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v.

ANAND SWARUP (DEAD BY LRS.)

OCTOBER 4, 1988

[R.S. PATHAK, CJ. AND S. NATARAJAN, J.]

East Punjab Urban Rent Restriction Act, 1949: Section 13(2)(iii)—'Acts as are likely to impair materially the value or utility of the building'—Interpretation of—landlord—When entitled to obtain order of eviction—The construction by the tenant must not only be one effecting or diminishing value of utility of building but also impairment must be of a material nature.

The appellant had taken on lease a room from the respondent for running a dry-cleaning shop. The appellant later put up a parchhati in the shop for storing clothes. The respondent-landlord sought eviction of the tenant under section 13(2)(iii) of the East Punjab Urban Rent Restriction Act, 1949 on the ground that the construction of the parchhati was an act causing material impairment to the building. Both the Rent Controller and the Appellate Authority upheld the contention of the respondent. The High Court, in revision, affirmed their findings.

Before this Court, it was contended on behalf of the appellant that (i) the respondent had not adduced any evidence, although the burden of proof was on him, to show that by fixing the parchhati the building had been materially impaired so as to affect the value or utility of the building in any manner; (ii) the Rent Controller and the Appellate Authority had rendered their findings against the appellant without any basis for it; (iii) the High Court had failed to comprehend section 13(2)(iii) in its proper perspective; and (iv) the High Court had erred in treating the findings of the Rent Controller and the Appellate Authority as pure findings of fact whereas they were findings on a mixed question of law and fact.

Allowing the appeal, it was,

HELD: (1) It is not every construction or alteration that would result in material impairment to the value or the utility of the building. [396E]

(2) In order to attract s. 13(2)(iii) the construction must not only

A **be one affecting or diminishing the value or utility of the building but such impairment must be of a material nature i.e. of a substantial and significant nature. [396E-F]**

(3) When a construction is alleged to materially impair the value or utility of a building, the construction should be of such a nature as to
B **substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building. [396G-H; 397A]**

(4) The Rent Controller and the Appellate Authority had rendered their findings without any basis for it, and the High Court erred in accepting those findings without applying the correct principles
C **of law underlying section 13(2)(iii). [397B]**

Govindaswamy Naidu **v.** *Pushpalammal,* **AIR 1952 Mad 181;** *Smt. Savitri Devi* **v.** *U.S. Bajpai,* **AIR 1956 Nagpur 60;** *Charan Singh* **v.** *Shrimati Ananthi & Ors.,* **[1966] 6 PLR 780;** *G. Natarajan* **v.**
D *P. Thandavarayan,* **[1969] RCJ 733;** *Shri Anup Chand & Ors.* **v.** *Shri Trilok Singh,* **[1977] 1 RCJ 752;** *Gobind Ram* **v.** *Smt. Kaushalya Rani & Ors.,* **[1983] 1 RCJ 295;** *Om Prakash* **v.** *Amar Singh & Ors.,* **[1987] 1 SCC 458 and** *Brijendra Nath Bhargava & Anr.* **v.** *Harsh Wardhan & Ors.,* **[1988] 1 SCC 454, referred to.**

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2471 of 1980.

From the Judgment and Order dated 26.9.80 of the High Court of Punjab and Haryana in Civil Revision No. 292 of 1976.

F Sultan Singh and T.L. Garg for the Appellant.

Harbans Lal, S.M. Ashri and Ashok Mahajan for the Respondent.

The Judgment of the court was delivered by

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NATARAJAN, J. In this appeal by special leave by a tenant against the dismissal of his Revision under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Act') by the High Court, what falls for consideration is the manner of construing the words "acts as are likely to impair materially
H the value or utility of the building" occurring in Section 13(2)(iii) of the Act.

A parchhati put up by the tenant/appellant in a shop taken on lease by him for running a Dry Cleaning laundry has been construed by the Rent Controller and the Appellate Authority as an act causing material impairment to the building and the High Court has affirmed their findings and dismissed the revision preferred by the appellant. The correctness of the order of the High Court in Revision is challenged in this appeal.

The facts are not in controversy and may briefly be stated as under. For running a dry-cleaning shop the appellant had taken on lease a room from the respondent on a monthly rent of Rs.30. The appellant put up a parchhati in the shop for storing the clothes before and after dry cleaning. The parchhati has been made to rest on the walls by means of wooden balas inserted in the wall through holes made therein.

The appellant did not dispute the construction of the parchhati but contended that the alteration had been made several years ago and that too with the consent of the respondent and secondly the parchhati did not weaken or impair the utility or value of the shop in any manner. In support of his contentions, the appellant examined the neighbouring shop owners to prove that the parchhati had been in existence for long and a retired engineer by name Amril Lal as PW-3 to speak about the parchhati being only a temporary construction and the said construction not affecting the structural soundness or the utility of the shop in any manner. Notwithstanding the appellant's contentions and the evidence of the expert, the Rent Controller and the Appellate Authority rendered findings against him and the High Court accepted those findings in the following manner:

> "However in the case on hand, it is not a minor alteration but a substantial structural change in the building. Again, the fact that the wooden balcony has been constructed with the support of nuts and bolts would also not make any difference to the position. With modern technique, the construction of even a multi-storeyed building has been made possible by the use of fabrication with steel material, including nuts and bolts. Moreover, the two Authorities below have come to a concurrent finding after considering the evidence produced by the parties, that the balcony in question tantamounts to material impairment of the value and utility of the premises."

A Arguing for the appellant, Mr. Sultan Singh, learned counsel stated that while the Rent Controller and the Appellate Authority have rendered their findings against the appellant without there being any basis for it, the High Court has failed to comprehend Section 13(2)(iii) in its proper perspective and this has led to miscarriage of justice. It was urged that while the appellant had examined an expert B PW-3 Amrit Lal to prove that the Parchhati was only a temporary wooden fixture which could be easily removed at any time without any damage being caused to the walls of the building, the respondent had no adduced any contra evidence, although the burden of proof was on him to show that by fixing the parchhati the building has been materially impaired so as to affect the value or utility of the building in any manner and attracting Section 13(2)(iii) to the facts of the case. The C learned counsel further contended that since the High Court has erred in treating the findings of the Rent Controller and the Appellate Authority as pure findings of fact whereas they were findings on a mixed question of law and fact, the order of the High Court in Revision suffers from a serious flaw and it needs correction by this Court.

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In elaboration of his argument, Mr. Sultan Singh stated that the words "materially impaired" have a distinct connotation and as such any and every alteration made in a building will not necessarily constitute material impairment to the building. The counsel referred to the definition of the word "impair" in the Law Lexicon by P. Ramanatha E Aiyar (Reprint Edition) 1987 at page 548.

> "Impair. To diminish in quality, value excellence or strength of a thing.
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> The word 'impair' means to make worse; to weaken; F to unfeeble. To make or become worse or less; to lessen, reduce or diminish the quantity or quality."

The learned counsel also referred to several decisions of High Courts and of this Court where the same question has been considered by the courts. The decisions are to the following effects.

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Every act of waste by the tenant will not entitle the landlord to obtain an order of eviction under the provisions of Section 7 (Madras Buildings Lease and Rent Control Act), 1946. It cannot be laid down as a rule of law that a demolition of a wall in a building must necessarily be deemed to be an act of waste which is likely to impair mate- H rially the value or the utility of the building." *Govindaswamy Naidu* v.

Pushpalammal, AIR 1952 Madras 181.

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"A landlord, in order to be entitled to the grant of permission to terminate the tenancy, is required not only to prove an act of waste on the part of the tenant but also to prove that the said act is likely to impair materially the value or the utility of the house," *Smt. Savitri Devi* v. *U.S. Bajpai,* AIR 1956 Nagpur 60 and *Charan Singh* v. *Shrimati Ananthi & Ors.,* [1966] 6 PLR 780.

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"Drilling of a hole to let out smoke by the tenant who had taken the building for hoteliering business and removal of a portion of parapet wall for temporarily accommodating the hotel employees housed in the adjacent building cannot be said to be acts which would impair the utility of the building or its value." *G. Natarajan* v. *P. Thandavarayan,* [1969] RCJ 733.

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"Mere construction of a false roof which is only wooden or the setting of a wooden stair or making of a few holes in the roof for letting out the smoke from the hotel, cannot be held to be such material alterations which may result in changing the character or nature of the premises." *Shri Anup Chand & Ors.* v. *Shri Trilok Singh,* [1977] 1 RCJ 752.

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"A wooden parchhati constructed by a tenant (tailor master) within the demised shop for the purpose of providing more accommodation to his employees and the opening up of a ventilator for that purpose and the putting up of a wooden staircase to reach the parchhati would not constitute a material alteration atracting the operation of Section 13(2)(iii) of the Act." *Gobind Ram* v. *Smt. Kaushalya Rani & Ors.,* [1983] 1 RCJ 295.

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In *Om Prakash* v. *Amar Singh & Ors.,* [1987] 1 SCC 458 it was held that the raising of a temporary wall of 6 feet height in a hall in the demised premises, without digging any foundation in the floor of the hall so as to convert the hall into two portions for convenient use without the consent of the landlord and the extension of a pre-existing tin shed on the open land adjacent to the accommodation by constructing a wall made by bricks or mud and enclosing it by bamboo tatters would not amount to making of any structural change of a substantial character either in the form or structure of the accommodation and as such the construction did not materially alter the accommodation. It was observed that "the expression 'materially alter' means a substantial change in the character, form and the structure of the building

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A without destroying its identity." It was further pointed out in the decision that the findings of the court regarding constructions would be findings of fact but the question whether the constructions materially altered the accommodation is a mixed question of fact and law which should be determined on the application of the correct principles. In a recent case *Brijendra Nath Bhargava & Anr.* v. *Harsh Wardhan & Ors.*, [1988] 1 SCC 454 the tenant had constructed a wooden structure inside the showroom making the showroom a cabin and a balcony or dochhati on the roof of the cabin with a wooden staircase inside the cabin to go to the balcony. The Court held that the constructions would not constitute in law material alterations to the tenanted premises so as to give a cause of action to the landlord for filing a suit for eviction.

Though these decisions construed the words 'materially alter' we are of the view that the reasoning adopted for construing those words would logically be attracted for construing the words "materially impaired" with which we are concerned.

In the light of these decisions, if we examine the present case we find that the Rent Controller and the Appellate Authority as well as the High Court have obviously failed to construe Section 13(2)(iii) in its proper perspective and they have failed to apply the correct legal tests for judging the nature of the constructions made by the appellant. As has been repeatedly pointed out in several decisions it is not every construction or alteration that would result in material impairment to the value or the utility of the building. In order to attract Sec. 13(2)(iii) the construction must not only be one affecting or diminishing the value or utility of the building but such impairment must be of a material nature i.e. of a substantial and significant nature. It was pointed out in *Om Prakash* v. *Amar Singh*, [1987] 1 SCC 458 at 463 that the legislature had intended that only those constructions which brought about a substantial change in the front and structure of the building that would provide a ground for the tenant's eviction and hence it had taken care to use the word "materially altered the accommodation" and as such the construction of a chabutra, almirah, opening of window or closing a verandah by temporary structure or replacing of a leaking roof or placing partition in a room or making minor alterations for the convenient use of the accommodation would not materially alter the building. It would therefore follow that when a construction is alleged to materially impair the value or utility of a building, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial and

monetary point of view or from the utilitarian aspect of the building. A

Having regard to the nature of the temporary construction put up by the appellant and the evidence of the expert witness examined by him which remains uncontroverted by any expert's evidence on the respondent's side, we find no difficulty in holding that the lower courts had rendered their findings without any basis for it and the High Court has erred in accepting those findings without applying the correct principles of law underlying Section 13(2)(iii). B

The learned counsel for the respondent had no effective answer for the contentions of the appellant's counsel except to say that the High Court was justified in affirming the concurrent findings rendered by the Rent Controller and the Appellate Authority and hence there is no need or justification for this Court to interfere with the order of the High Court. We are unable to countenance this argument because the High Court has failed to apply the correct principles of law while exercising its Revisional Powers. C D

In the light of our conclusions, the appeal succeeds and is accordingly allowed. The order of the High Court in civil revision as well as the order of eviction passed by the Rent Controller and the Appellate Authority are set aside and the respondent's petition for eviction will stand dismissed. There will, however, be no order as to costs. E

R.S.S. Appeal allowed.