was held that where the premises were let for sale of electric goods and instead a ***halwai's*** shop was set up, the case would come within the mischief of the clause under consideration in this case.

(8) The next contention of the learned counsel then was that so long as only a portion of the building is converted to a use different from the one for which it was let and the original purpose is carried on in the remaining portion, clause (ii)(b) of section 13(2) would not be applicable. He pointed out the difference in the phraseology used in sub-clauses (a) and (b) of clause (ii) to the effect that whereas in the case of sub-clause (a) dealing with subletting it has been provided that subletting of the entire building or any portion thereof would afford a ground for ejectment, but in sub-clause (b) the words used are 'the building' and not 'the building or a portion thereof'. His argument, therefore, was that so long as 'the building' which, in view of the wording of the earlier sub-clause (a) must be interpreted to mean the 'entire building', is not converted for a purpose other than the one for which it was leased, the tenant does not render himself liable to ejectment. This distinction between sub-clauses (a) and (b) has been noticed in a number of cases and it is this type of cases which create some difficulty. However, in none

(5) C. R. No. 654 of 1962 decided on 6th September, 1963.

of the decided cases the words 'the building' have been interpreted as 'the entire building'. It is true that the words 'a part of the building' do not exist in sub-clause (b) and, therefore, it would mean that merely because some slight change of use is made in a small part of the building that would not automatically render the tenant liable to be ejected under this sub-clause, but at the same time the word 'entire' is not used as qualifying the word 'building' as is the case in sub-clause (a). Taking into consideration the object of the legislation in inserting this sub-clause, namely, that a tenant should not be allowed to make use of the demised premises for a purpose for which if at the time of the lease an enquiry had been made from the landlord, he would not have consented to give the same on lease. In a case decided by the Madras High Court, reported as *Kannappa Chettiar* v. *Ranganathan Chetti* (6), identical words as occurring in the Act were the subject-matter of interpretation. In that case the premises were let for shroff's business and the tenant started manufacturing jewels for sale, and the question was whether such a user was hit by the statute in question, the learned Judge observed—"As strictly construed in these parts a shroff's business consists in buying and selling gold, sliver and other jewels manufactured by others and does not usually include the manufacture of such jewels by the shroff himself for purposes of sale. But in all such cases a liberal interpretation ought to be put in the interests of enterprise, and in order to prevent progress by too narrowly interpreting the scope of a business. If the business was totally different and such as could not have been contemplated at the time of the lease, it will certainly be a ground of eviction. But when a person carrying on business of shroff merely begins to manufacture jewels for sale in the premises, instead of confining himself to buying and selling jewels manufactured by others, it will still be within the frontiers of his original business." The same view has been expressed by other learned Judges by saying that it should be seen in such cases that the 'dominant purpose' to which the premises are put remains the same for which the premises had been let out originally. In *Rameshwar Dass* v. *Rishi Parkash* (7), a building was taken on lease for residential purposes. There were six rooms on the ground-floor and two on the first-floor. In the *deorhi* the tenant fixed a nickel polishing machine and one of the rooms was used for polishing of

(6) (1955)2 M.L.J. 51 (Notes).

(7) I.L.R. (1965)1 Pb. 177.

scientific apparatus, while another room was being used as an office. In these circumstances it was held that the dominant purpose to which the premises are being put remained the same for which the premises had been let out and consequently the tenant was not liable to eviction. In *Inder Singh* v. *Kalu Ram Harijan*, (8), Falshaw, C.J. held that if the back portion of a shop taken on lease by a barber was used for the purpose of residence, that would not fall within the mischief of this clause, because the dominant purpose still remains the same for which the shop was let out. This decision, however, was overruled by a Division Bench in *Niranjan Kaur* v. *Dr. Sri Ram Joshi*, (9). The basis of this decision, however, was not whether the dominant purpose remained the same or not, but the fact that the building was given for 'non-residential purposes', that is, solely for the purpose of business or trade, and as soon as a portion thereof was used for residential purposes it cannot be said that the building was being used solely for the purpose of business or trade and, therefore would, no longer fall in the category of 'non-residential building'. Consequently it was held that the building was being used for a purpose other than that for which it was leased. A case of which the facts were similar to the one which is before us, came up before Pandit J. *Bakhshi Singh* v. *Naubat Rai* (10). In that case the premises were let to the tenant "*barai dokandari tokajat*", that is, for a business in connection with chaff cutting machines. The parties' statements had further made it clear that what was meant by the words 'for business in connection with the *toka* machines' was that the premises were leased out for selling *toka* machines. Later on, the tenant, on a part of the premises, started the manufacture of spare parts of *toka* machines, which were ultimately sold on those very premises. While obtaining electric connection for the business of manufacture of spare parts, the premises were described as a 'workshop'. The contentions raised by the tenant before the learned Judge *inter alia* were (a) that the manufacture of spare parts of *toka* machines was a part of the business for which the premises had been let out to the tenant and that the manufacture of the same could be carried on within the frame work of the words '*barai dukandari tokajat*', and (b) that, in any case, the business of manufacture of spare parts was carried on only on a small portion of the premises.

(8) I.L.R. (1965)1 Pb. 121.

(9) 1969 R.C.R. 169.

(10) 1969 R.C.R. 1045.

Both these contentions were repelled. With regard to the first point it was observed by the learne Judge, at page 1049 of the report, as follows :—

> "If the building had been rented for the purpose of the manufacture of spare parts of *toka* machines and subsequently the tenant had started selling the machines after assembling those spare parts perhaps it could have been urged with some force that the sale of the *toka* machines was a part of the business of manufacturing the spare parts of the said machines, because after their manufacture, they had to be sold. The converse of this proposition could not, however, be true. The manufacture of a certain article could not be said to form part of the sale of that article, because one could sell an article without himself manufacturing it."

As regards the other point, it was observed that the evidence on the record did not show that only a small portion of the leased premises had been used by the tenant for manufacturing spare parts. *Inder Singh's case* (8), and *Rameshwar Dass's case* (7), were distinguished. As already observed, *Inder Singh's case* (8), is no longer good law. In so far as *Rameshwar Dass's case* (7), is concerned, it was contended by the learned counsel for the petitioner-landlord before us that that case seems to have been wrongly decided. Be that as it may, in *Remeshwar Dass's case* (7), Capoor, J. observed that there were as many as eight rooms in the house which were let out for residential purposes and a nickel polishing machine was fixed only in the *deorhi* of the house, and one room in the house was used for polishing of scientific apparatus while another room was being used as an office. From this it appeared that the dominant purpose to which the premises were being put was still residential, that is, the purpose for which the same were originally rented out. In *Bhakshi Singh's case* (10), it was found that the sheds for the manufacture of spare parts had been put in the courtyard which occupied nearly one-half of the total area of the premises and consequently it could not be said that manufacturing was being carried on only in a very small portion. It was further held that the sale of the *tokas* was quite different from "manufacturing spare parts". With great respect, we feel that the decision in *Bakhshi Singh's case* (10), lays down good law. No doubt conversion of a very small portion of the premises for a purpose which could be said to be different from the one for which the premises were originally let, may not render the tenant liable to eviction under clause (ii)(b) of sub-section

(2) of section 13, yet where a substantial portion of the premises is used for a purpose different from the one for which the same had been let, the consequences contemplated by the aforesaid clause would follow.

(9) Obviously, such consequences cannot follow, if the new business added to the existing one, for which the premises were let, is found to be a part of the existing business. An instance of this is afforded by a case decided by the Supreme Court, reported as *Maharaja Kishan Kesar* v. *Milkha Singh*, (11). In that case vacant land was given on lease for a period of five years and under the terms of the lease the tenant was entitled to construct buildings for residential purposes and for use as a workshop at his own cost. It was not disputed that the tenant was using the demised premises for servicing of motor vehicles. The tenant entered into an agreement with an Oil Company under which the company installed a petrol pump and embedded, in a portion of the site, a petrol storage tank. The landlord tried to evict the tenant on the ground that the setting up of a petrol pump for selling petrol was a purpose different from the one for which the premises had been let. Their Lordships repelled this contention and in doing so observed that in view of the admitted fact that the tenant "was using the demised premises for the servicing of motor vehicles . . . . . his workshop, can, therefore, be regarded as 'an automotive service station and repair shop". Their Lordships then referred to Dyke's Automobile and Gasoline Engine Encyclopaedia where at page 692, in the chapter dealing with 'the Repair Shop or Service Station and its Equipment', it is stated—"A garage is a place where cars are stored. A general service station supplies gasoline, lubricates cars, cleans and washes and performs other types of simpler services that are required almost daily. A repair shop and mechanical service department can be incorporated as part of the garage business or as a separate enterprise." In that case the Rent Controller had inferred that the sale of petrol, at a service station, or the running of a motor workshop, can be said to be an 'allied' business. Their Lordships, however, observed that "the business of sale of petrol may not be called an 'allied' business of the workshop, but they had no doubt that 'it can well be regarded as part of the business.' There is no evidence to show that in the trade a petrol pump is not regarded as a part of motor workshop business."

(11) 1966 Curr. L. J. (Pb.) 273.

(10) In the present case, however, it is not possible to accept the contention of the learned counsel for the tenant that the business of printing was part of the business of book selling. Just as it was observed by Pandit, J. in *Bakhshi Singh's case* (10), that the manufacture of spare parts of *toka* machines cannot be treated to be a part of the business of selling *toka* machines because people can sell *toka* machines without manufacturing their parts, similarly a book seller's business cannot be taken to include the printing of the books. So far as the sale of books is concerned, that is a commercial activity, whereas the business of printing is an industrial activity. If one may say so, in the words of the Madras High Court decision in (1955) 2M.L.J. 51(*supra*), the business of printing cannot be treated "within the frontiers" of the business of book selling. In the corresponding section 3(1)(d) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, it is provided that if the business carried on by a tenant is "inconsistent with the purpose for which the premises were let", and while dealing with a case where the premises were originally let for a dairy business but the tenant opened a workshop for repairing tractors, Dhavan, J., in *Varun Gupta* v. *Hari Swarup* (12), noted the difference between the words 'inconsistent with the purpose' and 'different from the purpose' observing—"But in the present case the purpose is not only different but inconsistent with the original one. A dairy is merely a shop for selling milk—a commercial enterprise, but a workshop for repairing tractors is in the nature of an industrial enterprise, requiring the use of mechanical tools. The work of repairing tractors is industrial and not commercial in nature."

From the provisions of section 13(2)(ii)(b) of the Act and the various decisions discussed above, the position emerges out like this :—

(a) that if only a small part of a building is used for a purpose other than the one for which it was originally let, that, by itself, may not render the tenant liable to be evicted under the above-mentioned clause. In any case, a tenant would not be so liable if the purpose complained of can be said to be 'part of the purpose for which the premises were originally let' ;

(b) that if the result of the use of even a small portion of a building is such that the category of the premises is changed from residential, non-residential and scheduled, and it

(12) 1967 All. L. J. 600.

becomes a category different from the one for which the same had been let, the clause would be attracted ;

(c) that if a substantial part of the demised premises is being utilized for a purpose other than the one for which the same had been leased, the tenant would render himself liable to eviction ; whether, in a particular case, there has been a substantial conversion of the premises for a purpose different from the one for which the same were let, would be a question of fact to be determined in each particular case ;

(d) that in determining whether the change has been substantial or not *inter alia*, it will be necessary for the Court to direct itself to the question whether at the time of letting of the premises the landlord would or would not have agreed to the premises being used for the changed purpose; and

(e) that if the entire premises are used for a purpose other than the one for which the same were originally let, the clause would be attracted.

(11) In the light of the above, in the present case there can be no manner of doubt that a substantial part of the premises, namely, admittedly the back portion of the ground-floor and the back *chaubara*, is being used for an industrial purpose, whereas the premises were originally let only for a commercial purpose of selling books or other general merchandise. Moreover, the business of printing cannot be said to be a part of the business of sale of books. It is also unlikely that the landlord while letting the shop for sale of books and merchandise, would have agreed, at the time of letting, that a printing press, to be run by electric power, be fixed on the premises. The tenant is, therefore, liable to be ejected under section 13(2)(ii)(b) of the Act. We, therefore, accept this petition, and, allowing the prayer of the landlord, grant a decree for ejectment of the tenant. In view of the fact that the tenant will need some time to shift the printing machine etc. we allow four months' time to the tenant to put the landlord in possession of the demised premises. In the peculiar circumstances of the case, however, we make no order as to costs.

P. C. JAIN, J.—I agree.

B.S.G.