Supreme Court of India
Vinod Kumar Arora vs Smt. Surjit Kaur on 17 July, 1987
Equivalent citations: 1987 AIR 2179, 1987 SCR (3) 552
Author: S Natrajan
Bench: Natrajan, S. (J)

PETITIONER:
VINOD KUMAR ARORA

Vs.

RESPONDENT:
SMT. SURJIT KAUR

DATE OF JUDGMENT17/07/1987

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1987 AIR 2179 1987 SCR (3) 552
1987 SCC (3) 711 JT 1987 (3) 106
1987 SCALE (2)60
CITATOR INFO :
RF 1989 SC 758 (13)
R 1991 SC 744 (10,11,13)

ACT:
East Punjab Urban Rent Restriction Act, 1949 (as in force in Union Territory of Chandigarh): ss. 13(3)(a) and 11--Bona fide requirement and change in user--Eviction of tenant--Concurrent findings of statutory authorities vitiated--Such findings whether binding on revisional court--Conversion of residential premises into non-residential premises without consent of Rent Controller--Whether tenant entitled to get over statutory embargo by pleading that landlady was aware of and consented to change in user.

Constitution of India, Articles 226 and 136---Jurisdiction of Courts--New questions of fact and law--Admissibility of.

HEADNOTE:
The deceased husband of the respondent leased out the entire portion of his house, except a big hall, to tenant in Chandigarh. He was then putting up in a Government quarter. After his death, his widow-the respondent, leased out the hall to the appellant on April 1, 1981 for a period of 11

months on a monthly rent of Rs.650. The Government quarter which had been allotted to her husband was transferred to the name of her eldest son.

The respondent filed two applications, more or less concurrently, in February 1982 against tenants of both the portions of the house seeking their eviction oh grounds that they had changed the user of the premises to non-residential purposes, and that she bona fide required the premises for her own use and occupation. The Rent Controller and the Appellate Authority held that the first tenant had changed the user of the premises and ordered his eviction. Insofar as the appellant was concerned, both the authorities found against the respondent on both the grounds and dismissed the action for eviction. The High Court dismissed the revision preferred by the first tenant, but allowed the one filed by the respondent and ordered the eviction of the second tenant too. The first tenant abided by the order of eviction and surrendered possession to the respondent.

The second tenant, however, appealed by special leave to this

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Court. It was contended that when the Rent Controller and the Appellate Authority have rendered concurrent findings of the fact, the High Court was not entitled to disregard those findings, and come to a different conclusion of its own, that the respondent could not seek recovery of possessing of the hail by means of an application under s. 13(3)(a) (i)(a) of the East Punjab Rent Restriction Act, 1949 for residential use because even of the hail had been let out for residential and nonresidential purposes, the premises would constitute a non-residential building as per the amended definition under the East Punjab Rent Restriction (Chandigarh Amendment) Act, 1982, that he was entitled to raise these questions though they had not been raised earlier because they were questions of law, that as per the second proviso to s. 13(3)(a) of the Act the respondent was not entitled to apply once over again for eviction of a tenant on the ground of bona fide requirement after having obtained an earlier order on the same ground.

Dismissing the appeal,

HELD: 1.1 The findings of the Rent Controller and the Appellate Authority are vitiated by inherent defects. The High Court was, therefore, justified in taking the view that those findings have no binding force on the revisional court. [565E]

1.2 The rule that when the courts of fact render concurrent findings of fact, the High Court would not be entitled to disregard those findings and come to a different conclusion of its own, would apply where the findings have been rendered with reference to facts.

In the instant case, both the statutory authorities have based their findings on conjectures and surmises and lost sight of relevant pieces of evidence which have not been

controverted. When the evidence of the respondent and her son, which has not been challenged, was that the Government quarter consisted of only one bed room, one store, one kitchen and one small dining room and nothing more, it has been construed by the authorities as comprising of three bed rooms and held that as there was enough accommodation for the entire family she was not likely to vacate it. When the respondent wanted the entire house to be vacated by the two tenants so that she and her family members could occupy the whole house, the authorities have proceeded on the basis that the respondent was seeking recovery of possession of one hail alone for her residential needs and held that the entire family could not manage to live in a single hail. They have failed to take note that the respondent had con-temporaneously initiated proceedings against the
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other tenant also for recovery of possession of the remain-ing portion of the house leased to him. Those proceedings were also before the very same Rent Controller and the Appellate Authority and they themselves had ordered the eviction of the other tenant. The respondent had clearly stated in her evidence that she required the property for her own use and for her children and that she had filed the ejectment petition against the other tenant also. That evidence was not and indeed could not be challenged. When the respondent had not demanded increase of rent, even as per the admission of the appellant, the authorities have proceeded on the basis that the respondent was not likely to forego the income derived by way of rent for the hall. They have failed to give due consideration to the respondent's statement that her daughter and sons were all fully grown up and she wanted to perform their marriages and as such she was very much in need of the entire house, including the hall, for her occupation. All these findings have been rendered on either non-existent or fictitious material. They cannot, therefore, be construed as findings of fact and once they cease to be findings of fact, they stand denuded of their binding force on the appellate or revisional court. [558H; 559A-H]

Hiralal Vallabhrara v. Sheth Kasturbhai Lalbhai and others, AIR 1967 S.C. 1653, referred to.

2.1 The finding rendered by the Rent Controller and the Appellate Authority about the purpose for which the hall was let out were vitiated by several errors of fact and law. The appellant, therefore, was not entitled to rely on those findings and dispute the respondent's right to seek his eviction under s. 13(3)(a)(i)(a) of the Act. [563C]

2.2 The pleadings of the parties form the foundation of their case and it is not open to them to give up the case set out in the pleadings and propound a new and different case. [560H]

In the instant case, the tenant had averred in his written statement that the hall was taken by him for the

purpose of his residence and for running his clinic but when he entered the witness box he propounded a different case that the hall had been taken on lease only for non-residential purposes. The statutory authorities failed to notice the perceptible manner in which the appellant had shifted his defence. [560G]

2.3 Yet another factor which vitiates the findings of the statutory authorities is that both of them have overlooked s. 11 of the Act and the sustainability of any lease transaction entered in contravention of that

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provision which interdicts conversion of residential buildings into nonresidential ones without the written consent of the Rent Controller. [561C-D]

In the instant case the parties had not obtained the consent in writing of the Rent Controller for converting the hall in a residential building into a clinic. Such being the case the appellant cannot get over the embargo placed by s. 11 by pleading that the respondent was well aware of his running a clinic in the hall and that she had not raised objection at any time to the running of the clinic. [561D-E]

Kamal Arora v. Amar Singh & Ors., [1985] SCC (Supplementary) 481, referred to.

Dr. Gopal Dass Verma v. Dr. S.K. Bhardwaj & Anr., [1962] 2 SCR page 678, distinguished.

3. Having taken a categoric stand during the enquiry that he had taken the hail on rent only for running his clinic and not for his residential needs as well, the appellant cannot reprobate and contend that the lease of the hall was of a composite nature, to seek the benefit of the enlarged definition of a 'non-residential building' given in the Amendment Act.

4. A pure question of law can be raised for the first time before the High Court or the Supreme Court even though the question had not been raised before the trial court or the appellate court. But in the instant case, the contentions advanced by the counsel on the nature of user of the hail pertain to mixed questions of fact and law. Moreover these contentions run counter to the legislative direction contained in s. 11 of the Act prohibiting conversion of a residential building into a non-residential one without the written consent of the Rent Controller. These contentions cannot, therefore be said to be pure questions of law.

Management of the State of Bank of Hyderabad v. Vasudev Anant Bhide and others, AIR 1970 SC 196, referred to.

5. The eviction proceedings were initiated by the respondent against both the tenants concurrently and not after an interval of time. As such, merely because the respondent succeeded in one of the petitions and failed in the other it cannot be said that the continuation of the proceedings in that case in appeal or revision would amount to applying once over again under the Act to seek eviction of a tenant on the ground of bona fide requirement.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1635 of 1985.

From the Judgment and Order dated 21.1.1985 of the Punjab and Haryana High Court in Civil Revision No. 2227 of 1984.

V.C. Mahajan, S.K. Bagga and Mrs. S.K. Bagga for the Appellant.

R.K. Jain, and Bharat Sangal for the Respondent. The Judgment of the Court was delivered by NATARAJAN, J. This appeal by special leave against a judgment of the High Court of Punjab and Haryana pertains to a contest between a widowed landlady seeking recovery of possession of a leased premises of the residential needs of herself and her sons and daughter on the one hand and an young medical practitioner on the other wanting to continue his medical practice in the premises without being evicted therefrom. The Rent Controller and the Appellate Authority declined to pass an order of eviction in favour of the respondent but the High Court had reversed their judgments and directed eviction and hence the present appeal by spe- cial leave by the tenant.

One Iqbal Singh, the deceased husband of the respondent was the owner of house no. 16, Sector 18-A, Chandigarh. He leased out the entire portion of the house except a big hall to one Kuldeep Singh on May 27, 1977. Iqbal Singh died in the year 1980 and on 1.4.81, his widow viz. the respondent leased out the hail to the appellant on a monthly rent of Rs.650. The lease was for a period of 11 months. The terms of the lease were reduced to writing but the deed was not registered.

The respondent filed two applications more or less concurrently (one on 2.2.82 and the other on 3.2.82) against the tenants of both the portions of the house viz. Kuldeep Singh and the appellant. The eviction of both the tenants was sought for on the same grounds viz., they had changed the user of the premises to non-residential purposes and secondly the respondent bona fide required the premises for her own occupation. In addition, in so far as the appellant is concerned, his eviction was also sought for on the ground of default in payment of rent from 1.5.81 onwards. It may be mentioned here that the respondent has three grown up sons and a grown up daughter. During the pendency of the proceedings the size of the family increased to seven members due to the eldest son getting married and begetting a child. The respondent's husband had been allot- ted a Government quarters and after his death the allotment was changed to the name of the eldest son viz. Gurcharanjit Singh who has been examined as AW 2 in the case. The appellant remitted the entire arrears of rent to- gether with interest, costs etc. on the first day of the hearing of the case and hence the prayer for eviction on the ground of non-payment of rent did not survive for considera- tion. As regards the other two grounds the appellant as well as Kuldeep Singh contended that they had not changed the user of the respective portions let out to them and secondly the respondent was in occupation of a government quarters and did not therefore, bona fide require the leased premises for her residence. The Rent Controller and the Appellate Authority held that Kuldeep Singh had

changed the user of the premises and ordered his eviction but in so far as the appellant is concerned, both the Authorities found against the respondent on both the grounds and dismissed the action for eviction.

Against the order of the Appellate Authority two Revi- sion petitions, one by the tenant Kuldeep Singh and the other by the respondent were preferred to the High Court. The High Court dismissed the Revision preferred by Kuldeep Singh and allowed the Revision filed by the respondent and ordered the eviction of the appellant too. While Kuldeep Singh has abided by the order of eviction and surrendered possession to the respondent of the portion leased to him, the appellant has come to this Court to impugn the order of the High Court directing his eviction.

Before we enter into the merits of the case, it is relevant to state that the High Court went only into the question of the bona fide requirement of the hall by the respondent for her residential use and did not go into the question whether the appellant had changed the user of the hall by running a clinic and had thereby rendered himself liable for eviction on that ground also. The High Court was of the view that when the respondent's requirement of the hall was a genuine one, the eviction of the appellant could be ordered on that ground alone and there was no need or necessity to examine the merits of the second ground on which also eviction was sought for.

In the light of the arguments advanced by Mr. Mahajan, learned counsel for the appellant, to assail the judgment of the High Court, the questions that fall for consideration can be enunciated as under:-

> 1. Whether the High Court had erred in the exercise of its revisional powers in (a) setting aside the concurrent findings of the Rent Controller and the Appellate Authority that the respondent was not bona fide in need of the hail for her residential use and (b) ignoring the findings of the Rent Controller and the Appellate Authority that the appellant had not changed the user of the hall from residential to non-residential purposes and, as such, he cannot be evicted on the ground of mis-user of the hall.
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> 2. Whether the High Court has failed to note that in view of the concurrent findings of the Rent Controller and the Appellate Authority that the hall must be deemed to have been let out for a non-residential purpose. to wit, running a clinic, the appellant will not be entitled to seek recovery of possession under Section 13(3)(a)(i)(a) of the Act for her residential occupation.
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> We will now take up for consideration the first conten-

tion of Mr. Mahajan. The Rent Controller and the Appellate Authority have rejected the ease of the respondent that she bona fide required the hail for her residential needs for the following reasons:-

1. The Government quarters allotted to the respondent's son in which the respondent's family was living consists of three bed rooms and only a nominal rent was being paid for it and hence the

accommodation was sufficient and she was not likely to vacate it.

2. The respondent was not likely to occupy the hall after eviction the tenant who was paying an attractive rent of Rs.650 per month.

3. It was inconceivable that the respondent and her family members could manage to live in a single hall when their grievance was that the accommodation in the Government quarters consisting of three bed rooms was insufficient for their requirements.

In so far as this finding is concerned, the High Court was refused to give any weight or credence to it, even though it was a concurrent one. In our view, the High Court was fully justified in rejecting the finding of the Rent Controller and the Appellate Authority, even though it is a finding of fact, because both the Authorities have based their findings on conjectures and surmises and secondly because they have lost sight of relevant pieces of evidence which have not been controverted. The evidence of the respondent and her son, which has not been challenged is that the Govern- ment Quarters consists of only one bed room, one store, one kitchen and a small dining room and nothing more. Strangely enough the Rent Controller and the Appellate Authority have proceeded on the assumption that the Government Quarters consists of three bed rooms and hence there was enough accommodation for the entire family. It is, therefore obvi- ous that they have based their findings on imaginary materi- al and not facts. Secondly, both the Authority have taken the erroneous view that the respondent had initiated action only against the appellant to get possession of the hall in the house and had not initiated action to get possession of the other portions of the house from the other tenant. Due to this mistake, the Authorities have disbelieved the re- spondent and held that the entire family cannot manage to live in a single hall. They have failed to note that the respondent had contemporaneously initiated proceedings against the other tenant Kuldeep Singh also for recovery of possession of the remaining portion of the house leased to him. Those proceedings were also before the very same Rent Controller and the Appellate Authority and they had them- selves ordered the eviction of Kuldeep Singh. The respondent has clearly stated in her evidence as follows:-

> "The house is of single storey. I require the property for my own use and for my children. I require the entire ground floor. I have filed the ejectment petition against the other tenant also."

Her evidence was not and indeed could not be challenged. In spite of all these materials being there, the Rent Control- ler and the Appellate Authority have taken a curious view that the respondent and her family members were wanting one hall alone for their residential needs and as such their case was not a believable one. In so far as the doubts entertained about the respondent not beings likely to forego the rent of Rs.650 per month paid by the appellant, the Authorities have failed to give due consideration to the respondent's statement that her daughter and sons are all fully grown up and she wanted to perform their marriages and as such she was very much in need of the entire house in- cluding the hall for her occupation. Having regard to all these vitiating factors, the High Court was fully entitled to reverse the findings of the Rent Controller and the Appellate Authority and examine the case of the respondent and give her relief. The so-called findings of fact suffer from inherent defects which deprive them of their binding force on the revisional court.

As regards the second limb of the first contention, the Rent Controller and the Appellate Authority have again committed serious errors in rendering their decision on the question whether the appellant had changed the user of the hall from residential to nonresidential purpose. The appellant rested her case upon the recital in the unregistered lease deed that the hall was let out only for residential purposes and for no other. The Rent Controller refused to look into the lease deed because of its non-registration. The Appellate Authority has taken the view that in spite of the non-registration, the lease deed can be looked into for collateral purposes out even then the respondent's case can fare no better, because the respondent has admitted in her evidence that she knew before the hall was let out that the appellant was a doctor and that the purpose of taking the hall on lease was for running a clinic therein and therefore she must be deemed to have acquiesed in the change of user of the hall. The Statutory Authorities have also been influ- enced by the fact that the payment of rent of Rs.650 per month was fully indicative that the hall should have been taken on lease for running a clinic. On the basis of such reasoning the Rent Controller and the Appellate Authority have held that the hall must have been let out for non- residential purposes only i.e. for running a clinic and hence the charge levelled by the respondent that the appel- lant had changed the user of the hall from residential to non-residential purpose cannot be sustained. As far as this aspect of the matter is concerned, the Rent Controller and the Appellate Authority have both failed to take note of the pleadings of the appellant. In the written statement, the appellant has averted as follows:-

> "The demised premises were taken by the answering respondent from the petitioner for the purposes of his residence and for running his clinic therein ..... The answering re- spondent is having his residence and clinic in the premises in dispute and is using the same for the said purposes, as such."

However, when the appellant entered the witness box, he gave up the case set out in the written statement and pro- pounded a different case that the hall had been taken on lease only for non-residential purposes. The perceptible manner in which the appellant had shifted his defence has escaped the notice and consideration of the Statutory Au- thorities. Both the Authorities have failed to bear in mind that the pleadings of the parties from the foundation of their case and it is not open to them to give up the case set out in the pleadings and propound a new and different case. Another failing noticed in the judgments of the Rent Controller and the Appellate Authority is that they have been oblivious to the fact that the respondent had leased out the hall to the appellant only for a period of 11 months. Such being the case, even if the respondent had come to know soon after the lease was created that the appellant was using the hall to run a clinic, she may have thought it prudent to let the appellant have his way so that she can recover possession of the hall after 11 months without hitch whereas if she began quarrelling with the appellant for his running a clinic, she would have to be locked up in litiga- tion with him for a considerable length of time and can obtain possession of the hall only after succeeding in the litigation. Yet another factor which vitiates the findings of the Rent Controller and the Appellate Authority is that both of them have over-looked Section 11 of the Act, and the sustainability of any lease transaction entered in contra- vention of Section 11. The legislature, with a view to ensure adequate housing accommodation for the people, has interdicted by means of Section 11 the conversion of resi- dential buildings into non-residential ones without the written consent of the Rent Controller. Admittedly, in this case the

parties had not obtained the consent in writing of the Rent Controller for converting the hall in a residential building into a clinic. Such being the case, the appellant cannot get over the embargo placed by Section 11 by pleading that the respondent was well aware of his running a clinic in the hall and that she had not raised objection at any time to the running of the clinic. Learned counsel for the appellant referred us to the decision in Dr. Gopal Dass Verma v. Dr. S.K. Bharadwaj & Anr., [1962] 2 SCR page 678 and argued that the ratio laid down therein would be fully attracted to the facts of this case. It is true that in the said decision, it was held that when a leased premises was used by the lessee incidently for professional purposes and that too with the consent of the landlord, then the case would go out of the purview of Section 13(3)(e) of the Delhi & Ajmer Rent Control Act 1954 and consequently, the landlord would not be entitled to seek eviction of the tenant-on the ground he required the premises for his own residential requirements. We find the facts in that case to be markedly different and it was the speciality of the facts which was largely instrumental in persuading this Court to render its decision in the aforesaid manner. Moreover, the Court had not considered the question whether the conversion of a residential premises into a non-residential one without the permission of the Rent Controller was permissible under the Delhi & Ajmer Rent Control Act and if it was not permitted, now far the contravention would affect the rights of the parties. In our opinion, the more relevant decision to be noticed would be Kamal Arora v. Amar Singh & Ors., [1985] SCC (Supplementary) 481 where this Court declined to inter-

fere with an order of eviction passed in favour of the landlord as the Court was of the view that even if the landlord and the tenant had converted a residential building into a non-residential one by mutual consent, it would still be violative of Section 11 of the East Punjab Rent Restric- tion Act and therefore, the landlord cannot be barred from seeking recovery of possession of the leased building for his residential needs. We are therefore of the view that the findings of the Rent Controller and the Appellate Authority about the appellant having taken the hall on lease only for running a clinic and that he had not changed the user of the premises have been rendered without reference to the plead- ings and without examining the legality of the appellant's contentions in the light of Section 11 of the Act. We do not therefore think the High Court has committed any error in law in ignoring the findings rendered by the Statutory Authorities about the purpose for which the hall had been taken on lease.

Learned counsel for the appellant repeatedly contended that when the Rent Controller and the Appellate Authority have rendered concurrent findings of fact, the High Court was not entitled to disregard those findings and come to a different conclusion of its own and cited in this behalf the decision of this Court in Hiralal Vallabhram v. Sheth Kas- turbhai Lalbhai and others, AIR 1967 S.C. 1653. The proposi- tion of law put forward by the counsel is undoubtedly a well settled one but then it must be remembered that the rule would apply only where the findings have been rendered with reference to facts and not on the basis of non-existent material and baseless assumptions. In this case when the Government quarters occupied by the respondent consists of a single bed room alone, it has been construed as comprising of three bed rooms; when the respondent wanted the entire house to be vacated by the two tenants so that she and her family members can occupy the whole house, the Authorities have proceeded on the basis that the respondent was seeking recovery of possession of one hall alone for her residential needs; when the respondent had not demanded increase of rent, even as per the admission of the appellant, the Au- thorities have proceeded on the

basis that the respondent was not likely to forego the income derived by way of rent for the hall etc. In such circumstances it is futile to say that the Rent Controller and the Appellate Authority have rendered their findings on the basis of hard and irrefutable facts. On the contrary the findings have been rendered on either non-existent or fictitious material. They cannot therefore be construed as findings of fact and once they cease to be findings of fact, they stand denuded of their binding force on the appellate or revisional court.

Coming now to the second question, Mr. Mahajan argued that the respondent cannot seek recovery of possession of the hall by means of an application under Section 13(3)(a)(i)(a) because the Rent Controller and the Appellate Authority have found that the hall had been let out only for running a clinic and not for the appellant's residence. It is true that under the Act, a landlord can apply to the Controller for an order or eviction against a tenant on the ground he requires the building for his own occupation only if the building is a residential one and not if it is a non-residential one. Since we have already held that the findings rendered by the Rent Controller and the Appellate Authority about the purpose for which the hall was let out are vitiated by several errors of facts and law, the appel- lant is not entitled to rely on those findings and dispute the respondent's right to seek his eviction under Section 13(3)(a)(i)(a) of the Act. In fact, such a contention was never put forward before the Statutory Authorities or before the High Court.

Mr. Mahajan advanced another argument which also had not been urged before the Statutory Authorities or the High Court. He contended that even if the hall had been let out for residential and non-residential purposes, the premises would constitute a non-residential building as per the amended definition under the East Punjab Rent Restriction (Chandigarh Amendment) Act, 1982, and consequently the respondent cannot seek the eviction of the appellant on the ground she requires the premises for her residential use. The Amendment Act referred to above has enlarged the defini- tion of "non-residential building", in the parent Act by making "a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence" to be also a non-residential building. We do not feel persuaded to examine the merit of this contention because it had not been raised before the Rent Controller or the Appellate Authority or the High Court or even in the grounds of appeal in the special leave petition. Moreover, the appellant had given up his case in the written statement that the hall was let out for his residential use as well as for running a clinic and had taken a categoric stand during the enquiry that he had taken the hail on rent only for running his clinic and not for his residential needs as well. Having taken up such a stand the appellant cannot reprobate and contend that the lease of the hail has of a composite nature and as such the benefit of the enlarged definition of a 'non-residential building' given in the Amendment Act would endure to his aid in the case. Mr. Mahajan sought to contend that he was entitled to raise these questions before this court even though they had not been raised before the Statutory Authorities or the High Court, because they are questions of law and can be raised at any time. The learned counsel placed reliance on the decision rendered in Management of the State Bank of Hydera- bad v. Vasudev Anant Bhide and others, AIR 1970 SC 196 to give added weight to his argument. It is true that a pure question of law can be raised for the first time before the High Court or this Court even though the question had not been raised before the Trial Court or the Appellate Court but the position here is that the arguments advanced by the counsel pertain to mixed questions of fact and law. The contentions have been advanced on the assumption that the

hall had been leased out for non-residential purposes alone or in the case in appeal or revision would amount to apply- ing once over again under the Act to seek eviction of a tenant on the ground of bona fide requirement. Over and above all these things, we find that the events which have taken place subsequently, give added force to the decision rendered by the High Court. The eviction proceed- ings against the other tenant Kuldeep Singh have ended in favour of the respondent and she has filed affidavits before this Court to state that she has re-occupied the portion leased out to Kuldeep Singh. The occupation of a portion of the house by the respondent places her claim for recovery of possession of the hall on a better footing. This is because of the fact the hall does not have an attached bath room or water closet. Consequently the appellant and the patients visiting his clinic are also making use of the common bath room and toilet in the house. This would not only cause inconvenience to the members of the respondent's family but would also expose them to the risk of infection from the patients using the bath room and toilet during their visit to the appellant's clinic. Though the appellant has averted in his affidavit that he has only a portable X-Ray unit and he does not have a clinical laboratory to carry out blood test, motion test, urine test etc. and that his patients do not make use of the common bathroom and toilet, there are enough averments in the counter-affidavits of the alterna- tive for residential as well as non-residential purposes. Factually the findings on these contentions have been found to be unacceptable. Moreover, the contentions run counter to the legislative direction contained in Section 11 of the Act prohibiting the conversion of a residential building into a nonresidential one without the written consent of the Rent Controller. These factors stand in the way of our accepting the contentions of the appellant's counsel as being pure questions of law and, therefore, worthy of consideration by us in the appeal.

It was lastly contended by Mr. Mahajan that as per the second proviso to Section 13(3)(a) the respondent is not entitled to apply once over again for eviction of a tenant on the ground of bona fide requirement for owner's occupa- tion after having obtained an earlier order on the same ground. According to Mr. Mahajan inasmuch as the respondent has obtained an order of eviction against Kuldeep Singh she is precluded by the proviso from seeking eviction of the appellant too on the ground of bona fide requirement. We do not find any merit in this judgment because it does not take note of relevant facts. We have already stated that the eviction proceedings were initiated against both the tenants concurrently and not after an interval of time. As such merely because the respondent succeeded in one of the peti- tions and failed in the other, it cannot be argued that the continuation of the proceedings in that respondent and material in the photos produced by her of the same board of the appellant's clinic to show that he does have a clinical laboratory in the hall in question. It does not require much to see that at least some of the patients visiting the appellant's clinic would be making use of the common bath- room and toilet and this would certainly cause great incon- venience to the occupants of the house. Hence the respondent will be fully justified in asking for the eviction of the appellant from the hall let out to him.

For all these reasons, we do not find any merit in the contentions of the appellant. As we have already stated the findings of the Rent Controller and the Appellate Authority are vitiated by the inherent defects in them and the High Court was, therefore, justified in taking the view that the findings have no binding force on the revisional court. In the result the appeal fails and will stand dismissed. The parties are directed to bear their respective costs. In order to enable the appellant to secure alternate accommodation for shifting his clinic he is granted time till 31.1.0.1987 to vacate the

premises subject to the condition he files an undertaking in the usual terms within three weeks from today failing which the respondent will be entitled to recover possession in terms of the judgment and decree of the High Court.

P.S.S. Appeal dismissed.