that the workman was employed on 7th August, 1986 and he continuously worked up to 31st July, 1994 was not disputed even before the Labour Court and, therefore, it cannot be said that the workman had been employed only to meet a temporary need of short duration. He had completed more than 240 days of service and, therfore, before his services could be terminated it was imperative upon the petitioner to comply with the mandatory provisions of Section 25-F of the Act. It is common ground between the parties that the workman was neither given any notice nor paid any compensation in terms of Section 25-F of the Act. In this view of the matter, the Labour Court was justified in holding that the termination was wrongful and contrary to the provisions of the Act.

(9) Lastly, it was urged that the findings recorded by the Labour Court are perverse and, therefore, the impugned award was liable to be set aside. We have perused the award under challenge and find no perversity in the findings recorded by the Labour Court. Having conceded before the trail court that the petitioner was an industry it cannot be said that the finding of the Labour Court in this regard is in any way perverse. The other finding in regard to the workman having completed more than 240 days of service has not been challenged even before us. This contention too is, therefore without any merit.

(10) No other point was raised.

(11) In the result, the writ petitions fail and the same stand dismissed.

R.N.R.

Before V.S. Aggarwal, J.

DR. J.S. SODHI AND OTHERS,—*Petitioners*

versus

MELA RAM,—*Respondent*

C.R. No. 2745 of 1999

11th January, 2000

East Punjab Urban Rent Restriction Act, 1949—S. 13—Materially impaired the value and utilitiy of the property—Whether every change materially impaires the value of the premises.

Held, that every change in the property does not materially impair the value and utility of the premises. The value and utility of the

premises has to be seen to be impaired from the point of view of the landlord. If the landlord is a party to any such act, he will not be allowed to raise such a bogey. The expression "materially" itself signifies that it has to be something substantial to give a cause to the landlord to seek eviction.

(Para 16)

Further held, that every permanent brick masonry wall cannot be presumed to have foundation. The presumption shall not take place of the substantive evidence. There is little evidence on the record to come to the conclusion that the wall in the dark room had been set up with the foundation. It follows that it does not impair the value and utility of the premises.

(Para 20)

M.L. Sarin, Senior Advocate with Hemant Sarin, Advocate, *for the petitioners.*

C.B. Goel, Advocate with R.C. Chauhan, Advocate, *for the respondent*

JUDGMENT

V.S. Aggarwal, J.

(1) The present revision petition has been filed by Dr. J.S. Sodhi, and others (hereinafter described as "the petitioners") directed against the order of eviction passed by the learned Rent Controller, Chandigarh, dated 25th May, 1996 and of the learned Appellate Authority, Chandigarh, dated 4th May, 1999. The learned Appellate Authority dismissed the appeal of the petitioners.

(2) The respondent is the landlord and, admittedly, petitioner No. 1 is the tenant in the suit premises. Petitioner No. 1 had taken the suit property i.e. ground floor of S.C.O. No. 809, Sector 22-A, Chandigarh on rent. The respondent filed a petition for eviction against the petitioners on a large number of grounds. The other grounds of eviction did not find favour with the learned Rent Controller and the learned Appellate Authority. The present controversy relates to the ground of eviction taken by the respondent that the tenant petitioner has made material aditions and alterations by raising permanent structures. A permanent room was stated to have been constructed towards the backside of the tenanted premises and it was being used as a dark room for X-ray films. Even a bath-room provided to Dr. Sodhi towards the backside had been damaged and the same had been reconstructed

by him at his own level for his own facility. It was further asserted that the machinery had been installed on the floor of the demised premises by constructing pucca foundation and in this process the main portion of the tenanted building had been damaged. A number of permanent cabins on the floor of the demised premises have been made without the prior permission of the landlord.

(3) The petition in this regard was contested. It was pleaded that through a writing Mela Ram and his brother Jai Chand had leased out the property to petitioner No. 1. Petitioner No. 1 was to run X-ray clinic in the suit premises. He is a radiologist. It was denied that the property in question had been taken for any purpose other than running of X-ray clinic. The contention that petitioner No. 1 had matrially impaired the value and utility of the suit property was denied. the electricity connection was given in the suit premises with the written consent of the landlord who had addressed a letter to the Sub Divisional Officer, Electricity Department. The property was stated to be in the same condition in which it was let out. Since it was X-ray clinic, dark room had to be there for X-ray films and machinery had to be installed. This could not cause any damage to the landlord because the cabins were only temporary structures. The same have been set up for smooth running of the X-ray clinic. It was denied that it has caused damage to the suit property.

(4) The learned Rent Controller scanned through the evidence and held that petitioner No. 1 had made material additions and alterations which had materially impaired the value and utility of the suit premises. This issue was decided in favour of the respondent-landlord.

(5) The petitioners preferred an appeal. The learned Appellate Authority concluded that there is no plea taken by the tenant in the written statement that there was a single brick wall in one corner of the room or that on the request of the tenant the landlord had covered it with false ceiling. It was further held that landlord Mela Ram had written a letter to the Electricity Department that he has no objection regarding 60 kw electric supply being given to Dr. Sodhi. In other words, it was concluded that it was let out to petitioner No. 1 for his X-ray clinic. However, the Appellate Authority went on to hold that permanent masonary walls had been raised in back portion of the demised premises. This was stated to be the construction of dark room and bath room. As regards bath room, the Appellate Authority held that it cannot be said that the same has matrially impaired the value and utility of the property in dispute. It was only the dark room that caught the imagination of the learned Appellate Authority and it was

held that permanent brick masonry walls mean regular and normal walls with their foundations in the ground and, thus, the same was concluded to have materially imparied the value and utility of the premises. The order of eviction was affirmed.

(6) Aggrieved by the same, present revision petition has been filed.

(7) A rent agreement had been executed between the parties. Clause 5 of the said agreement describes the purpose of letting and it reads as under :—

> "That the tenant shall use the tenanted premises exclusively for General Trade and what all is included in General Trade shall be carried out by the tenant and shall not be used for a purpose other than General Trade."

(8) From the said rent agreement it is clear that though the suit premises was let out for General Trade, Rule 9 of the Capital of, Punjab (Development and Regulation) Act, 1952, prescribes that General Trade includes certain professionals and also the profession of a doctor. Petitioner No. 1 is a doctor and in this regard, therefore, there can be little controversy with petitioner No. 1 for running of the clinic. This finding gets due support from the letter of the respondent Mela Ram, Exhibit R-6 which shows that the respondent-landlord had written to the Electricity Department that he has no objection regarding 60 K.W. electric supply being given to petitioner No. 1. Thus, it has rightly been held that the property in question had been let out for being used as X-ray clinic.

(9) On the strength of these facts, on behalf of the petitioners, it was being urged that once the property in question had been let out for being used as X-ray clinic, setting up of dark room is necessary for running of the said clinic. On the contrary, the respondent contention was that the said dark room with wall which are permanent in nature had materially impaired the value and utility of the premises. Sub-section (2) (iii) to Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') as applicable to Union Territory of Chandigarh, makes the said ground of eviction available and it reads as under :—

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

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

(10) The immediate question, therefore, that arises for consideration is as to what would be materially impairing the value and utility of the premises. The Legislature has used the word "materially" which necessarilly mean that every damage small or insignificant will not be taken to impair the value and utitility of the property. Reference to some of the precedents can well be in the fitness of the things. In the case of *L.D. Khanna, Sole Proprietor M/s G.D. Khanna and sons* v. *J.K. Puri and others* (1), this Court had held that it is for the landlord to prove as to when additions and alterations have been made and further that additions and alterations that have been made materially affected the value and utility of the property.

(11) In the case of *Kewal Chand Jain and another* v. *Jiwan Kumar Kaushal* (2), the tenant had constructed a wall. The question for consideration was as to whether it would be taken to have materially impaired the value and utility of the property or not. On appraisal of certain facts, this Court thereafter had held that it could not be termed that the value and utility of the property had materially been affected. A Division Bench of this Court in the case of *Bhupinder Singh and another* v. *J.L. Kapoor and another* (3), described about what would be materially impairing the value and utility of the property in the following words :—

".....The material impairment in the value and utility has to be considered as accepted from time immemorial on the principle which stood the test of time and has been accepted as legal and equitable maxim, that lessee cannot basically change the structure of the demised premises and has to return the premises he had taken on lease, to the landlord at the time of expiry of the tenancy in the same condition in which he took it on lease except the usual wear and tear resulting on account of time factor. The approach for determining whether alterations made have materially impaired the value and utility cannot be whimsical but has to be such as a reasonable man acting in a reasonable way would assume in the facts and circumstances of the case. It has to be judged according to the prevailing situation and not as one is deciding the question in

(1) 1985 (1) R.C.R. 512
(2) 1989 (2) R.C.R. 215
(3) 1992 (2) R.L.R. 104

cool and detached atmosphere of the Court, removed from the reality of the situation."

(12) More recently, in the case of *Samitri Devi* v. *Karam Singh* (4), where the structure raised by the tenant was in the form of nine pillars and a pardi wall of six feet and four inches height and roof consisting of rafters and purlins, this court held that it does not affect the value and utility of the building. This court held as under :—

"In this case, the structure raised by the respondent is only in the form of nine pillars and a pardi wall of six feet height and four inches thickness and roof consisting of rafters and purlins cannot be regarded as having the affect of material impairment in the value or utility of the tenanted premises."

(13) The leading case on the subject is the decision of the Supreme Court in the case of *Om Parkash* v. *Amar Singh and another* (5). This was a decision under the U.P. Cantonments (Control of Rent and Eviction) Act, 1952. The question for consideration was as to what would be material alterations. The Supreme Court looked at the expression "materially altered" and held as under :—

"The Act does not define either the word "materially" or the word "altered". In the absence of any legislative definition of the aforesaid words it would be useful to refer to the meaning given to these words in dictionaries. Concise Oxford Dictionary defines the word alter as change in character, position "materially" as an adverb means important essentially concerned with matter not with form. In Words and Phrases (Permanent Edition) one of the meanings of the word alter is to make change, to modify, to change, change of a thing from one form and set to another. The expression "alterations" with reference to building means substantial change, varying, change the form or the nature of the building without destroying its identity". The meaning given to these two words show that the expression materially altered means "a substantial change in the character, form and the structure of the building without destroying its identity". It means that the "nature and character of change or alteration of the building must be of essential and important nature."

(14) In the cited case, partition wall had been set up without digging any foundation and it was concluded that it does not amount

(4) 1996 (2) R.L.R. 677
(5) A.I.R. 1987 S.C. 617

to material alterations of the property. The findings in this regard are as under :—

> "In the instant case the disputed constructions which the High Court has found to be material alteration consists of a partition wall of 6 feet height in a hall converting the same into two rooms and a tin shed marked by letters CDGH on the Eastern side on an open land adjacent to the accommodation. The trial Court held that the partition wall did not change the front or structure of the accommodation, it being temporary in nature, did not constitute material alterations in the accommodation. This finding of the trial court was not challenged by the landlord before the civil judge. But the High Court has held that the partition wall constituted material alteration. The findings recorded by the trial court and the relevant evidence placed before us by the parties clearly show that the partition wall did not actually partition the hall converting the same permanently into two rooms. The partition wall was made without digging any foundation of the floor of the room nor it touched the ceiling instead, it was a temporary wall of 6 feet height converting the big hall into two portions for its convenient use, it could be removed at any time without causing any damage to the building. The partition wall did not make any structural change of substantial character either in the form or structure of the acommodation."

(15) Very recently, the Supreme Court in the case of *Shri Gurbachan Singh and another* v. *Shivalak Rubber Industries and others* (6), was concerned with similar situation as in the present case. It was held that the meaning of the expression "to impair materially" in common parlance would mean to diminish in quality, strength or value substantially. The word "impair" cannot be said to have a fixed meaning. It is a relative term affording different meaning in different context and situations. So far as "value" is concerned, the Supreme Court has opined that it means intrinsic worth of a thing. It was further held that it has to be seen from the point of view of the landlord.

(16) Having pondered with some of the decisions in this regard, the conclusions are obvious. Every change in the property does not materially impair the value and utility of the premises. The value and utility of the premises has to be seen to be impaired from the point of view of the landlord. If the landlord is a party to any such act, he will not be allowed to raise such a bogey. The expression "materially" itself

(6) J.T. 1996 (2) S.C. 615

signifies that it has to be something substantial to give a cause to the landlord to seek eviction.

(17) Exhibit P-32 is the report of the expert produced by the respondent-landlord. The relevant portion of the said report read as under :—

> "2. That the permanent brick masonary walls have been raised in the back portion of show room to accommodate one toilet and a dark room for developing X-ray films which is not as per the sanctioned plan.
>
> 3. Heavy machines such as C.T. Scan, X-Ray have been installed on the floor of demised premises by constructing permanent foundations and damaging the part of flooring.
>
> 4. Semi-permanent partitions/wooden cabins and false ceiling have been built to divide the total space into different sections.
>
> 5. The front upper portion towards the entry of tenanted premises above the main show window in the place of advertisement panel, the wall has been damaged and air-conditioning equipment has been fitted, which has poiled the overall look of the building and is against the Building Bye Laws.
>
> By making material alteration have impaired the value and utility of demised premises."

(18) Though the expert produced by the respondent opined that brick masonry wall had been raised in the dark room but he specifically felt shy of asserting that foundation had been laid for the said wall. It was rightly pointed out that if there were foundations for the heavy machines that were set up, he would have said that X-ray machine had been installed by constructing permanent foundation. This fact is significantly missing with respect to the wall that had been set up. If there was a foundation, the respondent's architect would have made mention of that. Consequently, this Court do not find any reason to appoint a Local Commissioner to find out if there is a foundation or not. There is no other material to conclude that the said wall in the dark room had been built by laying the foundation.

(19) The learned Appellate Authority in this regard observed as under :—

> ".....Therefore, this part of his report and statement must prevail. As every man in the street knows by "the permanent brick masonry walls", we mean the regular and normal walls with

their foundations in the ground. Such walls are a permanent structure....."

(20) The said observations are presumptive in nature that every permanent brick masonry walls must have foundation. As pointed out above, there is no material to come to such a conclusion. The presumption shall not take places of the substantive evidence. It follows, therefore, that there is little evidence on the record to come to the conclusion that the wall in the dark room had been set up with the foundation.

(21) In *Om Parkash's case* (supra), the Supreme Court, as mentioned above, has categorically stated that when there is a partition wall without digging any foundation and it does not touch the ceiling, it must be taken to be a temporary wall which will not substantially change the character of the building. As a necessary corollary, it follows that it does not impair the value and utility of the premises. Thus, the findings to this effect of the learned Appellate Authority cannot be approved.

(22) Coupled with that is another important fact. Petitioner No. 1 is carrying on the said profession in the said premises. He is there for a very long time. The landlord did not deem it appropriate to file eviction petition on the earlier occasion. Dark room would invariably be set up with the profession of a Radiologist. Consequently, there is an implied consent which can be inferred.

(23) It is true that there is concurrent finding of fact. But, as noticed above, there is an illegality in the order because the order proceeds on a presumption which is not correct in law or on fact. Thus, sub-section (5) to Section 15 of the Act will permit this court to interfere.

(24) For these reasons, the revision petition is allowed. The impugned order of eviction is set aside. Instead of the application for eviction is dismissed.

S.C.K.

Before N.K. Sodhi and N.K. Sud, JJ.

JATINDER KUMAR BHAG AND ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 1661 of 1999

9th February, 2000

Constitution of India, 1950—Art. 226—Punjab Municipal Act, 1911—Ss. 78 and 229—Goods of the petitioners seized within municipal