

## **Gulraj Singh Grewal vs Dr. Harbans Singh And Anr on 12 January, 1993**

**Equivalent citations: 1993 AIR 1574, 1993 SCR (1) 149, AIR 1993 SUPREME COURT 1574, 1993 (2) SCC 68, 1993 AIR SCW 1768, 1993 SCFBRC 117, 1993 HRR 129, (1993) 1 SCR 149 (SC), (1993) 1 JT 146 (SC), (1993) 1 PUN LR 410, (1993) 1 RENCJ 180, (1993) 1 RENCRC 270, (1993) 1 RENTLR 210, (1993) 1 SCJ 251**

**Author: Jagdish Saran Verma**

**Bench: Jagdish Saran Verma, Yogeshwar Dayal, N Venkatachala**

PETITIONER:

GULRAJ SINGH GREWAL

Vs.

RESPONDENT:

DR. HARBANS SINGH AND ANR.

DATE OF JUDGMENT 12/01/1993

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

YOGESHWAR DAYAL (J)

VENKATACHALA N. (J)

CITATION:

1993 AIR 1574

1993 SCR (1) 149

1993 SCC (2) 68

JT 1993 (1) 146

1993 SCALE (1) 109

ACT:

East Punjab Urban Rent Restriction Act, 1948--Section 13(3)(a)(i)(a) read with Section 2 (a) , (d), (g) and (h)--Eviction of "scheduled building" for personal need--Held, all buildings fall into two categories, non-residential and residential--'Scheduled building' in Section 2(h) is a kind of 'residential building' and ground of eviction for personal need available--Amendment Acts of 1956, 1957, 1966 and 1985--Section 13A.

East Punjab Urban Rent Restriction Act 1948--Sections 13 13A and 2(a), (d), (g) and (h)--Interpretation of statutes--Principle of harmonious construction--Omission of

"scheduled building" by amendment in 1956, and its inclusion in provisions inserted by the 1985 amendment--Held, retention of "scheduled" in the provision when "residential building" includes scheduled building considered superfluous--Inserted in 1985 Amendment to avoid controversies.

HEADNOTE:

The appellant took the suit premises situate in Ludhiana on a monthly rent of Rs. 800 from respondent 1. Both the respondents are medical practitioners. The respondent riled a petition for eviction of the appellant tenant on three grounds: their personal need under Section 13(3)(a)(i)(a); change of user under Section 13(2)(ii)(b) and impairment of the value and utility of the rented building under Section 13(2) (iii) of the East Punjab Urban Rent Restriction Act 1948.

The Rent Controller dismissed the petition. The appellate authority held that the personal need of the respondents and the ground of change of user was proved. Since the building though let out to the tenant for a residential purpose was used partly for his profession and had become a 'scheduled building' under Section 2(h), he could not be evicted on the ground of personal need. The order of eviction was, however, made on the ground of change of user of the building. The High Court on revision affirmed the finding and order of eviction made by the appellate authority.

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In the Supreme Court, it was argued for the appellant that there was no change of user to justify the order of eviction on that ground and that the finding on the question of personal need was erroneous. Relying on legislative intent evidenced in amendments to the Act, it was further contended that no order of eviction can be made on the ground of personal need contained in Section 13(3)(a)(i)(a) in respect of a 'scheduled building' since that ground is available for eviction only from a residential building. The omission of the words 'or a scheduled' after the word 'residential' in Section 13 (3) (a) (i) (a) in 1956 and their addition in Section 13A in 1985 were referred to advance the argument

The respondents submitted that there was no ground to interfere with the order of eviction; that 'scheduled building' In section 2(h) continues to be a 'residential building' in section 2(g) and that personal need in section 13(3) (a) (i) (a) is available as a ground for eviction; and that the finding of fact relating to personal need of the landlord is not open to challenge. In the alternative, if a "scheduled building" is not a "residential building" then the ground of change of user, unilaterally was available.

Dismissing the appeal, this Court

HELD: 1. The finding of fact of personal need is

unassailable.

That respondent 2 is carrying on his profession at some distance from Ludhiana is not sufficient to negative the landlords' need. [155B]

Non-examination of respondent 2 is immaterial when respondent 1 has examined himself and proved the need of the landlord; it is at best a matter relating to appreciation of evidence, on which ground this finding of fact cannot be assailed particularly when it was not seriously challenged in the High Court. (pp.6/7) [155C]

2. All buildings are divided into two categories: "non-residential" and "residential". Building, -\* used for the purpose of business or trade are "non-residential" and the remaining buildings are all 'residential'. This is clear from the definitions in section 2(a), (d) and (g). (pp.23/24) [167D]

3. 'Scheduled building as defined in section 2(h) is merely a kind of 'residential building, as defined in section 2(g), its characteristic being its part user for a scheduled purpose. (p.24) [167E]

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4. 'The Act makes a distinction between a residential building which is being partly used for a scheduled purpose, i.e. a scheduled building, for the purpose of determination of fair rent.

A separate definition of 'scheduled building' in clause (h) while making it clear therein that it means a residential building used partly for a specific purpose does not, therefore indicate that a scheduled building ceases to be a residential building or is a category of building separate from a residential building for the purpose of eviction of tenants in the scheme of section 13 of the Act This is the only manner in which a harmonious construction can be made of these provisions. (pp.24/25) [167H, 168A]

5. The object of the 1956 amendment was to equate the Punjab tenants with the Delhi tenants and exclude the ground of landlord's personal need for eviction of tenants of non-residential property. Obviously the definition of 'scheduled building' in section 2(h) clearly indicating that scheduled building is residential building, the words 'or a Scheduled' after "residential" were considered superfluous. The use of the word "scheduled" after "residential" in section 13A inserted in 1985 may have been used to avoid any controversy like the present raised on the basis of the 1956 Amendment. (p.26) [168D-E]

6. Section 13A which provides for an expeditious remedy is not a separate distinct provision but has to be read along with section 13 of the principal Act forming a part of the general scheme contained in section 13 for eviction of tenants on the ground of personal need from buildings which are not non-residential. (p.27) [168H]

7. This construction of section 13(3) (a) (i) as it stood after the 1956 amendment, is the only construction which can

be made to harmonise with the definitions in section 2. (p.27) [169C]

8. The question of change of user is not necessary to be considered. However, the general principle is that if the express terms of lease restrict the user solely for purpose of residence, then use of any part thereof for even a scheduled purpose without the written consent of the landlord may amount to use of the building for a purpose other than that for which it was leased. That, however, is a question of fact in each case. In that case while the ground of eviction in section 13 (3) (a) (i) (a) would remain available to the landlord for eviction of the tenant, in view of the express

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covenant against user of any part of the residential building even for a scheduled purpose, it may make available also the ground of change of user under section 13(2) (ii) (b) of the Act. (pp.28/29) [169G-170A]

Bishamber Dass Kohli (dead) by L.rs. v. Smt. Satya Bhalla, referred to.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5086 of 1985. From the Judgment and Order dated 31.1.1985 of the Punjab and Haryana High Court in Civil Revision No. 1847 of 1984. A.B. Rohtagi, R.C. Mishra and Dr. Meera Aggarwal for the Appellant.

M.S. Gujaral and R.S. Sodhi for the Respondents. The Judgment of the Court was delivered by' VERMA, J. The appellant, Gulraj Singh Grewal, took the suit premises situate in Ludhiana on monthly rent of Rs. 800 from respondent No. 1, Dr. Harbans Singh, in March 1980. Respondent No. 2, Dr. Ravinder Singh, is son of respondent No. 1, Dr. Harbans Singh. Both the respondents are medical practitioners. The respondents filed a petition for eviction of the appellant-tenant on three grounds, namely, personal need of the respondents under Section 13(3) (a) (i)

(a), change of user under section 13(2) (ii) (b) and impairment of value and utility of the rented building under section 13(2) (iii) of the East Punjab Urban Rent Restriction Act, 1948. The appellant contested the petition denying the existence of any of these grounds for eviction. The Rent Controller dismissed the petition holding that none of the three grounds had been proved. On appeal by the respondents, the appellate authority held that the personal need of respondent No. 2, Dr. Ravinder Singh, one of the landlords, was proved and the ground of change of user of the rented building by the appellant had also been proved. The third ground relating to impairment of value and utility of the rented building was rejected. The appellate authority further held that the building though let out for residential purpose was used by the appellant, a consultant engineer, partly for his profession on account of which it had become a 'scheduled building' as defined in Section 2(h) of the Act and, therefore, the ground for eviction based on personal need was not available for evicting the tenant from a 'scheduled building. However, an order of eviction was made on the ground of change

of user of the rented building. The appellant then preferred a revision to the High Court which has been dismissed the findings and order of eviction made by the appellate authority. Hence, this appeal by special leave.

The submissions of Shri Avadh Behari, learned counsel for the appellant are several. The first contention is that there was no change of user by the appellant-tenant to justify the order of eviction on that ground. The second submission is that the finding on the question of personal need of the landlord is erroneous. The last submission is that no order of eviction can be made on the ground of personal need contained in section 13(3) (a) (i) (a) in respect of a 'scheduled building' since that ground is available for eviction only from a 'residential building' as defined in section 2(g) of the Act, a 'scheduled building' defined in section 2(h) of the Act being a different kind of building. In reply, Shri M.S. Gujral, learned counsel for the respondents submitted that the order of eviction is justified and there is no ground to interfere in this appeal. His submission is that a 'scheduled building' defined in section 2(h) continues to be a 'residential building' as defined in section 2(g), so that the ground for eviction based on personal need contained in section 13(3) (a) (i) (a) is available in the present case. He also submitted that the finding of fact relating to personal need of the landlord is not open to challenge. His submission in the alternative is that in case a 'scheduled building' is not 'residential building', then the ground of change of user is available since the building was let out for residential purpose and its user has been changed unilaterally by the tenant without the consent of the landlord.

The first question for our decision is: whether learned counsel for the appellant is right in contending that a 'scheduled building' is not a "residential building" for the purpose of the ground of eviction contained in section 13(3)

(a) (i) (a) ? In case it is held that this ground for eviction of the tenant is available in the present case and the finding of fact on the question of personal need of the landlord is not open to challenge, the order of eviction can be sustained on this ground alone and it is unnecessary to decide the question relating to the ground of change of user contained in section 13(2) (ii) (b) of the Act. We would, therefore, consider this question first.

Admittedly, the appellant is a consultant engineer and the suit premises, a 'building as defined in section 2(a) of the Act, was let out to him solely for residential purpose. He has been using it as his residence while a part thereof is used by him as his professional office without the consent of the landlord. It is on the basis of use of a part of the building as appellant's office that the appellant claims it to be a 'scheduled building' as defined in section 2(h) of the Act. Apart from the question of change of user which is a separate ground for eviction, the question is whether the suit premises being treated as a 'scheduled building, the ground for eviction contained in section 13(3) (a) (i) (a) is not available, that ground being available only in respect of a 'residential building' as defined in section 2(g) of the Act.

The contention of learned counsel for the appellant is that the word 'scheduled' which occurred along with 'residential' in section 13(3) (a) (i) of the Act having been omitted by the amendment made in the principal Act in 1956, the obvious legislative intent is to exclude a 'scheduled building'

from the scope of that provision with the result that the grounds for eviction contained in section 13(3) (a) (i), of which personal need of the landlord is one, are not available for eviction of a tenant from 'scheduled building' thereunder after that amendment. To buttress this argument, learned counsel referred to section 4 of the principal Act and Section 13A, inserted therein by an amendment made in 1985, wherein the expression 'scheduled building' is expressly used in addition to the expression 'residential building' and the separate definition of 'scheduled building' in section 2(h) while defining 'residential building' in section 2(g) in the principal Act from the very inception. The question is whether this contention can be accepted. Before dealing with the above question, it would be appropriate to dispose of the challenge made to the finding of fact of landlord's personal need, on which this question arises. The finding on this question of fact recorded by the appellate authority has been affirmed by the High Court. Can this finding be reopened now?

Learned counsel for the appellant submitted that the personal need found proved is only of respondent No. 2, son of respondent No. 1, who did not enter the witness box and, as stated in an affidavit filed in this Court, even he is carrying on his profession at a place about 25 kms, away from Ludhiana. In our opinion, this finding of fact is unassailable. The High Court has clearly observed that no meaningful argument could be advanced on behalf of the appellant to challenge this finding of the appellate authority. Respondent No. 1 who is the father of respondent No. 2, has supported and proved the need of respondent No. 2, who also is a landlord. The fact that for want of suitable accommodation in the city of Ludhiana, respondent No. 2 is at present carrying on his profession at some distance from Ludhiana is not sufficient to negative the landlord's need. In these circumstances, the non-examination of respondent No. 2 also, when respondent No. 1 has examined himself and proved the need of the landlord, is immaterial and, at best, a matter relating only to appreciation of evidence, on which ground this finding of fact cannot be reopened. This is more so when no serious challenge to this finding was made in the High Court. We must, therefore, proceed on the basis that the personal need of the landlord is proved to make out the ground of eviction contained in section 13(3)(a)(i)(a) of the Act in case that ground of eviction is applicable to the suit premises treating it as a 'scheduled building'.

In order to fully appreciate the arguments of learned counsel for the appellant, the legislative history would be useful. The Punjab Urban Rent Restriction Act, 1941 was enacted to restrict the increase of rents on certain premises situated within the limits of urban areas in the Punjab. That Act was primarily to control the increase of rents and did not relate to eviction of tenants. Then came the Punjab Urban Rent Restriction Act, 1947 which was enacted to restrict the increase of rent of certain premises situated within the limits of urban areas and the eviction of tenants therefrom. Provision was made in Section 4 of the Act for determination of fair rent, for which purpose 'non-residential building', 'residential building' and 'scheduled building' were treated as three different categories prescribing different formula for each of these three categories. For this reason, separate definition of each of them was given in section 2 containing the definitions. However, for the purpose of eviction, in section 13 (3), a 'residential building' or a 'scheduled building' were clubbed together and treated similarly by providing the same grounds for eviction while a 'non-residential building' or 'rented land' were clubbed together and provided for separately. The scheme of the Act clearly shows that a 'residential building' and a 'scheduled building' were treated as different categories only for the determination of fair rent but were treated alike while prescribing-

ing the grounds for eviction of a tenant therefrom. The definition of 'scheduled building' in section 2(h) of that Act also took care to provide that a 'scheduled building' means a residential building which was being used partly for a specified purpose. In this manner, the definition of a 'scheduled building' given in the Act was in consonance with the scheme of the Act treating it differently from a 'residential building' for the purpose of determination of fair rent and similarly for eviction of the tenant. Then came the East Punjab Urban Rent Restriction Act, 1948 which repealed the 1947 Act and replaced it. The same scheme was retained in the 1949 Act which is the principal Act for our purpose. It is the relevant provisions of this Act, as amended from time to time, which are material for deciding the point raised by the appellant.

The East Punjab Urban Rent Restriction Act, 1948 (East Punjab Act No. 111 of 1948) was amended by the Amendment Acts of 1956, 1957, 1966 and 1985 whereby section 13 of the principal Act was amended and in 1985 the new section 13A was inserted. It is the amendments made in section 13 at the principal Act providing for eviction of tenants which are material for our purpose. The material provisions of the Act, including the amendments made in section 13 from time to time are mentioned hereafter.

In the principal Act as originally enacted, the material provisions are as under :-

'2. Definitions. In this Act, unless there is anything repugnant in the subject or context,

(a) 'building' means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns out-houses or furniture let therewith, but does not include a room in a hotel, hostel or boarding house;

xxx	xxx	xxx	
(d)	'non-residential	building	means a

building being used solely for the purpose of business or trade;

xxx	xxx
xxx	
(g)	"residential building" means any
	building which is not a

non-residential building;

(h) "scheduled building means a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to this Act, partly for his business and partly for his residence;

xxx	xxx
xxx	

"4. Determination of fair rent.- (1) The Controller shall on application by the tenant or landlord of a building or rented land fix the fair rent for such building or rented land after holding such inquiry as the Controller thinks fit.

(2) In fixing the fair rent under this section, the Controller may first fix a basic rent taking into consideration xxx xxx xxx (3) In fixing the fair rent of a residential building the Controller may allow. If the basic rent-

xxx xxx xxx (4) In fixing the fair rent of a scheduled building the Controller may allow, if the basic rent-

xxx  
xxx  
(5) In fixing the fair rent of a non-

residential building or rented land the Controller may allow, if the basic rent xxx xxx xxx '11. Conversion of a residential building into a nonresidential building No person shall convert a residential building into a non- residential building except with the permission in writing of the Controller."

"13. Eviction of tenants. (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied

(i).....

(ii)that the tenant has after the commencement of this Act without the written consent of the landlord-

(a).....

(b) used the building or rented land for a purpose other than that for which it was leased. or

(iii)that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application :



Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate. (3) (a) A landlord may apply to the Controller for an order directing tenant to put the landlord in possession-

(i) in the case of a residential or a scheduled building if

(a) he requires it for his own occupation;

(b) he is not occupying another residential or a scheduled building, as the case may be, 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:

(ii) in the case of a non-residential building or rented land, if-

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be, and xxx xxx xxx "19.

Penalties. (1) If any person contravenes any of the provisions of sub-

section (2) of section 9, sub-section (1) of section 10, section 11 or section 18, he shall be punishable with fine which may extend to one thousand rupees.' The East Punjab Urban Rent Restriction (Amendment) Act, 1956 (Punjab Act No. 29 of 1956) amended section 13 in the following manner:-

2. Amendment of section 13 of East Punjab Act III of 1949. In clause (a) of sub-section (3) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as the principal Act

(i) (a) In sub-clause (i), the words 'or a scheduled' shall be omitted.

(b) In sub-paragraph (b), the words "or a scheduled" and the words "as the case may be"

shall be omitted.

(ii) (a) In sub-clause (ii) the words 'a non- residential building or' shall be omitted.

(b) In sub-paragraph (b), the words "building or" and the words "as the case may be" shall be omitted"

(c) In sub-paragraph (c), the words 'a building or' shall be omitted.

(iii) For sub-clause (iii), the following shall be substituted, namely:-

(iii) In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Govern-

ment or local authority or any improvement Trust under some improvement of development scheme or if it has become unsafe or unfit for the human habitation.-

(iv) In sub-clause (iv), for the words 'any building', where they first occur, the words 'any residential building shall be sub-

stituted.

(v) In the second proviso, for the words "a residential a scheduled or non-residential building or rented land", the words "a residential building or rented land" shall be substituted.

Section 13 was again amended by the Punjab Urban Rent Restriction ,Amendment) Act, 1957 (Punjab Act No. 21 of 1957) as under

'2. Amendment of section 13 of the East Punjab Act No. 111 of 1949. After clause (c) of sub-paragraph (i) of paragraph (a) of sub- section (3) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, the following shall be added, namely :-

"(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is a workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Ad, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or made against him by the landlord."

Thereafter, the East Punjab Urban Rent Restriction (Amendment) Act, 1966 (Punjab Act No. 6 of 1966) further amended section 13 of the principal Act as under

"2. Amendment of section 13 of punjab Act 3 of 1949. In section 13 of the East Punjab Urban Rent Restriction Act, 1949,

(i) in sub-section (3),

(a) after sub-paragraph (i) of paragraph.(a), the following sub-paragraph shall be inserted, namely :-

"(i-a) In the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act. Explanation. For the purposes of this sub- paragraph (1) the certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions; and (2) 'family' means such relations of the landlord as ordinarily live with him and are dependent upon him;"

(c) in the first proviso in paragraph (a), for the words "shall not be entitled, the words 'shall not, except under sub-paragraph (i-a), be entitled' shall be substituted; and

(c) after paragraph (b), the following new paragraph shall be added, namely :-

'(c) where an application is made under sub- paragraph (i-a) of paragraph (a), it shall be disposed of, as far as may be, within a period of one month and if the claim of the landlord is accepted, the Controller shall make an order directing the tenant to put the landlord in possession of the building on a date to be specified in the order and such date shall not be later than fifteen days from the date of the order."; and (2) In sub-section (4), for the words 'does not himself occupy it or, if possession, the words 'does not himself occupy it or, if possession was obtained by him for his family in pursuance of an order under sub-paragraph (i-

a) of paragraph (a) of sub-section (3), his family does not occupy the residential building, or, if possession" shall be substituted."

Then the East Punjab Urban Rent Restriction (Amendment) Act, 1985 (Punjab Act No. 2 of 1985) further amended section 13 and inserted new section 13A in the principal Act as under

'Amendment of section 13 of Punjab Act 3 of 1949. 3. In the principal Act, in section 13, after sub section (4), the following sub- section shall be inserted, namely :-

'(4-A) Where a tenant is evicted from a residential or scheduled building in pursuance of an order made under section 13-A and the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord :-

(a) does not occupy it for a continuous period of three months from the date of such eviction; or

(b) within a period of three years from the date of such eviction of the tenant, lets out the whole or any part of such building, from which the tenant was evicted, to any person other than the tenant;

such evicted tenant may apply to the Controller, for an order directing that the possession of the building shall be restored to him and the Controller shall make an order accordingly.' Insertion of new section 13-A in Punjab Act 3 of 1949. 4. In the principal Act, after section 13, the following section shall be inserted, namely:-

Right to recover immediate possession of residential or scheduled building to accrue to certain persons. "13-A. Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller alongwith a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the on of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts :

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grandchild or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this section to the Controller,

(a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 within one year of such commencement:

(b) In this case of death of such specified landlord, after such commencement, but before the date of his retirement, within one year of the date of his death;

(c) in the case of death of such specified landlord, after such commencement and the date of his retirement, within one year of the date of such retirement;

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant:

Provided further that nothing in this section shall be so construed as, conferring a right on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts:

Provided further that the controller may give the tenant a reasonable period for putting the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation. For the purpose of this section the expression "retirement" means termination of service of a specified landlord otherwise than by resignation."

Further by this Amendment Act of 1985, special procedure for disposal of applications under section 13A was prescribed and some other ancillary amendments were also made. The definitions in clauses (a), (d), (g) and (h) of Section

2 and the material part of section 4 quoted above remain the same in the principal Act as originally enacted even after these amendments, section 13, in so far as it is material for the present case, as it stands amended in the above manner now reads as under:-

"13. Eviction of tenants (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied

(i).....

(ii) that the tenant has after the commencement of this Act without the written consent of the landlord

(a).....

(b) used the building or rented land for a purpose other than that for which it was leased, or

(iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or xxx XXX xxx (3) (a) 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 an other residential building, in the urban area concerned; and xxx xxx xxx (i-a) in the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in section 7 of the Indian Soldiers (Litigation) Act, 1925, that he is serving under special conditions within the meaning of section 3 of that Act.

XXX xxx xxx

(ii) in the case of rented land, if

(a) he requires it for his own use:

(b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land; and

(c) he has not vacated such rented land without sufficient cause after the commencement of this Act, in the urban area concerned:

xxx xxx xxx

(iv) in the case of any residential building, if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer or as a "registered practitioner" within the meaning of that expression as used in the Punjab Medical Registration Act, 1916, or for the residence of his son who is married, if

(a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and

(b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned xxx xxx xxx The main argument of learned counsel for the appellant is that omission of the words "or a scheduled" after the word 'residential' in section 13(3) (a) (i) by the 1956 Amendment while using those words in addition to the word 'residential in section 13A, subsequently inserted-in 1985, is a clear indication that the ground of eviction contained in section 13(3) (A) (i) (a) of \_personal need of the landlord.is no longer available to landlords in general after the 1956 Amendment, awn though a more expeditious remedy on that ground has been provided by 13A from 1985 to the category of specified landlords alone. The retention of the separate definition of 'scheduled building' in section 2(h) and use of that expression elsewhere in the Act, including section 4 and section 13, is referred in support of this submission. The question is whether this construction is proper.

In section 2 which contains the definitions, clause (a) defines 'building'. Clause (d) then defines 'non- residential building' to mean a building being used solely for the purpose of business or trade. Thus, to be a non- residential building, it must be used solely for the purpose of business or trade. Clause (g) defines 'residential building' to mean any building which is not a non- residential building. These definitions make it clear that all buildings are divided into two categories : 'non-residential' and 'residential'. Buildings used solely for the purpose of business or trade are 'non-residential' and the remaining buildings are all 'residential'. Accordingly, no building to which the Act applies is outside the classification of 'non-residential' and 'residential'. Then comes clause (h) which defines 'scheduled building' to mean a residential building which is being used partly for a scheduled purpose. The definition of 'scheduled building' in clause (h) itself makes it clear that it is a residential building as defined in clause (g) with the qualification that such a residential building is one which is used partly for a specified purpose. In other words, 'scheduled building' as defined in clause (h) is merely a kind of 'residential building' as defined in clause (g), its characteristic being its part user for a scheduled purpose. The reason to defined 'scheduled building' separately in clause (h) is also evident from some provisions of the Act itself. The Act makes a distinction for the purpose of determination of fair rent between a residential building which is being used partly for a scheduled purpose and is, therefore, treated as a 'scheduled building' and the remaining residential buildings which are not so used. This is clear from the scheme of section 4 itself providing for determination of fair rent. This is also clear from the fact that from the definition of 'building' given in section 2(a), the only category excluded is a 'non-residential building' as defined in section 2(d) for the purpose of section 2(g) and not also 'scheduled building' defined in section 2(h) and in section 2(h), a 'scheduled building' is defined to mean a residential building used partly for a scheduled purpose. A separate definition of 'scheduled building' in clause (h) while making it clear therein that it means a residential building used partly for a specified purpose does not, therefore, indicate that a scheduled building ceases to be a residential building or is a category of building separate from a residential building for the purpose of eviction of tenants in the scheme of section 13 of the Act. This is the only manner in which a harmonious construction can be made of these provisions.

The question now is of the effect of the 1956 Amendment which omitted the words 'or a scheduled' in section 13(3) as indicated earlier. The Statement of Objects and Reasons of the Amendment Act of 1956 clearly says that the provision allowing eviction on the ground of personal need has been misused by certain landlords and according to the Act applicable to Delhi the tenants of industrial and commercial premises cannot be ejected on the ground of personal need, while in the Punjab, such tenants can be evicted therefrom also on the ground of personal need. To avoid hardship to such tenants, it was considered necessary that the tenants of non-residential property in the Punjab should be placed at par with tenants of such property in Delhi. Thus, the object of this enactment was to equate the Punjab tenants with Delhi tenants and exclude the ground of landlord's personal need for eviction of tenants of non-residential property. To achieve this object deletion was made of the words other than 'residential' from section 13(3) providing for eviction of tenants from buildings on the ground of landlord's personal need. Obviously, in view of the definition of 'scheduled building' in section 2(h) being clear to indicate that 'scheduled building' is a 'residential building, retention of the words ,or a scheduled' after 'residential' was considered superfluous while omitting the words 'non-residential building' in other parts of section 13(3) relating to the ground of personal

need for eviction of the tenants from buildings. Subsequently, in section 13A, when inserted by 1985 Amendment, the word 'scheduled' was also used after 'residential', may be, in view of the controversy like the present raised on the basis of the 1956 Amendment, to avoid any such controversy therein. That does not, however, mean that section 13 which must be construed in the manner indicated by us should be read differently for that reason. In fact, insertion of section 13A further reinforces the view we have taken. There would be no occasion to provide an expeditious remedy for eviction of tenants of a category of landlords and to also provide for a special summary procedure for them unless the remedy of eviction on the ground of personal need was already available generally to the landlords in section 13. It is significant that section 13 was also amended by the 1985 Amendment by inserting sub- section (4-A) therein as a result of insertion of the new section 13A in the principal Act. Thus, the 1985 Amendment itself shows that section 13A is not a separate and distinct provision but has to be read along with section 13 of the principal Act forming a part of the general scheme contained in section 13 for eviction of tenants on the ground of personal need from buildings which are not non-residential. The construction we have made of section 13(3)(a)(i), as it stood after the 1956 Amendment, is the only construction which can be made to harmonise with the definitions in section 2 which continue to remain as originally enacted and the other provisions of the Act which have been referred. The contention of learned counsel for the appellant on this point is, therefore, rejected.

The result of the above discussion is that the respondent landlord's personal need being found proved, the ground of eviction contained in section 13(3) (a) (i) (a) is available and the order of eviction passed against the appellant can be sustained on this ground alone. The construction made by the High Court of Section 13(3) (a) (i) that it does not apply to a scheduled building is, therefore, erroneous. The only surviving question is the availability of the ground of change of user contained in section 13(2) (ii) (b) on which the order of eviction has been passed by the High Court. In view of the above conclusion reached by us that the ground in section 13(3)(a)(i)(a) is made out, the consideration of this question in the present-case appears unnecessary. We have considered and decided that question in a connected matter *Bishamber Das Kohli (Dead) by Lrs. v. Smt..Satya Bhalla*. However, a brief reference to the general principle may be apposite.

If the express terms of lease restrict the user solely for purpose of residence, then use of any part thereof for even a scheduled purpose without the written consent of the landlord may amount to use of the building for a purpose other than that for which it was leased. That, however, is a question of fact in each case. In that case while the ground of eviction in section 13(3)(a)(i)(a) would remain available to the landlord for eviction of the tenant, in view of the express covenant against user of any part of the residential building even for a scheduled purpose. It may make available also the ground of change of user under section 13(2) (ii) (b) of the Act. In the present case, it is unnecessary to go into this further question since the order of eviction can be sustained on the ground contained in section 13(3)(a)(i)(a) alone as already indicated.

Consequently, the appeal is dismissed with costs. Counsel's fee Rs. 3,000.

U.R.

Appeal dismissed.



