of section 1 of the Delhi and Ajmer Rent Control Act, 1952, speaks of that Act extending to the areas specified in the First Schedule, that is, to certain specified areas, while in clause (j) of section 2 of the Punjab Act, the words used are general, that is, any area administered by a municipal committee, etc. I am, therefore, of the view that the case relied upon by the Courts below can be distinguished, and accordingly I accept the revision petition and holding that the Act is applicable to the property in dispute, I set aside the order of the Courts below though in the peculiar circumstances of the case, the parties are left to bear their own costs in this Court. They are directed to apear before the trial Court on the 6th April, 1964, for decision on merits.

K.S.K.

REVISIONAL CIVIL

Before D. Falshaw, C.J.

MESSRS. GULAB RAI KISHORI LAL,—*Petitioner.*

Versus .. ..

BANARSIDAS CHANDIWALA SEWA SMARAK TRUST,—*Respondent.*

Civil Revision No. 409-D of 1959. ...

1964

March 17th.

Delhi and Ajmer Rent Control Act (XXXVIII of 1952) —S. 17(d)—Public institution requiring premises for the furtherance of its activities—Whether must be in existence before the ejectment proceedings are taken—S. 35—Subsequent events—Whether can be taken into consideration at the stage of revision—Ground of ejectment ceasing to exist —Ejectment—Whether can be refused.

Held, that in order to attract the provisions of section 17 of the Delhi and Ajmer Rent Control Act, 1952, it is necessary that the plaintiff institution must already be a

public institution, i.e., the plaintiff must already be running an educational institution, library, hospital or a charitable dispensary for extending the scope of which it requires the premises in suit. In other words, it must be an existing public institution and not an institution which wants to become a public institution.

Held, that while deciding the revision petition under section 35 of the Delhi and Ajmer Rent Control Act, 1952, the Court can take into consideration subsequent events as the proceedings in a revision under section 35 are proceedings under the Act and constitute rehearing of the case. If at the stage of revision the ground on which a decree for ejectment had been obtained by a landlord has ceased to exist, the Court should set aside the decree.

Petition under section 35 of Act 38 of 1952, for revision of the order of Shri H. R. Khanna, District Judge, Delhi, dated 12th August, 1959, reversing that of Shri A. S. Gill, Sub-Judge, Ist Class, Delhi, accepting the appeal and setting aside the order of the lower Court and passing an order for ejectment of the respondents from the premises in dispute.

R. S. NARULA, S. D. SEHGAL, A. C. SEHGAL, DAYA KISHAN, R. L. TANDON AND HARBANS SINGH, ADVOCATES, for the Petitioner.

N. C. CHATTERJEE, HARNAM DASS AND D. K. KAPUR, ADVOCATES, for the Respondents.

ORDER.

Falshaw, C.J. FALSHAW, C.J.—These are 9 connected revision petitions filed by tenants against whom decrees for ejectment had been passed in appeal by the District Judge, in favour of the common landlord, a registered trust called Shri Banarsidass Chandiwala Sewa Samarak Trust, after the landlord's suits had been dismissed by the trial Court. Because of the pecuniary value of the cases 7 of the appeals were filed by the landlord in the Court of the Senior Subordinate Judge and two in the

Court of the District Judge, but because the cases had been consolidated in the trial Court, the appeals filed in the Court of the Senior Subordinate Judge were withdrawn by the District Judge and heard along with those filed in his Court.

The premises in dispute are described as shops and *balakhanas* constituting one block in what is described as Katra Ishwar Bhan in the part of Delhi called Khari Baoli. The tenants had been in occupation of the premises when the block was owned by an individual, but the property was made over to a trust which was created and registered under the Societies Registration Act of 1866 two or three years before the suits were instituted in 1955. One of the objects of the trust, as set out in the Memorandum of Association, is to provide education, particularly basic education, and training in handicrafts or cottage industries to children and adults in Delhi State by opening schools or by awarding scholarships to deserving students to carry on their studies or by giving aid to institutions working for these objects.

It is alleged that the trustees of the Society passed a resolution on the 28th of June, 1954, to the effect that a school should be set up in the premises in suit of which possession was to be obtained for this purpose. The Delhi State Administration was informed of the intention of the trust to set up a school in these premises and by a letter, dated the 3rd of February, 1955, the Chief Secretary of the Delhi Administration promised to give the same help to the plaintiff trust in connection with such a school as was given to other similar institutions. In these circumstances the suits were instituted against the nine tenants under section 17

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of the Delhi and Ajmer Rent Control Act of 1952, the relevant portion of which reads:—

"Where the landlord in respect of any premises is any company or other body corporate or any local authority, or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution, for the furtherance of its activities, then notwithstanding anything contained in section 13, the Court may, on an application of such landlord, place him in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Court is satisfied—

(a) .....

(b) .....

(c) .....

(d) that the premises are *bona fide* required by the public institution for the furtherance of its activities.

Explanation.—For the purposes of this section, public institution includes any educational institution, library, hospital and charitable dispensary."

It was claimed by the plaintiff that the premises were *bona fide* required for the furtherance of its activities by setting up a school therein. The suits were contested on various grounds by the defendants, but the only question of importance at this stage is whether the requirements of section 17 are met. The trial Court was not satisfied that the trust *bona fide* required the premises for the purpose of starting a school there, but the learned District Judge found that the plaintiff trust was a public institution one of the objects

of which was to further education by setting up schools, and that there was no reason for supposing on the facts of the present case that they were not intending in fact to set up a school in the premises once possession was obtained from the tenants. This was sufficient, in his opinion, to justify ejectment of the tenants.

On behalf of the tenants it was argued before me that as was held by J. L. Kapur, J., and myself in Civil Revision No. 413 of 1953, *Messrs J. N. Singh & Co.* v. *Sardari Mal and others*, decided on the 2nd of December, 1955, not by any means every charitable trust is a public institution within the meaning of section 17, and that in order to take advantage of the provisions of this section a charitable trust must be of the nature mentioned in the Explanation, i.e., an educational institution, library, hospital or charitable dispensary. It was also pointed out that in Civil Revision No. 46-D of 1960, *Abdul Aziz and others* v. *Multan Sewa Samiti*, decided on the 9th of January, 1961, I had taken the matter a step further. In that case the landlord was a registered society styled the Multan Sewa Samiti, which had been a charitable institution at Multan before the partition; and which had been revived at Delhi where it had purchased a house. A suit was instituted against certain persons occupying various portions of the house under section 17 of the Act on the ground that the house was required by a public institution for the purpose of turning it into a library and hospital. After referring to the decision in *J. N. Singh & Co's case* and another case, *Saiya Ram Gupta* v. *Smt. Ganga Devi Jain Dharamarth Trust* (1), in which I had taken a similar view, I observed as follows:—

> "At the same time it would appear that the present case is to some extent

(1) (1960) 62 P.L.R. 904.

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distinguishable from those cases in that the object of the society for which it requires possession of the premises in suit is to start a hospital and a library, and hospitals and libraries are mentioned as public institutions in the Explanation. On behalf of the petitioners, however, and in my opinion, rightly, it is contended that it is not sufficient that the plaintiff society should require the premises to start a hospital and library and in order to attract the provisions of section 17, the plaintiff institution must already be a public institution, i.e., the plaintiff in the present case must already be running a hospital or a library for extending the scope of which it requires the premises in suit. In other words, it must be an existing public institution and not an institution which wants to become a public institution."

In that case I decided in favour of the landlord because it was proved on the record that in another house owned by the plaintiff society, a charitable dispensary was already being carried on. This decision was of course later than the decision of the learned District Judge in the present case, but since the status of the plaintiff trust as a public institution was challenged by the defendants, it is to be presumed that all the evidence available to them for this purpose was produced and the only evidence, other than to the effect that the premises in suit were required for setting up a school under article 3 of the Memorandum of Association, was that at an earlier stage the trustees had taken a decision to use these very premises for setting up a Health Centre, the

provision of medical facilities also being included in the Memorandum of Association as an object of the trust. It seems that this idea was abandoned because the authorities did not consider this to be a suitable location for a Health Centre. In the circumstances it must be taken as a fact that until the plaintiff trust instituted these proceedings to eject the tenants from the premises in suit, it had not taken any active steps to implement any of its objects, and if I correctly stated the law in the *Multan Sewa Samiti's case*, the plaintiff trust would have to be held to be not yet an actual public institution, but only a would-be or potential public institution. In my opinion the view I took in that case was correct and it must be held that when the respondent trust instituted these ejectment proceedings, it was not a public institution within the meaning of section 17 of the Act.

Apart from this there are other grounds for deciding in the petitioner's favour in the form of developments which have taken place during the pendency of the present revision petitions. An application was filed along with an affidavit by one of the petitioners on the 16th of August, 1963. It was alleged therein that in August, 1959, the trust had started a Women's College at Delhi under the name Janki Devi Mahavidyalaya and according to the requirements of the Statutes of the University of Delhi the trust was required to set apart a sum of Rs. 8,00,000 in cash, Rs. 5,00,000 in lieu of endowment fund and Rs. 3,00,000 in lieu of building fund in order that the college could be recognised. In order to meet this demand the trust had passed a resolution on the 12th of September, 1961, by which two-thirds of the property of the trust which includes the premises in dispute was to be transferred to the governing body of the new college, a copy of this resolution

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being sent to the Registrar with letter of the 13th of September, 1961, by the Chairman of the governing body of the college. Subsequently a list of the properties transferred in the name of the college was sent by the Chairman to the Registrar of the University on the 9th of October, 1962 and the list clearly includes the premises in dispute. It was pointed out in the application that after the properties were transferred to the new college for the purpose of its income being devoted to the upkeep of the college, the trust could not possibly be requiring the ejectment of the tenants for the purpose of setting up a school therein.

In the reply filed on behalf of the trust and the affidavit of Shri Krishana, Chairman of the trust, these allegations were generally not denied. It was, however, denied that there had actually been any transfer of the property to the college which could not be done by a mere resolution, and it was alleged that some of the trustees had raised and made over to the college the requisite amount in cash, or they were intending to do so shortly. In a rejoinder filed by the petitioner who had originally filed the application it was pointed out that the transfer of the property to the governing body of the college by a resolution of the trust as communicated to the University authorities was just as good in law as was the original transfer of the property to the trust by Brij Krishen Chandiwala, regarding which there was no formal gift or sale-deed, and the University record still showed that the property including the premises in suit stood charged with Rs. 5,00,000 as it vested in the governing body of the college. It was also alleged and a photostat copy of a letter sent by Brij Krishen Chandiwala to the Delhi Corporation was attached to show,

that in April, 1963, he was trying to induce the Corporation to buy the property including the premises in dispute. Attached to the letter, there was in English list of the tenants and the description of the premises occupied by them and particulars of the grounds on which they were liable to ejectment.

The first question which will arise is whether I should take note of subsequent developments in deciding the revision petitions under section 35 of the Delhi and Ajmer Rent Control Act of 1952. The view I had expressed *in Bimal Parashad Jain* v. *Niader Mall* (2), that proceedings in a revision under section 35 were proceedings under the Act and constitute rehearing of the case, which was overruled by a Division Bench in *Manmohan Lal* v. *B. D. Gupta* (3), has now been upheld by the Supreme Court in *Karam Singh Sobti and another* v. *Pratap Chand and another* (4), though what was under consideration in those cases was whether this Court in a revision petition under section 35 could give effect to the proviso contained in section 57 of the Act of 1958, by which the principles of the new Act were to be applied in proceedings instituted under the Act of 1952. These Acts are generally for the protection of tenants and restrict the reasons on which they can be ejected, and I should certainly have thought that if it is shown at the stage of revision that the ground on which a decree for ejectment had been obtained by a landlord has ceased to exist, the Court should set aside the decree. The position revealed by the application and documents produced at this stage appears to be either that the trust has transferred the property which includes the premises

(2) I.L.R. (1960)2 Punj. 438=1960 P.L.R. 664.
(3) I.L.R. (1962) 1 Punj. 558=1962 P.L.R. 51.
(4) 1964 P.L.R. 210.

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in dispute in these cases to a college for its income, or alternatively that the landlord-trust is negotiating to sell the property to the Corporation at a price made higher by the fact that the tenants will have been removed. In neither of these cases should there possibly be said to be a case made out that the premises were *bona fide* required by the trust for the purpose of establishing a school in them.

For these reasons I accept the revision petitions and setting aside the orders of the learned District Judge restore the orders of the trial Court dismissing the landlord's petitions for the ejectment of the tenants. The parties will bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before J. S. Bidi and Shamsher Bahadur, JJ.

RANJIT SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents

Civil Writ No. 1665 of 1963.

1964

March, 17th

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Proviso to S. 18(1)—"Total number of members"—Computation of—Associate and ex-officio *members—Whether to be reckoned—Ss. 102 and 121—Removal of chairman by no-confidence motion—Whether can be challenged by means of an election petition—Resolution removing chairman not validly passed—Whether can be cancelled by Government.*

Held, that the vacation of office by chairman or vice-chairman, which must follow as a result of no-confidence motion being a serious matter, the Legislature must be intended to have meant what the first proviso to sub-section (1) of section 18 of the Punjab Panchayat Samitis and