RAI CHAND JAIN

v.

MISS CHANDRA KANTA KHOSLA

NOVEMBER 15, 1990

[B.C. RAY AND R.M. SAHAI, JJ.]

East Punjab Urban Rent Restrictions Act, 1949—Sections 11 and 15—High Court—Interference with findings of fact—Whether permissible.

Respondent, land-lady leased out the demised premises to the appellant on the basis of a rent note dated 19.5.1978 wherein it was stipulated that the demised premises were to be used for residential purpose and that the tenant-appellant shall not sublet the premises or any part thereof. The respondent filed an application for eviction of the appellant-tenant on the ground that the tenant had not paid the rent; that he has changed the user of the premises by setting up a printing press "Navneet Prakashan' there and further that she required the premises for her *bona fide* use. The appellant controverted the allegations. The trial court allowed the application holding that the demised premises were used for the purpose other than that for which it was let out and the premises were let out to the appellant and not to 'Navneet Prakashan'. However, on the question of land-lady's requirement for *bona fide* use, the trial court held against her.

On appeal by the tenant-appellant, the Appellate Authority reversed the findings of the trial Court and held that the premises were let out for running printing press and thus there was no change of user. Against the judgment of the appellate authority, the respondent-landlady filed a revision in the High Court. The High Court reversed the order passed by the appellate authority. It held that the demised premises was let out to the appellant and not to the Navneet Prakashan and the purpose of tenancy is to use the demised premises as residence and since the appellant has used the premises for a purpose other than that for which it was let out to him, he was liable to be evicted. It further held that the respondent required the premises for *bona fide* use. Hence this appeal by the tenant.

Before this Court it is *inter alia* contended that the High Court in its revisional jurisdiction is not competent to interfere with the findings of fact arrived at by the Appellate Authority even if the findings are

erroneous nor it can substitute its views for the view expressed by the appellate authority even if two views are possible unless the findings are perverse.

Dismissing the appeal, this Court,

HELD: The High Court in exercising its power under Section 15(5) is within its jurisdiction to reverse the findings of fact when the same were improper and also illegal. [100B]

The tenant in the instant case, took the lease in his own name and the rent note was signed by him. It is also evident that he is the sole proprietory of M/s. Navneet Prakashan. In these circumstances it cannot but be held that the lease of the demised premises was given to the tenant appellant for his residence. [101D-E]

Faqir Chand **v.** *R.R. Bhanot*, **[1973] 3 SCR 454;** *Shalimar Tar Products Ltd.* **v.** *H.C. Sharma and Ors.*, **[1988] 1 SCR 1023;** *Duli Chand (dead) by L.rs.* **v.** *Jagmender Dass*, **[1990] 1 SCC 169;** *Hari Mittal* **v.** *B.M. Sikka*, **AIR 1986 (Pb. and Haryana) 119;** *Ram Dass* **v.** *Ishwar Chander and Ors.*, **[1988] 3 SCC 131;** *Vinod Kumar Arora* **v.** *Smt. Surjit Kaur*, **[1987] 3 SCR 552;** *M/s. New Garage Ltd.* **v.** *Khushwant Singh and Anr.*, **[1951] PLR 136;** *Kamal Arora* **v.** *Amar Singh and Ors.*, **[1986] SCC (Suppl.) 181;** *Ved Parkash* **v.** *Darshan Lal Jain*, **[1986] 2 SCR 90, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5346 of 1990.

From the Judgment and Order dated 7.6.1990 of the Punjab and Haryana High Court in Civil Revision No. 1238 of 1989.

P.C. Jain and Ms. Indu Goswamy for the Appellant.

Avadh Behari Rohtagi, Arvind Minocha and Nand Kishore Khosla for the Respondents.

The Judgment of the Court was delivered by

RAY, J. Special leave granted. Arguments heard.

This appeal by special leave is directed against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh

in Civil Revision No. 1238 of 1989 reversing the Order of the Appellate Authority, Chandigarh, dated December 24, 1988 in Rent Appeal No. 29 of 1987, reversing the Order of the Rent Controller, Chandigarh dated 16th February, 1987 in Case No. 124 of 1985. A

The matrix of the case in short is as follows. The petitioner landlady (Respondent in this appeal), Ms. Chandra Kanta Khosla leased out the demised premises being House No. 382, Sector-30A, Chandigarh, at a monthly rent of Rs. 1,100 on the basis of a rent note dated 19th May, 1978. It has been specifically stated in the lease deed that the demised premises were to be used for residential purpose only and the tenant will not sub-let the premises or any part thereof and application for eviction of the tenant (appellant in this appeal) was filed on the ground that the tenant had not paid or tendered rent with effect from December 1, 1984, and that the tenant had changed the user of the demised premises and had set up a printing press under the name and style of "M/s Navneet Parkashan" in the jarage and two rooms of the demised premises. It has also been alleged that the tenant used the demised premises for the purpose other than that for which it was let out and the landlady required the demised premises for her own use and occupation as she had no other alternative accommodation in the city. This application was filed before the Rent Controller, Chandigarh for terminating the tenancy of the tenant/respondent by issuing a notice. The tenant controverted the allegations made in the eviction petition and pleaded that M/s Navneet Parkashan was a necessary party to the eviction petition. It was further pleaded that the disputed premises were admittedly rented out to him for running the printing press under the name style of "M/s Navneet Parkashan" of which he was the sole proprietor. The execution of the rent note dated 19th May, 1978 was admitted, but it was pleaded that the rent note being not registered it could not create any right in favour of the landlady. It had also been pleaded that the landlady had been accepting rent on behalf of M/s Navneet Parkashan and as such she could not dispute that the latter was not a tenant in respect of the demised premises from the very beginning. It had also been stated that the major portion of the demised premises was being used for office and printing press. B C D E F G

On these pleadings of the parties, three issues had been framed i.e.:-

(a) Whether the tenant had changed the use of the premises in dispute for a purpose other than that for which it was let out. H

A (b) Whether the landlady requires the premises *bona fide* for her personal use and occupation.

(c) Whether the premises was let out to M/s Navneet Parkashan as alleged.

B The Trial Court considered issues nos. 1 and 3 and disposed of the same in favour of the landlady by holding that the premises were let out to the tenant and not to M/s Navneet Parkashan. It was also held that the demised premises were used for the purpose other than that for which it was let out. It was also held that the landlady had sufficient accommodation in her possession as she was residing in House No. 153, Sector 9B, Chandigarh in which she was a co-owner.
C

On appeal the Appellate Authority held that the demised premises were not let out for residential purposes but it was let out for running the printing press under the name and style of M/s Navneet Parkashan and the tenant did not change the user of the demised
D premises and thus reversed the findings of the Rent Controller under issue nos. 1 and 3. The appellate authority further found that the landlady did not requires the premises *bona fide* for her own use and occupation.

Against this judgment and order of the Appellate Authority the
E respondent-landlady, owner of the premises in question filed a Revision Application being Case No. 1238 of 1989 in the High Court of Punjab and Haryana. The High Court held that the demised premises was let out to the Appellant, Rai Chand Jain and not to M/s Navneet Parkashan. It had been further held that the acceptance of rent by cheque from the account of the press could not amount to creation of
F tenancy in favour of the said printing press so the tenant is the sole proprietor of the said press and the lease deed entered into by the appellant and the respondent is expressly in the name of the appellant and not in the name of the press and the purpose of the tenancy is to use the demised premises as his residence. It was also held that the tenant having used the demised premises for the purpose other than
G that for which it was let out was liable to be evicted on this ground. The findings of the Appellate Authority on this score under issues nos. 1 and 3 were reversed. The High Court also held that the landlady *bona fide* required the demised premises for her own use and occupation as she had proved that the one room in House No. 153, Sector-9B, Chandigarh, where she has been residing was bequeathed by her
H father to her elder brother Wing Commander, S.K. Khosla, who was

the exclusive owner of the house. It was also held from the evidence of AW 2 Shri N.K. Khosla, an advocate and brother of the landlady who deposed that there was a will under which the father of the witness and of the landlady bequeathed the house in favour of the latter, Wing Commander S.k. Khosla. The landlady has proved her *bona fide* requirement of the suit premises for her residence. The finding of the Appellate Authority was also reversed on this point. The High Court, therefore, passed a decree for eviction of the appellant/tenant from the suit premises and granted one month's time to vacate the demised premises provided he clears the arrears of rent upto date within a fortnight from the date of the Order and gives an undertaking to the effect that he will hand over the vacant possession of the demised premises to the landlady after expiry of the said period.

It is against this judgment and decree the instant appeal by Special Leave has been filed before this Court.

The learned Counsel appearing on behalf of the appellant has advanced four fold submissions before this Court. The dimension of his first submission is that the suit premises was let out to the press M/s Navneet Parkashan for the purpose of running the said press in the demised premises and it was not let out to the appellant, Rai Chand Jain for his residence. It has also been submitted in this connection that the premises was let out to the tenant on 16th May, 1978 on the basis of an oral agreement that it will be used for running the press therein. Subsequently in order to avoid the effect of the legal bar provided in section 11 of the East Punjab Urban Rent Restriction Act, 1949 (Act No. E.P. Act III of 1949), the impugned lease deed was got executed by the tenant/respondent, Rai Chand Jain. This will be clear from the lease deed itself wherein the date 16th was scored through and 19th was inserted. Similarly in clause I of the terms of the said deed the date 15th was scored through and 18th was substituted. It has also been submitted that the tenancy was created not in favour of the appellant but in favour of M/s Navneet Parkashan for the purpose of running the printing press and not for residence as has been mentioned in the lease deed executed by both the parties on May 19th 1978 for a period of 11 months. The second dimension of the submission on behalf of the appellant is that the landlady let out the demised premises to the appellant for the purpose of running the printing press and the press is being run there and she having accepted rent paid by cheque from the account of said press and given receipts since the inception of the tenancy without any objection can not plead that Section 11 of the said rent Act has been violated and that she was

A entiled to have an order of eviction on that score. It has also been submitted in this connection that the suit was filed after 6 years of the commencement of the tenancy and as such acceptance of rent for such a long period would amount to waiver of her right to eject the tenant for using the premises for the purpose other than that for which the demised premises was let out. It has been lastly submitted that the B landlady is admittedly residing in a room in House No. 153, Sector-9B, Chandigarh all along, left by her father and so on the demise of her father she became a co-owner with her brother. The allegation that the said house was bequeathed by her father late L.N. Khosla to her elder brother Wing Commander, S.K. Khosla is baseless as hold by the Appellate Authority inasmuch as she had not produced the alleged will before the Court. It has further been alleged that she had not retired C from service, and as such the provisions of Section 13(A) of the said Act cannot be invoked in getting an order of ejectment from the demised premises for her residence. Some decisions have been cited in support of the submission. It was further submitted that the High Court in its revisional jurisdiction is not competent to interfere with D the findings of fact arrived at by the Appellate Authority even if the findings are erroneous not it can substitute its views for the view expressed by the appellate authority even if two views are possible unless the findings are perverse. Some decisions have been cited at the Bar in this regard.

E The learned counsel for the respondent on the other hand has contended in the first place that it is clear and evident from the lease deed itself that the demised premises was let out to the appellant, Rai Chand Jain for the purpose of using the said premises is his residence. It was not let out to M/s Navneet Parkashan, of which appellant is the sole proprietor. The story of oral agreement as alleged by the learned F counsel on behalf of the appellant was denied. It has been further submitted in this connection that the monthly rent was paid to the respondent landlady in the letter head of M/s Navneet Parkashan by voucher from the Bank account of the press of which the appellant is the sole proprietor and the respondent merely put her signatures in the said vouchers acknowledging the receipt of rent. From these vouchers G signed by the respondent acknowledging receipt for the rent does not at all lead to the conclusion that the tenancy was created in respect of the said premises in favour of the press and not in favour of the appellant. It has been next submitted that the purpose of the lease deed was for use of the demised purposes solely for residence of the appellant and not for establishing or running a press therein. Admittedly the H demised premises bad been used for running the printing press in the

name of M/s Navneet Parkashan. Section 13(2)(ii))(b) of the East Punjab Urban Rent Restriction Act, 1949 provides for ejectment of a tenant on the ground that he used the building for a purpose other than that for which it was leased. Referring to this provision it has been contended that the order or decree of ejectment as passed by the High Court in Revision is quite valid and proper. It has further been contended on behalf of the respondent that the demised premises was situated in a residential area. Section 11 of the said Act enjoins that no person shall convert a residential building into a non-residential building except with the permission in writing of the Rent Controller. The demised premises was admittedly let out for residential purposes and it is a residential building. In the lease dead the specific purpose of letting out the said building was for residence of the tenant appellant. The tenant has undoubtedly converted the said residential building into a non-residential building without the permission of the Rent Controller in writing. It has been submitted that the tenant is liable to ejectment on this ground also. It has further been submitted in this connection by referring to the decisions in *Faqir Chand* v. *R.R. Bhanot,* [1973] 3 SCR 454; *Shalimar Tar Products Ltd.* v. *H.C. Sharma & Ors.,* [1988] 1 SCR 1023; *Duli Chand (Dead) by Lrs.* v. *Jagmender Dass,* [1990] 1 SCC 169 and *Hari Mittal* v. *B.M. Sikka*, AIR 1986 (Punjab & Haryana) 119 that written consent of the Rent Controller is mandator and the provisions to that effect in Section 11 is imperative. It is not directory. This provision has been inserted in the Act in public interest and as such it cannot be waived by the parties. It has also been submitted that the power of revision conferred by Section 15 of the said Act on the High Court is wider than the power of revision provided in Section 115 of the Code of Civil Procedure, inasmuch as the High Court has been empowered to interfere with the findings of fact arrived at by the Appellate Authority on the ground of legality and propriety. The power of the High Court in revision is, therefore, much wider and the High Court having found on consideration of the lease deed as well as terms of the Will filed in Court, that the findings of the Appellate Authority are not in accordance with law inasmuch as the purpose of the lease deed to use the demised premises was only for residence of the tenant and not for any other purpose and secondly the High Court considered the evidence of AW2 i.e. the younger brother of the landlady as well as the terms of the Will executed by the father of the landlady in favour of her elder brother that the other house where the landlady was residing was bequeathed to her elder brother alone and as such the findings of the Appellate Authority are perverse and dehorse those documents. It has, therefore, been contended on behalf of the respondent that the High Court was justified in interferring

A with the findings on the ground of the legality and propriety and he High Court was justified in reversing those findings of facts arrived at by the Appellate Authority. Several decisions of this Court have been cited in support of this submission.

The first question that poses for consideration by this Court is B whether the High Court while exercising its power under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, herein referred to as the 'said act' is empowered to interfere and reverse the findings of fact arrived at by the Appellate Authority. It had been urged before us that the Appellate Authority has found that the demised premises were not let out for residential purpose but the same were let out for C the purpose of running the press under the name and style of M/s Navneet Parkashan. It has also been held that the lease deed, exhibit PI, which was an unregistered document could not be read into the evidence except for collateral purposes and so the purpose of renting out of the demised premises cannot be said to be for collateral purposes and the contention of the learned counsel for the landlady D had no substance. It has also been found on a consideration of the rent receipts Ex. R1 to R.10 that the purpose of letting out was for running the printing press and not for residence and so reversed the findings of the Rent Controller on issues No. 1 and 2. The above findings of the Appellate Authority are not at all borne by the evidences on record. Firstly, the lease deed Ex. P1 dated 19th May, 1978 executed both by E the appellant and the respondent i.e. the landlady and the tenant, Rai Chand Jain, though unregistered can be considered for collateral purposes and as such the findings of the Appellate Authority to the effect that the said deed cannot be used for collateral purposes namely to show that the purpose was to lease out the demised premises for residential purposes of the tenant only is not at all legally correct. It is F well settled that unregistered lease executed by both the parties can be looked into for collateral purposes. In the instant case the purpose of the lease is evident from the deed itself which is as follows: "The lessor hereby demises House No. 382, Sector 30-A, Chandigarh, to lessee for residential purposes only". This clearly evinces that the property in question was let out the tenant for his residence only. It is also evident G from the lease deed itself that the date 15th April, 1979 was corrected as 18th April, 1979 when the tenancy will end. All the corrections in the lease deed were signed by both the appellant and the respondent and as such the submission that there was an oral agreement of letting out the premises to the tenant on 16th May, 1978 and the landlady got his signatures on the rent note subsequently to avoid her liability to the H established offence is wholly without any foundation, as the deed itself

clearly proves that the corrections of dates were signed by both the parties. Further the finding of the Appellate Authority on considering rent receipts Ex. R1 to R10 that the purpose of the letting out of the demised premises was for running the press under the name and style of M/s Navneet Parkashan is also perverse and the said inference cannot be drawn from the lease deed Ex. P1 as well as the rent receipts. It is evident from the Ex. R1 to R10 that these are vouchers on the latter head of M/s Navneet Parkashan showing issuance of cheques to the landlady against the rent in respect of the said premises from the account of the press. The landlady on the said vouchers merely put her signatures in acknowledging the receipt of the rents. It can not be concluded from the consideration of these rent receipts that the landlady let the premises to M/s Navneet Parkashan for running of the press. The demised premises were let out to the tenant-appellant for the purpose of his residence as is evident from the terms of the lease deed Ex. P1. It also appears from the pleading of the landlady that as soon as she came to know that the demised premises had been used for the purpose other than that for which it was let out, the application for eviction was filed by the landlady under section 13 of the said act. In these circumstances, the findings of the Appellate Authority are, in our considered opinion, perverse and contrary to the evidences on record. It is appropriate to note in this connection the relevant provision of Section 15(5) of the Act which specifically conferred jurisdiction on the High Court in an application for revision against the Order of the Appellate Authority to satisfy itself as to the legality or propriety of the order made by the Appellate Authority. On a plain reading of this provision it is clear and transparent that the revisional jurisdiction conferred on the High Court is much wider than the jurisdiction provided under Section 115 of the Code of Civil Procedure. The High Court while exercising this jurisdiction is competent not only to see the irregular or illegal exercise of jurisdiction but also to see to the legality or propriety of the order is question. In the instant case the High Court has found that the findings of the Appellate Authority in so far as it held that the demised premises were not let out for residential purposes and the same were let out for the purpose of running a press under the name and style of M/s Navneet Parkashan were not at all correct and per se against the evidences on record. It is further held that the demised premises were located in a residential part of the sector in the city and letting out of such residential building for the purpose of trade in violation of the Capital of Punjab (Development and Regulation) Act 1951 would not bring it within the fold of non-residential building as defined in clause (d) of section 2 of the said Act. The High Court also held that the building was let out to

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A the tenant for residential purposes and not for commercial purposes and so the High Court reversed the findings of the Appellate Authority under issues Nos. 1 and 3. Undoubtedly, the High Court reversed the findings of the Appellate Authority as the same are perverse and contrary to the evidences on record. The High Court in exercising its power under Section 15(5) of the said Act is within its jurisdiction to B reverse the findings of fact as the same were improper and also illegal. It is appropriate to refer in this connection to the decision in the case of *Ram Dass* v. *Ishwar Chnder and Others,* [1988] 3 SCC 131 where it has been held that Section 16(5) of the Act enables the High Court to satisfy itself as to the "legality and propriety" of the order under revision, which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to C examine the correctness of the findings of facts also, though the revisional court is not "a second court of first appeal (see *Dattonpant Gopalvarao Devakate* v. *Vithalrao Marutirao*)". Therefore this contention is without any substance. It is appropriate to mention in this connection the decision rendered by this Court in the case of *Vinod* D *Kumar Arora* v. *Smt. Surjit Kaur,* [1987] 3 SCR 552 where it was held that 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. It was further held that the rule when the courts of fact render concurrent findings of fact, the High Court would not be E 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. Similar observations have been made by this Court in the case of *Faqir Chand* v. *R.R. Bhanot,* (supra) where it has been held that there is no estoppel because both the landlord and the tenant knew that the tenancy was not one permitted under the terms of the F lease of the land. In any case there can be no estoppel against the statute.

The next question that falls for consideration is whether the demised premises was let out to the tenant/appellant for the purpose of his residence or whether it was let out to the press M/s Navneet G Parkashan for the purpose of running the same press in the demised premises. As stated herein before, the terms of the lease deed Ex. P1 bespeaks that the lease was granted to the tenant/appellant and not to M/s Navneet Parkashan, the Press and the sole purpose of letting out was for the residence of the tenant. Much has been urged on behalf of the appellant that the press was being run in the demised premises H since the inception of the tenancy to the knowledge of the landlady,

the respondent and the rent receipts were issued by the landlady on accepting the rent from the bank account of the press for about 6 years and as such the findings of the Appellate Authority are correct in so far as it held that the demised premises was let out to M/s Navneet Parkashan for running the press. This finding of the Appellate Authority has been reversed by the High Court and, in our considered opinion, the findings of the High Court are quite legal, valid and proper. it is evident from the recitals of the lease deed that the demised premises was let out to the tenant/appellant and not to M/s Navneet Parkashan. The purpose of letting out is for the use of the premises as his residence and not for running the press under the name and style of M/s Navneet Parkashan. Much argument has been advanced on behalf of the appellant that the rent receipts Ex. R1 to R10 given by the landlady clearly establish that the purpose of the lease was for running the printing press of M/s Navneet Parkashan. This finding is perverse, illegal and improper inasmuch as the alleged rent receipts which were written in the letter heads of M/s Navneet Parkashan by the appellant as the sole proprietor in the form of vouchers and the landlady signed the same acknowledging the receipt of rent. In these circumstances, it cannot be said that the lease was granted in favour of M/s Navneet Parkashan and not in favour of the appellant because of the obvious fact that the tenant took the lease in his own name and the rent note was signed by him. It is also evident that he is the sole proprietor of M/s Navneet Parkashan. In these circumstances it cannot but we hold that the lease of the demised premises was given to the tenant appellant for his residence. Much capital has been tried to be made out of the fact that the application for eviction under section 13 of the said Act was filed after more than 6 years of the commencement of the tenancy. The landlady had clearly stated in the application that she was not aware that a press was being run in the said premises by the tenant and as soon as she came to know of the same she made the instant application for eviction. Nothing can be inferred against the landlady because of the delay in filing the application for eviction. As regards the third submission that the acceptance of rent from the press known as M/s Navneet Parkashan for a period of more than 6 years and granting of receipts clearly proves acquiesence of the landlady to the user of the premises for non-residential purposes and as such she should be deemed to have waived her right to eject the tenant for using the said premises for the purpose other than that for which it was let out. The learned counsel for the appellant cited the decision in *M/s New Garage Ltd.* v. *Khushwant Singh & Anr.*, [1951] PLR 136 in support of his contention that by acquiesence and waiver, the landlady waived her right to invoke the provisions of Section 13(2)(iii)(b) of the

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A said Act, as she continously received rent from the tenant/appellant for a period of over 6 years. In this case the lease deed was granted by the landlord for the purpose of show room and workshop to the tenant. The tenancy was terminated on the ground that the said show room was being used as a workshop and thereby committed nuisance. It was held that by acceptance of rent for a long period the landlord B had waived the breach of the terms of the covenant and was not entitled to eject the tenant. It was further held that such acceptance of rent was not only condonation of breaches in the past but was a licence for breaches in the future. It was also held that even if it was a continuing breach the waiver of forfeiture along with the provisions of section 9(1)(b) would prevent a successful proceeding by the landlords for C ejecting the tenant. In this case it is to be noted that in the covenant of lease it was expressly mentioned that the show room was to be used for show room and garage as workshop and it was in that background the said decision was rendered by the High Court. Reference may be made in this connection to the case of *Kamal Arora* v. *Amar Singh and Others,* [1986] SCC (Supp.) 181 where the respondent-landlord filed D an eviction petition against the tenant/appellant under Section 3 of the East Punjab Urban Rent Restriction Act, 1949 on the ground that the respondent who was to retire from service *bona fide* required possession of the house for his residence. The tenant/appellant contested the petition alleging *inter alia* that the building was being used for running a school and so it was a non-residential building within the meaning of E the said Act. The landlord was not entitled to recover possession on the ground that he *bona fide* required the same for residence more so after having knowingly let it out for non-residential purpose. The High Court after examining the provision of the Capital of Punjab (Development and Regulation) Act, 1951 read with Section 11 of the Rent Act held that statute prohibits conversion of residential building F into non-residential building by act *inter vivos*. It was further held that the landlord and the tenant by their mutual consent cannot convert residential building into a non-residential building because that would be violative of the provision of Section 11 of the said Act. It was admitted that the building was situated in a sector falling under the residential zone. The High Court held that the landlord having retired G from service genuinely needed the premises for his residence as found by all the courts below. On an appeal to this Court this Court upheld the judgment of the High Court and dismissed the appeal. It is appropriate to mention in this connection the decision rendered by this Court in the case of *Vinod Kumar Arora* v. *Smt. Surjit Kaur* (supra). In this case the landlord filed an application for eviction of the tenant on H the ground that the tenant had changed the user of the residential

premises for non-residential purposes. It has been held that the Act provided that the conversion of a residential premises into a non-residential one could not be made without the permission of the Rent Controller under the Delhi and Ajmer Rent Control Act, 1954. The question arose for consideration was if it was not permitted what would be the effect of the contravention of the provisions of the Act. It followed the decision in *Kamal Arora* v. *Amar Singh and Others,* (supra) where it was held 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 Restriction Act and therefore the landlord cannot be barred from seeking recovery of possession of the leased building for his residential needs. In the case of *Faqir Chand* v. *Shri Ram Rattan Bhanot* (supra) the respondent landlords built two houses of lands given on long lease by the Delhi Improvement Trust in Karol Bagh. Subsequently the rights, liabilities and assets of the trust vested in the Delhi Development Authority. Under the terms of the leases the buildings erected on the lands were to be used for residential purposes only and if they were used for any other purpose without the approval of the lessor the leases would become void. The landlords in violation of the terms of the leases let out the buildings for commercial purposes. There was a barber shop and a scooter repair shop. The DDA gave notice to the landlords that since the buildings have been permitted to be used for commercial purposes the leases were liable to be determined. The landlords issued notice asking the tenants to stop the commercial use of the buildings and subsequently instituted proceedings against the tenants under the Delhi Rent Control Act, 1958. The Rent Controller dismissed the petition and thereafter appeals were filed and the Appellate Authority dismissed the appeals. The High Court decided in favour of the landlords. It came up for decision before this Court and it was held that the policy of legislature seems to be to put an end to unauthorised use of the leased lands rather than merely to enable the authorities to get back possession of the leased lands. This conclusion is further fortified by a reference to sub-section 11 of section 14. The lease is not forfeited merely because the building put upon the leased land is put to unauthorised use.

The last contention that falls for consideration is whether the provisions of Section 11 of the said Act expressly prohibits the conversion of a residential building into a non-residential building "except with the permission in writing of Controller" creates a legal bar for such conversion and as such in case of such conversion even with the consent of the landlord whether the tenant is liable to ejectment from

A the demised premises. It has been urged on behalf of the appellant that the aid of this provision can not be taken advantage of by the landlord who knowing fully of this legal prohibition has inducted the tenant into the demised premises for being used as printing press i.e. for commercial purposes. We have already considered herein before that the landlord is not entitled to waive this legal bar by giving his consent for such B use. It is pertinent to refer in this connection once more the observations of this Court in *Faqir Chand* v. *R.R. Bhanot* (supra) to the following effect:

> "The anxiety of the legislature is to prevent unauthorized user ..... There is no estoppel here because both C the landlord and the tenant knew that the tenancy was not one permitted under the terms of the lease of the land. In any case there can be no estoppel against the statute ..... We thus reach the conclusion that the lease in its inception was not void nor is the landlord estopped from claiming possession because he himself was a party to D the breach of the conditions under which the land was leased to him. Neither the clear words of the section, as in *Waman Shriniwas Kini* v. *Rati Lal Bhagwandas*, (1) A.I.R. 1959 SC 689, nor a consideration of the policy of the act lead us to the conclusion that the lease was void in its inception if it was for an unauthorised user."

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It is pertinent to mention here that the provisions of Section 14(1)(k) of the Delhi Rent Control Act, 1958 contain similar provisions as in Section 11 of the East Punjab Urban Rent Restriction Act, 1949. It is also pertinent to refer to this connection the decision in *Shri Hari Mittal* v. *Shir B.M. Sikka*, (supra) where the scope and effect of F provisions of Section 11 was considered by a Full Bench of the Punjab & Harana High Court and held that Section 11 is intended to subserve a public policy of seeing that the residential accommodation does not fall short of the community's requirement, as the shortage of residential accommodation would tend to result in unhygenic conditions of the residential area by accommodating more members than it could G legitimately be intended or the extra population resorting to unhygenic use of the open space and pavements and creating social tension and health hazards to the community. In view of the above the provisions of section 11 of the Act are mandatory in character. It was further held that a residential building let out for non-residential purpose by the landlord without obtaining the written permission of the Rent Control- H ler in terms of Section 11 of the Act would continue to be a residential

building and the landlord would be entitled to seek ejectment of the tenant on the ground of his *bona fide* requirement. To counter these observations of decision of the Punjab & Haryana High Court rende red in the case of *Ved Parkash* v. *Darshan Lal Jain,* [1986] 2 SCR 90 was cited. In this case the landlord sought ejectment of the tenant on the ground that the tenant had made structural alterations in the shop in dispute by removing the wall adjacent to shop No. 6312 and therby the tenant had committed an act by which he has impaired the value and utility of the shop in dispute. This was contested by the tenant that inspite of the landlord's knowing of the fact he filed the eviction petition after a considerable period of time and as such he acquiesced to this and so he is debarred from proceeding with the application of ejectment and could not get any relief. It was held by the Division Bench of the High Court that the landlord having full knowledge of the fact that the wall in question had been removed by the tenant had been receiving rent from him for more than four years from the time he gained knowledge of it and in fact filed the ejectment application nearly eight years after he gained knowledge of the alleged act. If the lessor is aware of continuing breach and acquiescence in it for a long period, that is, with full knowledge he receives rent it will be presumed that the had either released the convenant or granted a license for the user. This decision has been rendered relying upon the observations made by this Court in the case of *M/s New Garage Ltd.* v. *Sardar Kushwant Singh and Anr.* (supra). These decisions can not have any effect because of the subsequent Full Court decision rendered by the said High Court mentioned hereinbefore. It is apropos to refer in this connection to the decision in *Vinod Kumar Arora* v. *Smt. Surjit Kaur* (supra). It has been held that even though the landlord and the tenant had converted the residential building into a non-residential one by mutual consent, it would still be violative of Section 11 of the East Punjab Rent Restriction Act and so the landlord cannot be barred from seeking recovery of possession of the leased building for his residential needs. The decision in the case of *Kamal Arora* v. *Amar Singh and Others* (supra) was cited before us on behalf of the appellant to bring home the submission that where the parties are pari delicto the Court should not render assistance to the landlord in getting the order of eviction from the suit premises by taking recourse to the provision of Section 11 of the said Rent Control Act. This submission, however, is not borne out by this decision inasmuch as this question was left out for consideration in this case. It has, of course, been submitted by the learned counsel for the appellant that several cases are pending before the Constitution Bench on the question of the scope and applicability of Section 11 of the said Act. In view of the

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A question being pending before the larger bench, we do not think it proper to make any observations on this question.

It has also been contended with great emphasis on behalf of the respondent that Section 11 of the said Act requires mandatorily the prior permission in writing of the Rent Controller before converting a B residential building into a non-residential building and as such in the instant case no permission in writing of the Rent Controller having been taken the tenant/appellant is liable to be evicted from the suit premises as admittedly he had been using the premises for running a printing press under the name and style of M/s Navneet Parkashan. In support of this submission the decisions in *Shalimar Tar Products Ltd.* v. *H.C. Sharma & Ors.* (supra) and *Duli Chand (Dead) by Lrs.* v. C *Jagmender Dass* (supra) have been referred to before us. In the case of *Shalimar Tar Products Ltd.* v. *H.C. Sharma & Ors.* eviction was sought by the landlord of the tenant/appellant on the ground that the tenant sub-let the premises without the written consent of the landlord as required under section 14(1)(b) of the Delhi Rent Control Act, 1958 D read with Section 16(2) and (3) of the said Act where it has been provided that there can not be any sub-letting without the previous consent in writing of the landlord. It has been held by this Court that Section 14(1) proviso (b), 16(2) and (3) of the Delhi Rent Control Act, 1958 require the tenant to obtain consent of the landlord in writing for sub-letting of the premises. The purpose of such written consent was E that it would cut out litigation on this ground. Mere permission or acquiescence would not do. The consent must be to the specific sub-letting and must be in writing. There is no implied permission. The above observations of this Court has been followed and reiterated in a subsequent decision by this Court made in the case of *Duli Chand (Dead) by Lrs.* v. *Jagmender Dass* (supra) where it was held that it was F necessary for the tenant to obtain the consent in writing to sub-letting the premises. The mere permission or acquiescence will not do. The consent shall also be to the specific sub-letting or parting with possession. This Court further observed that the requirement of consent to be in writing was to serve a public purpose, i.e., to avoid dispute as to whether there was consent or not and that, therefore, mere permission G or acquiescence will not do. While nothing that everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his individual capacity, in the context of the statutory provision of the Delhi Rent Control Act, this Court further held that the requirement as to the consent being in writing was in the public interest and that, therefore, there cannot be H any question of waiver of a right, dealing with the rights of the tenants or landlord.

It is pertinent to refer that the landlady in another application obtained an order of eviction of the tenant-appellant from the demised premises under section 13A of the said Act on the ground that she retired from her services as Professor of a Music College. This judgment is under challenge before the appellate authority and is now pending for decision. A B

We have considered all the submissions made on behalf of the tenant-appellant and we have rendered our findings on each of the submissions. In view of our above findings, we do not find any merit in the instant appeal and the decision of the High Court, in our considered opinion, is unexceptional. We, therefore, dismiss the appeal with costs quantified at Rs.3,000. Six months time is granted to vacate the premises with usual undertaking to be filed within four weeks in default the decree will be executed. C

Y. Lal Appeal dismissed.