Before J. V. Gupta, J.

PANDIT BISHAN SARUP,—*Petitioner.*

versus

PREM NARAIN,—*Respondent*

Civil Revision No. 988 of 1985.

August 8, 1985.

Haryana Urban (Control of Rent and Evictions Act (XI of 1973)—Section 21(a)—Residential house along with vacant land rented out to a tenant—Said vacant land subsequently sold to another person—Tenant continuing as such under the new landlord—Subsequent argeement between the landlord and the tenant fixing separate rent for the house and vacant land—Such vacant land whether ceases to fall within the definition of 'building' given in Section 2(a)—Provisions of the Rent Act—Whether applicable to such premises.

Held, that reading of section 2(a) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, will show that when the demised premises was originally let out alongwith the building part it came within the purview of the definition of the term 'building', but when it was let out separately after purchasing it then it ceased to be a building as defined under the Act. The definition further suggests that if any land, lawns, etc., appurtenant to such building, are let out alongwith the building, the whole falls within the definition of the term 'building'. In other words, if any land or lawn, etc., are let out separately then it will not be covered by the definition of the term 'building'. The Act applies only to the building, may be non-residential or residential or to the rented land as defined under the Act. The premises in dispute does not fall either under the definition of the term building or under the definition of the term 'rented land'. As such Rent Act is not applicable to the premises in dispute and the only remedy to the landlord is to seek the ejectment of the tenant from the civil court.

(Para 6)

Petition u/s 15(6) *of Haryana (Control of Rent and Eviction) Act for revision of the order of Shri V. K. Kaushal, Appellate Authority, Rohtak, dated 28th January,* 1985, *affirming that of Shri N. C. Nahatha, Rent Controller, Rohtak, dated 7th March,* 1984, *accepting the ejectment petition and directing the respondent to hand over the vacant possession of the disputed ghair as detailed in para* 1 *of the petition to the petitioner within a period of two months, leaving the parties to bear their own costs.*

R. S. Bindra, Senior Advocate, with Ravi Kant Sharma, Advocate, *for the Petitioner.*

S. D. Bansal, Advocate, *for the Respondent.*

JUDGMENT

J. V. Gupta, J.

(1) This is tenant's petition against whom eviction order has been passed by both the authorities below.

(2) The landlord Prem Narain sought the ejectment of his tenant Pt. Bishan Sarup from the premises in dispute which consists of one *Gher* which was let out to him for tether his cattle. It is the common case of the parties that previously one Smt. Chandra Wati, wife of Jai Parkash, was the owner of the premises in dispute along with other two rooms. Admittedly, Chandra Wati had let out the said two rooms along with the *Gher* in dispute to the tenant Bishan Sarup for tethering his cattle. It was in the year 1976 that Chandra Wati sold the *Gher* (open space) to Prem Narain landlord, though Bishan Sarup also continued to be the tenant under Chandra Wati in the said two rooms which were let out originally to him along with the *Gher*. The landlord filed the ejectment application in April 22, 1981, seeking the ejectment of the tenant from the said *Gher* (open space surrounded by four walls) on the ground that the premises was let out for residential purpose and since the tenant is already in possession of his own residential building which is sufficient for his requirement in the urban area concerned, he is liable to ejectment. In the reply filed on behalf of the tenant, it was pleaded that the *Gher* in question is not a residential one and that he has not been residing therein. The tenant does own his own house in the urban area concerned, but since the premises in dispute was taken for tethering the cattle he was not liable to ejectment, as alleged by the landlord. According to the tenant, the premises in dispute was a non-residential building as he was running a milk dairy therein and, therefore, the landlord was not entitled to seek ejectment from the said non-residential building. The learned Rent Controller found that the premises in dispute was let out for tethering cattle and not for running any milk dairy, as alleged by the tenant, and, therefore, the premises in dispute could not held as non-residential building. According to the definition of the term 'residential building' under the Haryana Urban (Control of Rent and Eviction) Act, 1973, the residential building falls within the said definition. Since the tenant was already in occupation of a residential building of his own in the urban area concerned which was sufficient to meet his requirement eviction order was passed. In appeal, the learned Appellate

Authority affirmed the said findings of the Rent Controller and maintained the eviction order. Dissatisfied with the same, the tenant has filed this petition in this Court.

(3) The learned counsel for the petitioner contended that on the finding of the authorities below that the premises was let out for tethering cattle only and not for running the milk dairy, the premises could not be held to be rented land as defined under the Rent Act. According to the learned counsel, it could not be held to be non-residential building either because on the facts admitted it is an open space surrounded by four walls and no construction of any kind exists thereon. It is argued by the learned counsel that the finding of the authorities below that it was a residential building was wrong and illegal. According to the learned counsel, the premises in dispute does not fall within the purview of the Act and the only remedy, if any, with the landlord is to seek his ejectment in a Civil Court.

(4) On the other hand, the learned counsel for the respondent submitted that originally the open space was let out along with the two rooms which are still in occupation of the tenant and the *Gher* in dispute being a part of the building falls within the definition of the 'building' as defined under the Act. Thus argued the learned counsel, the finding of the Courts below in this behalf was correct and could not be interfered with in revisional jurisdiction. In any case, argued the learned counsel, the case which is now being set up in this petition was never taken up either in the pleadings or before any of the authorities.

(5) After hearing the learned counsel for the parties and going through the evidence on the record, the facts admitted are that earlier the *Gher* in dispute along with two rooms were let out to the tenant by Smt. Chandra Wati. Later on, the *Gher* in dispute was sold in the year 1976 to Prem Narain landlord. The husband of Chandra Wati has appeared in the witness box. He has stated that later on separate rent was fixed for the *Gher* in dispute as well as for the two rooms which remained in occupation of the tenant. It is not disputed that the Gher in dispute is surrounded by four walls only and no construction exists therein. In the Act, the term 'building' has been defined as under :

> "2. (a) "building" means any building or a part of a building let for any purpose whether being actually used for

that purpose or not, including any land, godowns, out-houses, gardens, lawns, wells or tanks apurtenant to such buliding or the furniture let therein or any fittings affixed to or machinery installed in such building, but does not include a room in a hotel, hostel or boarding house."

(6) From the said difinition, it is quite evident that when the demised premises was originally let out along with the building part it came within the purview of the definition of the term 'building', but when it was let out separately after purchasing it then it ceased to be a building as defined under the Act. Rather the definition suggests that if any land, lawns etc. appurtenant to such building, are let out along with the building, the whole falls within the definition of the term 'building'. In other words, if any land or lawn etc. are let out separately then it will not be covered by the definition of the term 'building'. Thus from the facts admitted and proved on the record the *Gher* in dispute ceases to be a building after it was purchased by the landlord in the year 1976 and it could not be termed as 'rented land' as well because it was never let out for the purpose of being used mainly for business or trade. According to the finding of the authorities below and which finding has not been challenged, it was let out for tethering cattle only and not for doing any milk dairy business. The Act applies only to the building, may be non-residential or residential or to the rented land as defined under the Act. The premises in dispute does not fall either under the definition of the term 'building' or under the definition of the term 'rented land'. If it is not building, the question of its being non-residential or residential does not arise. Thus, the Rent Act was not applicable to the premises in dispute being an open space let out for tethering cattle. The only remedy with the landlord is to seek the ejectment of his tenant from the civil Court after terminating his tenancy by issuing necessary notice.

(7) As a result of the above discussion, this petition succeeds, the orders of the authorities below are set aside and the ejectment petition is dismissed with no order as to costs.

H.S.B.