

Gurbachan Singh and another

Vs

Shivalak Rubber Industries and others

Civil Appeal No. 514 of 1994

(Kuldip Singh, Faizan-Uddin JJ)

23.01.1996

### JUDGEMENT

#### FAIZAN UDDIN J.

1. This is landlords appeal directed against the order dated August 7, 1993 passed by the High Court at Punjab and Haryana at Chandigarh dismissing the appellants Civil Revision No. 618 / 1993 in limine against the judgment dated November 17, 1992 passed by the Appellate Authority, Amritsar in Rent Appeal No. 21 dated December 12, 1988 affirming the order dated November 4, 1988 passed by the Rent Controller, Amritsar in Rent Application No. 106/81 dismissing the application of the appellants seeking eviction of the respondents 1, 1-A to I-F from the premises in suit.

2. Karam Singh, late father of the appellants, had purchased the property at G. T. Road, Chhehartta from the Rehabilitation Department. The property consisted of 12 shops with a verandah in front of shops and vacant land at the main gate situated between the shops Nos. 6-S and 7-S.

3. The respondent No. 1, Shivalak Rubber Industries through its proprietor, Dev Raj was inducted as a tenant of Karam Singh in shops Nos. 4-S to 6-S together with 10 ft. vacant land behind the shops with effect from May 1, 1958 on a monthly rent of Rs. 28/-. The respondents Nos. 1-A to 1-F are the partners of respondent No. 1-firm. Later by a rent note dated October 25, 1965 the respondent No. 1-C Dev Raj obtained shops Nos. 2-S and 3-S from late Karam Singh together with 10 ft. open land behind the said shops and 7 ft. wide strip of vacant land with the corresponding length to shops Nos. 2-S to 6-S behind / adjoining 10 ft. wide strip of land on a monthly rent of Rs. 30/-. Thus shops Nos. 2-S to 6-S with the aforementioned vacant land were let out to the respondents Nos. 1 and 1-A to 1-F. The owner / landlord Karam Singh expired on July 13, 1972 leaving behind him the present appellants as his sons and respondents Nos. 2, 3 and 4 as his daughter. Karam Singh has executed a Deed of Will dated June 28, 1972 in favour of the appellants in respect of the suit premises by virtue of which the appellants became the owner / landlords of the respondents Nos. 1, 1-A to 1-F. The respondents Nos. 2 to 4 are impleaded as pro forma respondents.

4. The appellants initiated eviction proceedings against the respondents Nos. 1, 1-A to 1-F under the East Punjab Rent Restriction Act, 1949 on the grounds of subletting and alterations in the demised premises impairing materially the value and utility of the premises let out to them. The appellants alleged that the tenant-respondents have acted in a manner which has materially impaired the value and utility of the demised premises for having made various structural additions and alterations in the demised premises without the written consent of the landlords and in violation of the terms of tenancy. It was alleged that the tenant-respondents converted the shops in the shops, store, kothries for residential purpose and office by removing the intervening walls of the shops, removing the

doors of the 5 shops, converting verandah in front of the shops into sheds and closed the said verandah from the front and opened the shops on G. T. Road by brick work, it was further pleaded that the tenant-respondents converted shops Nos. 5-S and 6-S with verandah in front of the said shops by masonry work of manufacturing of rubber goods by making big appertures in the walls between the 2 shops. It is alleged the door of shop No. 2 is alleged to have been removed and a small window with iron grills has been affixed in the front. It is alleged that the verandah is being used as office by closing the door of shop No. 2 with masonry work and main part of shop No. 2 has been converted into a kothri with its entrance opening in the public street towards west which is being used as residence by one Jamuna Prasad, Respondent No. 5 to whom it has been sub-let. The full size door of shop No. 3 is alleged to have been removed and a door measuring 3 x 7 ft. has been installed in front of the verandah. Shop No. 4 has been alleged to be merged with the verandah by fitting a door in the verandah in order to make it a godown.

5. The appellants further alleged that the tenant respondents had demolished 17 ft. long and 5 ft. 9 inches high boundary wall existing on the western side of the demised land touching the house / kothi of Shri Chander Muni, respondent No. 1-A, which separated the appellants property from that of respondent No. 1-A on the western side. It has been alleged that the respondents made a passage to the demised land from the kothi of respondent No. 1-A by fixing one big wooden door and one steel door in place of the demolished boundary wall, which opened in the courtyard of the kothi of respondent No. 1-A. Adjacent to the wooden door a small triangular shaped kothri with a door opening in the courtyard of the kothi has also been constructed. A brick staircase has also been constructed from over this kothri as an access from the courtyard of the kothi to the roof of the shed made over the demised land as a direct approach. The open space at the back of the shops let out to the respondents has thus been converted by including the same into the shed with a shed with a pucca roof without the permission of the appellants. It has been alleged that the tenants-respondents have constructed a lintel roof over the shops Nos. 2-S to 6-S and mis-appropriated the costly wooden building material used in the original roof and thereby completely changed the shape of the building by closing it from the side of the G. T. Road merging the demised premises with the residential kothi of respondent No. 1-A situated in the west.

6. Further allegation of the appellants was that the floor of the demised shops has been totally damaged and the construction of the shed at the back of the shop has hampered light and air to the main building impairing its value and utility. It was also the case of the appellants that instead of trading activity in the demised shop the respondents have installed machinery and started industry of manufacturing rubber goods without the written consent of the appellants. The appellants also alleged that the two kothries illegally constructed on shop No. 2 and in the open space have been sub-let to one Jamuna Prasad, respondent No. 5 and other person which afforded additional ground to the appellants to seek eviction of the tenants-respondents. The appellants also took the plea that the tenants-respondents were in arrears of rent with effect from October, 1981 which they failed to pay.

7. The respondents Nos. 1 and 1-A to I-F contested the eviction application filed by the appellants. They took preliminary objection disputing the relationship of landlord and tenant between the newly added respondents as partners of the firm, respondent No. 1 and for mis-joinder of parties and causes of action. They also took the plea that the appellants had no locus standi to file the eviction application as they were not the legal heirs of deceased Karam Singh. The respondents denied all the adverse allegations with regard to the alleged alterations and additions in the demised premises. They took the plea that there were two separate tenancies in respect of two separate premises with separate terms and conditions and, therefore, the single application for ejection from both the

premises was not maintainable. The respondents took the stand that the alleged additions and alterations were made prior to the year 1971 before they were inducted as tenant and, therefore, they were not responsible for the same. The respondents, however, admitted the construction of shed which according to them was constructed under the terms and conditions of the tenancy and with the permission of the landlord. The respondents pleaded that the 3 shops Nos. 4 to 6 were not separate shops but it was only one unit having only one entrance from the road with 10 ft. space at the back. The respondents also denied any sub-letting by pleading that Jamuna Prasad was their Chowkidar who was permitted to occupy the kothri as a Watchman. Regarding the change of user the respondents pleaded that the demised premises were let out of carrying industrial business and it was being used for the same purpose.

8. After recording the evidence and on evaluation of the oral and documentary evidence the Rent Controller decided all the issues in favour of the landlord appellants except issues Nos. 2, 3 and 4 relating to the alleged unauthorised additions and alterations in the demised premises which are said to have materially impaired the value and utility of the premises and sub-letting a part of it to respondent No. 5. The Rent Controller took the view that the first tenancy in respect of shops Nos. 4-S to 6-S were created by late Karam Chand in favour of respondent No. 1 vide rent note dated May. 14, 1958 and the second tenancy was also created by late Karam Chand in favour of respondent No. 1 though the respondent No. 1-C in respect of shops Nos. 2-S and 3-S with 10 ft. wide open space beings these shops and that both the tenancies were consolidated. The Rent Controller also took the view that by virtue of the Deed of Will dated June 28, 1972 executed by the former landlord Karam Chand in favour of his two sons, the appellants herein they became the owner and landlord of the disputed property to whom the tenants-respondents were paying rent which fully established the relationship of landlord and tenant between the parties. The Rent Controller, however, took the view that the appellants had failed to establish that the alleged additions and alterations were made by the respondents in the demised premises and at the same time held that the notice issued to Chander Muni, respondents No. 1-A under Section 269 and 270 of the Municipal Corporation Act no doubt established that in the year 1981 the respondents started construction of the stair-case and one room up to the roof level on the vacant land which was let out to the respondents along with shops. The Rent Controller proceeded further to take the view that even if for the sake of arguments it is accepted that the respondents made additions and alterations as alleged in the eviction petition, in his opinion, the same did not materially impair the value and utility of the demised premises and, therefore, respondents are not liable to eviction from the demised premises. The Rent Controller also took the view that if the shops were converted into shed, store and kothries by removal of the intervening walls and making appurtures it cannot be said that the said conversion materially impaired the value and utility of the demised premises. The Rent Controller further took the view that the enclosure of verandah on replacement of the roof of the alleged shops also did not fall within the mischief of the provision of Section 13 (2) (iii) of the Act. As regards the subletting the Rent Controller took the view that Jamuna Prasad was a Chowkidar of the respondents who was occupying the kothri as a watchman of the tenanted premises which does not amount to sub-letting. On these finding the Rent Controller dismissed the eviction application. The appeal preferred by the applicants before the appellate authority also met the same fate as the findings of the Rent Controller were affirmed and the appeal was dismissed. The civil revision was also dismissed by the High Court in limine.

9. Learned counsel appearing for the landlord-appellants strenuously urged that the Rent Controller and the appellate authority both the have mis-read the evidence on record and committed a serious error in law and the facts of the case in recording the finding that the alleged additions and alterations made by the tenants-respondents do not amount to alteration impairing materially the

value and utility of the demised premises within the meaning of Section 13(2)(iii) of East Punjab Rent Restriction Act, 1949 (hereinafter as the Act). He submitted that the evidence on record oral and documentary sufficiently established that the tenant-respondents have drastically changed the nature, character and form of the demised premises which has not only impaired materially the value but also impaired the utility thereof. He urged that all the Courts have not considered the material evidence in a right perspective and the statement of the witnesses have either been ignored on material aspects or mis-read and twisted to mean otherwise than what is intended to depose by them which has resulted into grave injustice. With the assistance of the counsel for the parties we were taken through the material evidence and the documents on record. After perusal of the same and the judgments of the Court below we find that the Courts below fell into patent error in taking the view that they have taken with regard to the nature and character of the alleged additions and alterations which clearly fall within the provisions of Section 13(2) (iii) of the Act.

10. It may be noticed that the Rent Controller had appointed Ravinder Pal Kaur, AW4, an advocate to make an inspection of the premises in question and submit the report. Accordingly, AW 4 inspected the premises and submitted the report dated October 24, 1981. The premises were inspected in the presence of the appellants and respondent Chander Muni. A reading of the report goes to show that the verandah in front of the shops let out to the respondents was altogether missing which only indicated that it was enclosed in the manner alleged in the eviction petition and as deposed by appellant Gurbachan Singh, AW 16 in his statement. The report further goes to show that the additions and alterations are made in shops Nos. 2 to 6 and the verandah in front of the said shops in the manner it is alleged in the eviction petition and that the open space at the back of the shops measuring about 17 ft. was found covered by roof. A portion of the boundary wall of be disputed property on the western side about 20 ft. in length was found missing. The Commissioner, AW 4, also found that the staircase was constructed for the approach and underneath the said staircase a kothri was built and one steel and wooden gates were provided in the boundary wall for approach from the shed to the adjoining property belonging to the respondent Chander Muni. The demised property was also inspected by an Engineer S. C. Virmani, AW 12 and he also submitted his report Ext. AW 12/1. The said report also indicated almost the same additions and alterations which are alleged in the eviction petition. One Joginder Singh, AW 13, a trader was examined as a witness on behalf of the appellants. He deposed that he has seen the industry-respondents No. 1 having gone there for a number of times. He was taken to the industry by Chander Muni, respondent, in connection with the construction in the premises. He deposed that he had supplied 7- S quintals of steel bars for that purpose. After visiting the spot he proved the said supply from the account books of his shop dated April 5, 1980 and August 27, 1980. He also stated that the roof of the shop was relied with R. B. Slabs with the iron steel bar supplied by him. The evidence of the appellant Gurbachan Singh, AW 16 further established the additions and alterations made by the tenants-respondents in demised premises.

11. Apart from the evidence discussed above there is also the evidence with regard to the issuance of notices Ext. AW 16/18/19 and AW 11/1. Ext. AW/11, 3 to 6 by Municipal Corporation to respondent Chander Muni. These notices were issued to Chander Muni under Section 269 and 270 of the Municipal Corporation Act for the unauthorised construction in the premises in suit. These notices relate to the year 1981, From the evidence discussed above it is abundantly clear that the tenant-respondent had made the additions and alterations in the demised premises as alleged by the appellants. It may be pointed out that though the Rent Controller and the appellate authority both have found the additions and alterations having been made by the respondents in the demised premises but according to them the construction was either by the permission of the appellants or the same did not amount to the additions and alterations of such a nature as to impair materially the

value or utility of the building and the rented land within the meaning of Section 13(2) (iii) of the Act. This finding of the Courts below in respect of the construction no doubt would be finding of fact, but the question whether the alleged addition and alterations materially impaired the value and / or utility of the premises in question is a mixed question of law and fact, which has to be determined on the application of correct principles. We find that both the Courts below fell into a serious error in failing to apply the correct principles in determining whether the said additions and alterations materially impaired the value and / or utility of the premises.

12. Section 13(2) (iii) of the Act of which provides a ground for eviction of tenant reads as under :-

"13 (2) (iii).- The tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land."

A plain reading will go to show that it contemplates that a tenant is liable to eviction who has committed such acts as are likely to impair materially the value or utility of the building or rented land. The meaning of the expression "to impair materially" in common parlance would mean to diminish in quality, strength or value substantially. In other words to make a thing or substance worse and deteriorate. The word "impair" cannot be said to have a fixed meaning. It is a relative term affording different meaning in different context and situations. Here in the context the term "impair materially" has been used to mean, considerable decrease in quality which may be measured with reference to the antecedent state of things as it existed earlier in point of time as compared to a later stage after the alleged change is made or affected suggesting impairment. Further the use of the word "value" means intrinsic worth of a thing. In other words utility of an object satisfying, directly or indirectly, the needs or desires of a person. Thus, the ground for eviction of a tenant would be available to a landlord against the tenant under Section 13(2) (iii) of the Act. If it is established that the tenant has committed such acts as are likely to diminish the quality, strength or value of the building or rented land to such an extent that the intrinsic worth or fitness of the building or the rented land has considerably affected its use for some desirable practical purpose.

The decrease or deterioration, in other words the impairment of the worth and usefulness or the value and utility of the building or rented land has to be judged and determined from the point of view of the landlord and not of the tenant or any one else. This Court while dealing with the provisions of Section 13(2) (iii) of the Act in the cast of *Vipin Kumar v. Roshan Lal Anand*, (1993) 3 JT 9 SC) 171 expressed the view as follows :-

"The impairment of the value or utility of the building is from the point of the landlord and not of the tenant. The first limb of clause III of sub-section (2) of Section 13 is impairment of the building due to acts committed by the tenant and the second limb of the utility or value of the building has been materially impaired. The acts of the tenant must be such that erection of the wall had materially impaired the value or utility of the demised premises".

13. In the instant case before us as discussed in the foregoing paragraphs it is distinctly clear the tenant-respondents have constructed a lintel roof over all the 5 shops Nos. 2 to 6 by removing their original roof and they not only removed the intervening or partition walls of the shops but also

removed the doors of the 5 shops and converted them into sheds, store and kothries. They also converted the verandah in front of the shops into sheds by closing it from the front by masonry work. The door of shop No. 2 has been removed altogether and instead a small window with iron grills has been affixed in the front. The full size door of shop No. 3 has also been removed and a door measuring 3 x 7' has been installed in front of the verandah by merging the shop No. 3 into that part of the verandah. Similarly shop No. 4 has also been merged with the verandah by removing the door of the shop and fitting a door in the verandah itself in order to make it a godown: Shops Nos. 5 and 6 have also been merged with the part of the verandah in front of those shop with masonry work. The 17 ft. long and 5 ft. 9 inches high boundary wall existing on the western side of the demised land touching the kothi of Chander Muni respondent No. 1 A has been demolished so as to facilitate a passage from the Kothi of respondent No. 1 A to the demised premises by fixing one big wooden door and another steel door in place of the demolished boundary wall. A small triangular shaped kothri has all been constructed and a brick stair case has been raised in order to facilitate an access from the courtyard of the kothi of respondent No. 1 A to the roof of the shed made over the demised land as a direct approach.

14. Thus, from the above mentioned facts it is clear that even if it is assumed that the tenants-respondents raised the construction of shed over the part of the open land of the demised premises with the written consent of the landlord as may be spelt out from the rent note Ext. A/1, then the rest of the construction, additions and alterations of the 5 shops and the verandah in front of the said shops of a permanent nature, will certainly amount to acts as have or likely to have impaired materially the value or utility of the building / premises let out to them. The nature of the construction is relevant consideration in determining the question of material impairment in the value or utility of the building or the demised premises. In the present case the removal of the roof of the shops partition walls and the doors, laying of a roof, merging of the verandah with the shops, closing the doors and opening new doors and windows and converting the premises altogether, giving totally a new and a different shape and complexion by such alteration would certainly be regarded as one involving material impairment of the premises affecting its fitness for use for desirable practical purpose and intrinsic worth of the demised premises from the point of view of the appellant-landlords within the meaning of Section 13(2) (iii) of the Act. The High Court, therefore, fell in patent error in dismissing the revision in limine without going into the correct legal position involved in the case. Having regard to the facts and circumstances discussed above, we are of the firm view that this is a case which squarely falls within the mischief of the provisions contained in Section 13 (2) (iii) of the Act which make the tenants-respondents liable for eviction from the demised premises.

15. Consequently, the appeal succeed and is hereby allowed with costs throughout. The order of the High Court and the Judgment and orders of the Courts below are set aside. The application of the appellant-landlords for eviction of the tenants-respondents is allowed. It is directed that the appellants shall be place in actual physical possession of the demised premises after evicting the tenants-respondents therefrom.

16. We are, however, aware of the fact that the respondents-tenants are running an industry in the demised premises and it may not be possible for them to immediately vacate the premises. We therefore, in the interest of justice direct that the tenant-respondents shall not be evicted from the demised premises till 30th June, 1996 on furnishing usual undertaking in this Court within four weeks from today. Appeal allowed.