functions exercisable under any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly."

and argued that it is the Central Government which has the power in respect of the Union Territory of Chandigarh to specify the authority, officer or person who on and with effect from November 1, 1966 (the appointed day), shall be competent to exercise such functions as are exercisable under any law in force on that day as may be mentioned in the notification issued by the Central Government in that behalf. The argument of Sardar Abnasha Singh is that the Central Government having issued the notification (Annexure 'B'), naming the Chief Commissioner of Chandigarh as the officer who would exercise all the functions of the State Government, the appointment of respondent No. 1, by the Chief Commissioner is fully authorised. Even irrespective of the provisions of section 91 of the Punjab Reorganisation Act, the President of India could and has delegated his powers in respect of the administration of Union Territory of Chandigarh to the Chief Commissioner under Article 239(1) of the Constitution. We are, therefore, unable to find any invalidity in the appointment of respondent No. 1 as District Judge of Chandigarh.

(16) No other point having been argued before us in this case, the writ petition fails and is dismissed, but in view of the nature of questions raised and the peculiar circumstances of the case, we make no order as to costs of these proceedings in this Court.

S. B. CAPOOR, J.—I agree.

K. S. K.

REVISIONAL CIVIL

Before Mehar Singh, C. J.

KIDAR NATH,—*Petitioner*

versus

SHRIMATI KARTAR KAUR,—*Respondent*

C. R. 32 of 1968

December 12, 1968

East Punjab Urban Rent Restriction Act (*III of* 1949)—*Section* 13(2)(*ii*) (*a*)—*Demised property let for a fixed term—Rent-note entitling the tenant to sub-let the property—Such tenant—Whether can sub-let after the expiry of the fixed term.*

Held, that when a demised property is let for a fixed term, after the expiry of that term, the tenant holds the demised property as a statutory tenant, not on the terms and conditions as in the rent-note but on the rights available to him to remain in possession of the property under the provisions of the East Punjab Urban Rent Restriction Act, 1949. It becomes a statutory tenancy after the expiry of the period fixed in the rent-note. Even if under the original demise, a tenant is entitled to sub-let, that cannot subsist after the tenant becomes a statutory tenant. The right of a statutory tenant, as a tenant having protection of a statute, is a personal right to remain in possession of the property, but is not a right of tenancy which is transfer of interest in the demised property. In the terms section 13(2) (ii)(a) of the Act, there can be no implied right of subletting, for it is specifically provided that there can be no subletting except with the written consent of the landlord. The written consent of a landlord under the rent-note comes to an end after the expiry of the terms fixed in it and such a right cannot be extended after the expiry of that period. (Para 4)

Petition under section 15(5) *of the East Punjab Urban Rent Restriction Act,* 1949 *against of the order of Shri Sewa Singh, Appellate Authority, dated* 13*th December,* 1967, *affirming that of Shri O. P. Saini, Rent Controller, Amritsar, dated* 12*th December,* 1966 *directing the eviction of the respondent from the rooms shown yellow and marked* 2, 3 *and* 8 *in the plan Ex. A* 3, *and also entire plot included in the boundary wall of these premises.*

R. K. CHHIBBER, ADVOCATE, for the Petitioner.

H. L. SARIN, SENIOR ADVOCATE *and* H. S. AWASTHY, ADVOCATE, with him, for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—The demised property bears property-tax No. BXIII-28-S/439-A and is situate in Gali No. 3 of Putlighar at Amritsar. It was the property of Avtar Singh, who had let it to the applicant, Kidar Nath, under the rent-note, Exhibit A/2 of July 1, 1960. The tenancy was for eleven months from July 1, 1960. The other terms in the rent-note that the necessary to note are (a) that the tenant, the applicant, was given a right to introduce sub-tenants, (b) that he having already constructed six rooms at his own costs in the demised property had agreed that he would remove the structures when he would want to vacate the demised property, and (c) that he was to deduct Rs. 50 per annum from rent for repairs and white-washing of the demised property. The demised property originally had three rooms. It appears from the rent-note. Exhibit A/2, that it had been in the tenancy of the applicant since 1955. He had before the date of the rent-note, Exhibit A/2, built six rooms in addition to those that were already on the property when he took the same on

rent. In the rent-note, Exhibit A/2, all this was clearly stated and the applicant expressly agreed that he would remove the structure of the six rooms built by him at his own cost when he would be wanting to vacate the demised property. This property was purchased by the respondent, Kartar Kaur, from Avtar Singh by a registered sale deed of December 16, 1964. When the applicant took his property on rent from Avtar Singh, room marked 'A' in the plan, Exhibit A/3, with the rent-note, Exhibit A/2, was in the tenancy of Shiv Textile Mills, and the applicant admits that in June, 1964, he sublet that room to Naval Kishore Silk Mills. The subletting of the room was, therefore, before the sale of the property in favour of the respondent.

(2) On March 18, 1966, the respondent sought eviction of the applicant under section 13 of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), hereinafter referred to as 'the Act', on two grounds, (a) non-payment of arrears of rent from December 16, 1964, and (b) subletting of part of the demised property without the written consent of the landlord. The applicant paid the arrears of rent pursuant to proviso to section 13(2) (i) of the Act, and that ceased to be a ground of eviction. He admitted that he had sublet the room marked 'A' in the plan, Exhibit A/3, with the rent-note Exhibit A/2, to Naval Kishore Silk Mills in June, 1964, but took the defences (i) that he having, at his own cost, constructed six rooms on the demised property, that property ceased to be demised property from the landlord to him as tenant, for what was demised to him under the rent-note, Exhibit A/2, was not the shape of the property after he had constructed on it six rooms at his own cost and so the Act had no application to the case and the Rent Controller had no jurisdiction to entertain and dispose of the eviction application of the respondent, and (ii) that his tenancy of the demised property has been a permanent tenancy and even after the expiry of eleven months from the date of the rent-note, Exhibit A/2, he has held the demised property on same terms and conditions as in the rent-note Exhibit A/2, so that in the terms of that rent-note he has had all the time the written consent of the landlord to induct sub-tenants. The Rent Controller by his order of December 12, 1966 negatived the defences of the applicant and made an order of eviction against him on the ground of subletting of a part of the demised property without the written consent of the landlord. The Appellate Authority, on the appeal of the applicant, affirmed the order of the Rent Controller on December 13, 1967, after consideration of the grounds on which the applicant sought to escape eviction

by urging that the tenancy with him of the demised property was a permanent tenancy and he held the same subject to the same terms and conditions as in the rent-note, Exhibit A/2, thus having the written consent of the landlord to induct a sub-tenant like Naval Kishore Silk Mills in a part of the demised property.

(3) In this revision application by the applicant, the learned counsel on his behalf has reiterated the same two defences as taken before the authorities below. It is first urged on his behalf that in the facts and circumstances of this case the provisions of the Act have not been attracted and the Rent Controller has no jurisdiction in the case. The reason given is that what was let originally to the applicant was the demised property with three rooms only. He thereafter constructed six more rooms at his own cost. When he did that, by a curious logic on the side of the applicant, the demised property ceased to be so according to the rent-note under which it had been let. The original rent-note, when the property was let before the applicant constructed the new six rooms, has not been brought on the record, and probably because it was not considered relevant to the controversy between the parties. So that it is not clear in what circumstances the applicant after having taken the demised property on rent from Avtar Singh came to construct six new rooms on it at his own cost. It does appear from the rent-note, Exhibit A/2, that when that rent-note was being executed by the applicant on July 1, 1960, probably the then owner of the demised property, Avtar Singh, took exception to the conduct of the applicant in having constructed the six new rooms, because it is stated clearly in this particular rent-note that the applicant will not make any further alterations at his own instance in the demised property. So when the demised property was again let to the applicant by Avtar Singh on July 1, 1960, it was let as it was on that date, that is to say, with three original rooms on it and six additional rooms constructed on it by the applicant. It was in that condition that the demised property was let on that date to the applicant. The only condition attached was that when the applicant would be wanting to vacate the demised property, he would remove the structures put up by him on it at his own cost. So it is apparently and factually wrong to say that the character and nature of the demised property has been altered by the addition of six rooms by the applicant himself at his own cost. Nothing happened after the date of the rent-note, Exhibit A/2, which constituted an alteration in the nature and extent of the demised property. Assuming for a moment, without expressing any opinion on this matter, that after the date of

any rent-note by the applicant in favour of Avtar Singh about the demised property earlier to July 1, 1960, the applicant constructed the new six rooms, and that had the effect of somehow or the other bringing about an alteration in the nature of the contract between the parties with regard to the demised property, all that was washed away when the applicant agreed to execute a fresh rent-note, Exhibit A/2, in favour of Avtar Singh about the same property on July 1, 1960, after which date there has not been the slightest alteration or change in the nature and structure of the demised property. So the basis of this argument that after the rent-note, Exhibit A/2, of July 1, 1960, the tenant has done something which operates as an alteration of the contract of tenancy between the parties, does not exist. So the cases relied upon by the learned counsel on both sides on this aspect of the argument are really not at all relevant. Those cases are *Pyara Singh* v. *Gurmukh Das* (1), cited on the side of the applicant in support of the proposition that if after the date of a rent-note the tenant constructs new building on the demised land, under the rent-note eviction cannot be sought before a Rent Controller, under the provisions of the Act, from the new building. To the contrary the respondent's learned counsel has cited *Mohinder Kaur* v. *Jatinder Singh* (2) and *Dhan Devi* v. *Bakshi Ram* (3). The last is a decision by a Division Bench consisting of Shamsher Bahadur and Narula, JJ., and this case negatives this argument on the side of the applicant. If on the facts of this case it was an argument which needed consideration, I would have been bound by the Division Bench decision in *Dhan Devi's case* (3). However, as I have already said, on the facts of this case the argument does not arise, because eviction from the demised property is sought after the date of the rent-note, Exhibit A/2, under which the demised property was let to the applicant in exactly the very shape in which it was on the date of the eviction application. The condition that in certain circumstances the applicant was given the right to remove the structures put up by him, has not been suggestive of any change in the demised property during the tenancy as under the rent-note, Exhibit A/2, of July 1, 1960. It appears to me that quite unnecessary argument has been expanded before the authorities below and in this Court on this aspect of the case which really on the facts, as I have said, does not arise.

(1) 1964 P.L.R. 193.
(2) I.L.R. (1968) 2 Pb. & Hry. 643=1968 P.L.R. 637.
(3) I.L.R. (1969) 1 Pb. & Hry. 274=1968 P.L.R. 913.

(4) The other argument that is urged by the learned counsel for the applicant is that the tenancy with the applicant is a permanent tenancy and the applicant continues to hold the demised property on exactly the same terms and conditions as in the rent-note, Exhibit A/2. It has already been stated above that under that rent-note he was given the right to induct sub-tenants. The rent-note was only for eleven months. In spite of that what is urged on the side of applicant is that fixation of the term of tenancy be ignored and after considering other term in the rent-note it be concluded that it is a case of permanent tenancy. The first condition in the rent-note upon which reliance in this respect is placed is the right given to the applicant to sublet the demised property, but the giving of such a right alone cannot be taken to indicate any intention of the parties to create a permanent tenancy, for such a term is not unusual in ordinary tenancies and even section 13(2)(ii) (a) of the Act envisages a case of subletting in the case of a tenancy other than a permanent tenancy. The other condition of the rent-note relied upon in this respect is the right given to the applicant to deduct Rs. 50 per annum from the rent for repairs and white-washing of the demised property, but I just cannot understand how any such right can convert an ordinary tenancy into a permanent tenancy, because, obviously such a condition enures only so long as the tenancy subsists and it comes to an end with the coming to an end of the tenancy. The third factor that has been relied upon in this respect is the construction of six new rooms on the demised property by the applicant and in this respect the learned counsel has referred to *Muhammad Ismail Khan* v. *Jawahir Lal* (4), but in that case the lessee had been given the right to build a house and to let it out on rent to any-one else, and it was recited in the lease deed that the lessee shall have the same right as the lessor enjoyed up till the date of the demise; and the last condition the learned Judges interpreted that the lessee was to have the same proprietary rights during the currency of the lease as the lessor had the proprietary rights in the demised property. It is obvious that the facts were entirely different and the case is of no assistance to the argument on the side of the applicant. But this argument is otherwise besides the point for, as I have already pointed out, after the date of the rent-note, Exhibit A/2, no change whatsoever has taken place at the instance of anybody, let alone the applicant, in the demised property. Whatever construction the applicant made on the demised property that was before the date of

(4) A.I.R. 1935 All. 492.

that rent-note. The demised property was taken on rent by the applicant as it was with even the six rooms constructed by him thereon and acknowledging the right of the owner of the property to give it on rent to him but leaving him only the right of removal of the structure at the time when he should be vacating the demised property. So this consideration is even otherwise not available on the facts of the present case. The last consideration which has been urged in this respect is that it is stated in the rent-note that the applicant was to have the right to remove the structure of the six rooms built by him when he should be wanting to vacate the demised property. The learned counsel urges that this gives an unconditional option to the applicant to vacate the demised property at his own will so that so long as he does not exercise any such option he has the right to have the tenancy of the demised property. In this way he is a permanent tenant of such property. In support of this argument reliance has been placed by the learned counsel on *Apu Budgavda* v. *Narhari Annajee* (5), *Khayali* v. *Hussain Bakhsh* (6) and *Abdulrahim Funumulla* v. *Sarafalli Mohamadalli* (7), but in all those cases the question was only whether the lease deed required registration or not under section 17 of the Registration Act on the ground that it was a tenancy existing for a term of one year, the argument having been based on this that although the tenancy in express terms was for a period of less than one year, it gave an option to the tenant to continue as tenant so long as he continued to pay the annual rent. Even in these cases it was never held that any one of the cases was that of a permanent tenancy. But the question that arises on the argument of the learned counsel here did not arise in any of those cases and there is no question of the registration or non-registration of the rent-note, Exhibit A/2, so far as the present case is concerned. Now, not one of these considerations is the least evidence from which it can be inferred that this is a case of a permanent tenancy, and not a case of tenancy expiring and determining in the terms of the rent-note, Exhibit A/2. If the Act was not there, immediately upon the expiry of eleven months from the date of the rent-note, Exhibit A/2, the tenancy having determined by that date, the applicant was liable to eviction from the demised property. It is only because of the provisions of the Act that after the

(5) (1879) 3 Bom. 21.
(6) (1886) 8 All. 198.
(7) A.I.R. 1929 Bom. 66.

date of the determination of the contractual tenancy under the rent-note, Exhibit A/2, that the applicant has been able to retain possession of the demised property. He has thus been a statutory tenant of the demised property from the date of the determination of the contractual tenancy after the expiry of eleven months of the date of the rent-note, Exhibit A/2. The argument on the side of the applicant that on the date of the rent-note, Exhibit A/2, in the room marked 'A' in the plan, Exhibit A/3, there was already a sub-tenant, Shiv Textile Mills, and if subsequently the applicant has changed the tenant and inducted Naval Kishore Silk Mills in June, 1964 in that room, that is not subletting without the written consent of the landlord, cannot obviously be sustained in view of the decision of the Supreme Court in *Pooran Chand* v. *Motilal* (8), in which their Lordships held that the fact there were sub-tenants in the demised property and new ones were substituted for them could not concievably be of any help to the tenant, because the new sub-tenants were not holding under the earlier sub-tenants but were inducted by the tenant after the earlier sub-tenancy was terminated. There is then the argument on the side of the applicant that even after the expiry of eleven months from the date of the rent-note, Exhibit A/2, the applicant has held the demised property on the same terms and conditions as in that rent-note, but that rent-note expired after eleven months of its date and after that the applicant has held the property as a statutory tenant not on the terms and conditions as in that rent-note but on the right available to him to remain in possession of the demised property under the provisions of the Act. It has been said by the learned counsel for the applicant that because the applicant's tenancy and conditions of the rent-note, Exhibit A/2, have continued to subsist. But it has been shown above that this argument has no basis and there is no material in this case from which it can be concluded that this is a case of a permanent tenancy. It is a case of a statutory tenancy after the expiry of fixed period of tenancy in the rent-note, Exhibit A/2, and in the case of such a statutory tenancy their Lordships held in *Anand Nivas Private Ltd.* v. *Anandji Kalyanji's Pedhi* (9) that even if under the original demise a tenant is entitled to sublet, that right could not subsist after the tenant became a statutory tenant. Actually, in that case their Lordships have explained that the right of a statutory tenant a sa tenant having protection of a statute is a personal right to remain in possession of

(8) A.I.R. 1964 S.C. 461.
(9) A.I.R. 1965 S.C. 414.

the property, but is not a right of tenancy which is transfer of interest in the demised property. Obviously a person whose only right is to possession of the property, that in the term of a statute like the Act is not a person who has interest in property and he is not a person who can exercise a right as that of subletting. In the terms of section 13(2)(ii)(a) of the Act, there can be no implied right of subletting, for it is specifically provided that there can be subletting except with the written consent of the landlord. The written consent of the landlord allowing the applicant to induct sub-tenants under the rent-note, Exhibit A/2, came to an end after the expiry of eleven months as fixed in that rent-note, and there has been no means whereby such a right has come to be extended in favour of the applicant after the expiry of that period. So that the second argument on the side of the applicant also does not prevail.

(5) The consequence is that there is no reason whatsoever for interference with the appellate order of the Appellate Authority. It has been stated during the hearing of this revision application on the side of the respondent that pursuant to the orders of the authorities below the applicant has already been evicted from the demised property and he did not remove the super-structure of the six rooms constructed by him on the demised property before his eviction. The learned counsel for the respondent has referred to section 108(h) of the Transfer of Property Act and to a case reported as *K. Arumugham Naicker* v. *Tiruvalluva Nainar Temple by its trustee* v. *Sankaran Chettiar* (10), to urge that the lessse may even after the determination of the lease remove, at any time whilst he is in possession of the property leased but no afterwards all things which he has attached to the earth, provided he leaves the property in the state in which he received it. The object of the learned counsel for the respondent is to emphasise that now the applicant cannot remove the structure of those six rooms. On the applicant's side the learned counsel refers to *Bawa Singh-Pala Ram* v. *Kundan Lal-Labhu Ram* (11) to urge that the Act being a complete code in itself, the provisions of the Transfer of Property Act cannot be attracted to any situation to which the Act applied. It is pointed out by the learned counsel for the respondent that the ratio of tha case no longer holds the ground in view of the Full Bench decision

(10) A.I.R. 1954 Mad. 985.
(11) A.I.R. 1952 Pb. 422.

in *Bhaiya Ram* v. *Mahavir Parshad* (12). To my mind this is a consideration which does not arise in this revision application. The applicant has been evicted from the demised property and in this revision application, assuming that he has an indefeasible right with regard to the six rooms that he himself constructed on the demised property, no relief can be given to him. If he has a right to any relief in this respect and is so advised, he may seek such relief in a proper forum. This revision application is dismissed with costs, counsel's fee being Rs. 100.

K.S.K.

REVISIONAL CRIMINAL

Before Gopal Singh, J.

MANOHAR LAL,—*Petitioner*

versus

STATE,—*Respondent.*

Criminal Revision 1132 of 1967

December 13, 1968.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 2(v)a) and 16(1) (a)—Turmeric powder—Whether an article of "food"—Determination of an article as "food"—Whether its normal use only may be taken into consideration—Sale of turmeric powder for external use—Whether takes it out of the scope of the definition of "food".

Held, that the word, "ordinarily" used in the definition of the word, "food" as given in section 2(v)(a) of Prevention of Food Adulteration Act refers to the usual and normal purpose of use of that article as distinguished from its abnormal or extraordinary purpose. Turmeric powder is an article, which ordinarily enters into and is used in the composition or preparation of human food. Its ordinary use is to use it in eatable used as articles of diet for human consumption. As distinguished from that ordinary and common mode of its use in eatables, it is also used for external application to injuries or wounds because of its curative effect. Turmeric powder is thus an article, which ordinarily enters into and is used in the composition of preparation of human food and it falls within the scope of the extended definition of the word, 'food' given)in sub-clause (a) of clause (v) of Section 2 of the Act. (Para 10)

(12) 1968 P.L.R. 1011.