N.E.S. Block, Pataudi, in the publication referred to above, but thereafter notification, dated September 10, 1971, has been issued by the State Government by which the Municipal area of Haily Mandi has been included within the notified area of the Market Committee, Pataudi. For the purpose of this writ petition, I hold that by virtue of the notification, dated September 10, 1971, the municipal area of Haily Mandi has been included within the notified area of Market Committee, Pataudi, and the nominations of respondents 6 to 8 were in order. The matter can be more satisfactorily decided in the civil suits which have already been filed in the Court of Subordinate Judge 1st Class, Rewari, District Gurgaon, wherein the evidence will be recorded. The petitioner may apply to that Court for being impleaded as a defendant to those suits, as being interested in the decision thereof. Nothing said in this judgment should be taken to have decided that matter finally.

(6) For the reasons given above, I hold that the nomination of respondent No. 5 was contrary to law and is, therefore, set aside, but the nominations of respondents 6 to 8 are upheld.

(7) Since, in the election of Chairman and Vice-Chairman, respondent No. 5 took part, that election has to be set aside. Consequently, the election of respondents 3 and 4 as Chairman and Vice-Chairman of the Market Committee, Pataudi, is set aside. The election to these offices may be held after filling in the vacancy resulting from the quashing of the nomination of respondent No. 5. The writ petition is decided accordingly and in view of partial success, the parties are left to bear their own costs.

B. S. G.

REVISIONAL CIVIL

Before Bal Raj Tuli, J.

HARWANT KAUR ETC.,—*Petitioners.*

versus.

HARINAM SANKIRTAN MANDAL (REGISTERED) YAMUNA NAGAR ETC.,—*Respondents.*

Civil Revision No. 931 of 1971.

May 26, 1972.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(3)(a)(1)—Juristic person like an Association or Trust—Whether

can get the tenant ejected from a residential building for a school—'Occupation'—Whether necessarily means residence—Running of a school without charging fees from the students—Whether a trade or business—Dismissal of an application for ejectment—Whether bars the second application on the same ground of personal requirement.

Held, that a juristic person like an association, a trust or a limited company, can have its tenant ejected from a residential building for the purposes of a school on the ground that it is required for its own occupation. The word 'occupation' does not necessarily mean residence nor does it involve a continual personal living in the house. The words 'own occupation' used in conjunction with 'his' may well include either a human being or a notional entity like an association or a trust or a limited company. Section 13 of the East Punjab Urban Rent Restriction Act, 1949, covers the case of a juristic person as well as of an individual human being and the juristic person is entitled to enforce his rights in the same manner as an individual human being. (Para 3)

Held, that running of a school without charging fees from the students is neither a trade nor business. It means the rendering of service to the community. Where the landlord of a rental residential building is a juristic person engaged in the philanthropic object of spreading education by setting up a school for children without charging fees from them, such a residential building can be got vacated by the landlord for the purposes of the school. (Para 5).

Held, that the dismissal of one application for ejectment does not debar a second application on the same ground if it can be made out to the satisfaction of the Rent Controller or the Appellate Authority that the landlord wants the residential building for his own occupation. If in the first application the landlord was not able to satisfactorily prove his personal requirement, it does not mean that thereafter he cannot file an ejectment application even if his requirement is most genuine. (Para 7).

Petition under section 15(5) *of Urban Rent Restriction Act for revision of the order of Shri Jagmohan Lal Tandon, Appellate Authority under the Rent Restriction Act (District Judge) Ambala, dated* 21*st June*, 1971 *affirming that of Shri O. P. Gupta, Rent Controller, Jagadhri, District Ambala, dated* 13*th August*, 1970 *accepting the application and directing the respondents to put the applicant into possession of the premises in dispute on or before* 31*st October*, 1970.

T. S. Munjral, Advocate, *for the petitioner.*

H. L. Sibal, Sr. Advocate with S. C. Sibal, Advocate and S. K. Goyal, Advocate, *for respondent No.* 1.

JUDGMENT

TULI, J.—The petitioners are the tenants of the building in dispute owned by Harinam Sankirtan Mandal. An application was filed by that Mandal against the petitioners and firm Hari Singh Bachan Singh for ejectment from the said building on the ground that it was required for personal occupation for the purpose of a school run by the Mandal and that the petitioners had sublet a portion of the building to firm Hari Singh Bachan Singh. A notice was issued to the petitioners to vacate the building but to no effect. The application was resisted by the petitioners and the following issues were framed by the Rent Controller:—

(1) Whether respondents 1 to 7 have sub-let any part of the demised premises to respondent No. 8?

(2) Whether respondent No. 8 is in possession of the property, which is not part of the demised property as a direct tenant under the petitioner as alleged by him in his written statement?

(3) Whether the petitioner requires the premises in dispute for the purpose of running the school and as such for its personal use?

(4) If issue No. 3 is affirmed, whether the premises in dispute can be got vacated legally for the purpose of running the school?

(5) Whether the ejectment application has been filed by duly authorised person? If not, its effect?

(6) Whether the tenancy in respect of premises in dispute of respondent Nos. 1 to 7 has been determined by service of valid notice to quit? If not, its effect.

No decision was given by the learned Rent Controller on issue No. 2 as it was admitted by the parties that that issue was unnecessary. Issue No. 1 was decided in favour of the applicant. Issues 1, 3, 4, 5 and 6 were decided in favour of the landlord-applicant and against the petitioners and an order of ejectment was passed directing the petitioners to put the landlord into possession of the premises in

dispute on or before October 31, 1970. This order was passed on August 18, 1970, against which the petitioners filed an appeal which was dismissed by the learned Appellate Authority, Ambala, by order dated June 21, 1971. The present petition has been filed by the petitioners against the order of the Appellate Authority under section 15(5) of the East Punjab Urban Rent Restriction Act (hereinafter called the Act).

(2) The learned Appellate Authority reversed the finding of the learned Rent Controller on issue No. 1, but upheld the findings on issues 3 and 4. The findings on issues 5 and 6 were not challenged before him. The petitioners have challenged the decision of the learned Appellate Authority on issues 3 and 4 and the finding as to estoppel under issues 5 and 6. On behalf of the landlord-respondent, the decision of the learned Appellate Authority on issue No. 1 has been challenged.

(3) The learned counsel for the petitioners has argued that the decision of the learned Appellate Authority as well as the Rent Controller on issues 3 and 4 is wrong in view of the decision to their Lordships of the Supreme Court in *Attar Singh* v. *Inder Kumar* (1), which did not approve of the decision of this Court in *Municipal Committee, Abohar* v. *Daulat Ram* (2), on the basis of which both the issues have been decided in favour of the landlord. In the instant case, it has been proved that there does exist a school run by the landlord for which accommodation is grossly insufficient. The school is being run up to fifth class and is located in a building adjacent to the premises in dispute, which consists of three rooms only whereas the students on the rolls of the school are 185. Further admission of students cannot be made due to insufficiency of accommodation. It has been argued on behalf of the petitioners that a residential building cannot be got vacated for running a school therein. This matter directly came up for decision before a Division Bench of this Court in *Siri Kishan and others* v. *Ghanesham Dass* (3), and it was held that a juristic person like an association, a trust or a limited company, can have its tenant ejected from a residential building for the purposes of a school on the ground that it is required for its own occupation. The word 'occupation' does not necessarily mean residence nor does it involve a continual personal living in the house.

(1) 1967 Curr. L.J. (Pb. and Hry.) 242.
(2) I.L.R. 1959 Punjab 1131.
(3) I.L.R. (1963)1 Pb. 115.

The words 'own occupation' used in conjunction with 'his' may well include either a human being or a national entity like an association or a trust or a limited company. Various judgments were relied upon for this conclusion, one of them being *Municipal Committee, Abohar* (2), (supra). In that case, it was held that the Act covers the case of a juristic person as well as of an individual human being and the juristic person is entitled to enforce his rights in the same manner as an individual human being. Dealing with the specific case, it was observed:—

> "If the landlord is an individual human being, then in order to bring his case within the meaning of section 13(3)(a)(ii)(a) he does not have to show that he will live on the rented land himself by erecting a tent upon it. All that he need show is that he requires it for such use as the rented land can be put to. In the case of a Municipal Committee it may put its property to many uses."

In *Attar Singh's case* (1), (supra), it was submitted before their Lordships:—

> "As the expression 'for his own use' is unqualified, the landlord can ask for eviction if he requires the rented land for his own use, whatever may be the use to which he may put the land after eviction."

This was the view taken by this Court in *Municipal Committee, Abohar's case* (2), (supra). Before the Supreme Court the contention of the tenant was:—

> "* * though the words 'for his own use' in this provision are not in terms qualified, they must be read as qualified, on a combined reading of sub-clauses (b) and (c) along with sub-clause (a); and if that is done, the provision really means that a landlord can ask for eviction of rented land only in those cases where he requires the rented land for his own use for carrying on a trade or business principally. Thus, it is urged, even if a landlord requires the rented land in order to construct a residential building for himself, that is not requirement for his own use within the meaning of sub-clause (a) of this provision. As in this case the landlord has stated definitely that he required the land for constructing a residential building for himself and for

no other purpose, it is contended for the appellant that he cannot take advantage of section 13(3)(a)(ii)."

Their Lordships held that the view taken by this Court in the case of *Municipal Committee, Abohar* (2), (supra) could not be sustained, and observed:

"It is true that in sub-clause (a) the word 'for his own use' are not qualified and at first sight it may appear that a landlord can ask for eviction from rented land if he requires it for his own use, whatever may be the use to which he may put it after eviction. Now if sub-clauses (b) and (c) were not there, this would be the correct interpretation of sub-clause (a). This interpretation has been put by the High Court in *Municipal Committee, Abohar,* but in the case the High Court has 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 seems to have proceeded as if sub-clauses (b) and (c) were not there at all. We are of opinion 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. Now if sub-clauses (b) and (c) were not there, a landlord can 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. In such circumstances it would have been immaterial what was the use to which the landlord intended to put the rented land after he got possession of it so long as he uses it himself. But as the provision stands, the landlord cannot get possession of 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), he has also to show before he can get possession, firstly, that he is not occupying in the urban area concerned for the purpose of his business any other such rented land. If (for example) he is in possession of any other rented land in the urban area concerned for the purpose of his business, he cannot ask for eviction of his tenant from his rented land, even though the rented land of which he may be in possession for the purpose of his business may not be his own land and he may only be a tenant of that land. This

shows clearly that though the words 'for his own use' in sub-clause (a) are not qualified, the intention of the legislature must have been that if the landlord is in possession of other rented land, whether his own or belonging to somebody else, for his business, he cannot evict a tenant from his own rented land. It clearly follows from this that the intention when the word '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. Otherwise we cannot understand why, if it is the intention of the legislature that the landlord can ask for eviction of his tenant of rented land for any purpose whatever, he should not get it back if he is in possession of other rented land for his business. This to our mind clearly implies that sub-clause (a) has to be read in the light of sub-clause (b), and if that is so, the words 'for his own use' must receive a meaning restricted by the implication arising from sub-clause (b).

(8) Turning now to sub-clause (c), we find that the landlord has not only to prove before he can get the tenant evicted on the ground that he requires rented land for his own use that he is not in possession of any other rented land for the purpose of his business in that urban area but also to prove that he had not vacated any rented land without sufficient cause after the commencement of the Act. Thus, he has not only to prove that he is not in possession of any other rented land for his business but also to prove that he had not vacated any other rented land which he used principally for business without sufficient cause. For example, even if the landlord is not in possession of any rented land for his business but had vacated other rented land which means land that he had taken for business without sufficient cause, he would still not be entitled to ask for eviction of a tenant from his own rented land. This again shows that if the landlord had been in possession of land for business principally and vacated it without sufficient cause, he cannot ask for the eviction of a tenant from his own rented land on the ground that he requires it for his own use."

(4) On the basis of these observations, it is submitted by the learned counsel that the provisions of section 13(3)(a)(i) should be interpreted in the manner their Lordships interpreted. The provisions of section 13(3)(a)(i), in so far as relevant, read as under:—

"A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—

(i) in the case of a residential building if—

(a) he requires it for his own occupation;

(b) he is not occupying another residential building, in the urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;

(d) * * * * *"

(5) The learned counsel submits that the landlord himself should require the residential building for his own occupation and should prove that he is not occupying another residential building in the urban area and that he has not vacated such a building without sufficient cause after the commencement of the Act. These requirements are fulfilled in the present case as the landlord has not vacated any residential building without sufficient cause after the commencement of the Act. The landlord is, no doubt, occupying another residential building wherein the school is being run, but that accommodation is not sufficient and, therefore, the landlord requires the premises in dispute for his own occupation, that is, the running of the school, occupation does not mean residence, but it means that it should be occupied for a purpose for which residential building can be used. A residential building cannot be converted into a non-residential building without the permission of the Rent Controller under section 11 of the Act and, therefore, 'own occupation' must be occupation of the building as residential building. On behalf of the landlord, it is submitted that a residential building can be got vacated for the running of a school which is neither trade nor business, particularly because no fees are charged from the students and no profit is made by the landlord from the running of the school. The expenses of running the school are met from the income of the endowments, which have been set apart for this purpose.

The judgment in *Siri Kishan and others* (3), (supra) is a direct authority in support of the proposition that a residential building can be got vacated for the running of a school. Therefore, even if the observations of their Lordships of the Supreme Court in *Attar Singh's case* (1), (supra) are to be applied to this case, the requirements of section 13(3)(a)(i) have been fully satisfied. It has to be remembered that the landlord is a juristic person engaged in the philanthropic object of spreading education by setting up a school for the children and for that purpose the residential building can be got vacated.

(6) The learned counsel for the petitioners brought to my notice the Full Bench judgment in *The Model Town Welfare Council, Ludhiana* v. *Bhupinder Pal Singh* (4), wherein the word 'business' was interpreted with reference to 'rented land', which has been defined in section 2(f) of the Act to mean any land let separately for the purpose of being used principally for business or trade. The learned counsel for the petitioners submits that the definition of 'non-residential building' in section 2(d) of this Act is:

> "a building being used solely for the purpose of business or trade."

and for this reason the running of a school is business in its wider-sense and a residential building cannot be got vacated for running a business because it will get converted into a non-residential building. In my opinion, running of a free school does not amount to business. It means the rendering of service to the community and, therefore, a residential building can be got vacated for the purpose of a school which is not run on commercial lines for making a profit therefrom. The matter has to be decided on the facts of each case. Therefore, the learned Appellate Authority and the Rent Controller have correctly held that the landlord could get the premises in dispute vacated on the ground of its own occupation for running a school.

(7) The learned counsel for the petitioners has pointed out that the landlord had filed an ejectment application against Harwant Kaur, petitioner, on this very ground of personal occupation for a school in June, 1966, and had obtained an order of ejectment of June

(4) I.L.R. (1971)2 Pb. and Hry. 579.

26, 1967, a copy of which was filed as Exhibit R. 1. Harwant Kaur filed an appeal against that order before the Appellate Authority and therein the learned counsel for the landlord made a statement that he did not wish to proceed with the original application. On the basis of that statement of the learned counsel, the Appellate Authority accepted the appeal and dismissed the ejectment application by order dated June 18, 1968, a certified copy of which is R. 2. It has been submitted on behalf of the petitioners that the landlord is now estopped from claiming ejectment of the petitioners on that ground. It has been submitted on behalf of the landlord that there can be no estoppel because the Appellate Authority did not come to any finding on merits and the landlord withdrew the ejectment petition on the ground that it suffered from certain technical defects. I am, however, of the opinion that the dismissal of one application does not debar a second application on the same ground if it can be made out to the satisfaction of the Rent Controller or the Appellate Authority that the landlord wants the residential building for his own occupation. It may be that in 1966 personal requirement was not satisfactorily proved but it cannot be said that thereafter the landlord could not file an ejectment application even if its requirement was most genuine. The present ejectment application could not be dismissed on that ground and the decision of the learned Appellate Authority is correct on the point.

(8) I also agree with the learned counsel for the landlord-respondent that the finding of the Rent Controller on issue No. 1 was correct and its reversal by the learned Appellate Authority is not justified. Under section 15(5) of the Act, the High Court, while hearing a revision, can look into the propriety and legality of the order under revision. It was proved in this case by the evidence of the local commissioner, Gulzari Lal Sharma, Advocate, that the firm Messrs Hari Singh Bachan Singh were in occupation of a portion of the building wherein bags of grain were stored. When the local commissioner went to the spot, he found the bags of grain lying in the said garage besides some big sieves used for dusting the grain. Three big empty drums were also lying there. He further stated that when he reached the spot, the doors of the garage were open and when he came out, the same were locked by Bachan Singh of firm Hari Singh Bachan Singh. He asked Bachan Singh to give his statement which he made but refused to sign it. Smt. Harwant Kaur refused to give her statement. She, however, told him that the portion marked "A" in the rough site plan Exhibit A.2 (excluding

garage) was being used for her residence, and that the bags of grain lying in the premises marked "B" belonged to firm Hari Singh Bachan Singh. It is well known that it is not easy to prove sub-letting, as direct evidence is seldom available. The inference of sub-letting has to be drawn from the circumstances of the case. Before the Rent Controller, the firm Messrs Hari Singh, Bachan Singh denied that they were in possession of the garage or any portion of the building of which the petitioners were the tenants. This statement was contrary to the facts found on the spot by the local commissioner. The learned Appellate Authority did not place reliance on other oral evidence led in the case on the issue of sub-letting by either party. But it is difficult to understand how he came to the conclusion that the evidence of Shri Gulzari Lal Sharma did not prove sub-letting. I, therefore, hold that the finding on issue No. 1 arrived at by the learned Rent Controller was correct and its reversal by the learned Appellate Authority is wholly unjustified. I accordingly reverse the finding of the Appellate Authority and restore the finding of the Rent Controller on that issue.

(9) For the reasons given above, there is no merit in this petition which is dismissed, but the parties are left to bear their own costs. Since six out of seven petitioners are minors, I allow them two month's time to vacate the premises.

K.S.K.

CIVIL MISCELLANEOUS.

Before Prem Chand Jain, J.

SHAM DASS *alias* SHAM LAL,—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER ETC.,—*Respondents.*

Civil Writ No. 1636 of 1965.

May 26, 1972.

Punjab Security of Land Tenures Act (X of 1953)—Section 18(2)—Determination of the value of land sought to be purchased—Basis of—Whether the average of the prices obtaining for 'similar' land in the locality—Word 'similar'—Whether has any reference to the future use of the land—Prices of plots sold by the Government after acquiring agricultural land—Whether can be taken into consideration.