sell it. Thus, it is evident that Mohinder Singh had a right to sell the plot. If he sold it after constructing a shop, it cannot be held that the sale is invalid. That is why even Smt. Mohinder Kaur has not challenged the validity of the sale in favour of the plaintiff. Thus, the appellants cannot be allowed to challenge the sale by Mohinder Singh in favour of the plaintiff. The compromise between the parties is subsequent to the dates of the abovesaid two documents. Consequently, the learned counsel for the appellants cannot derive any benefit from them.

(12) For the aforesaid reasons, there is no merit in the letters patent appeal and the same is dismissed with costs. Counsel fee Rs. 300.

S. S. Sandhawalia, C. J.—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

NARAIN SINGH,—*Appellant.*

versus

BAKSON LABORATORIES and another,—*Respondent.*

Civil Revision No. 386 *of* 1976.

July 28, 1981.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (iii)—Scope of—Conversion of a Verandah into a room without the sanction of the landlord—Such act—Whether could be said to have impaired materially the value or utility of the building.

Held, that the legislature has designedly used the word 'likely' in section 13(2) (iii) of the East Punjab Urban Rent Restriction Act, 1949. The statute has not used pre-emptory or categoric language. Therefore, it is not that the impugned acts must have conclusively diminished the value or utility of the building, but it would be within the mischief of the statute if they are likely to do so. A closer look at the provision would, therefore, indicate that it is tilted in favour of the landlord because even if the acts may not conclusively impair the value or utility but merely have a tendency to

the same effect they may well come within the wider net of the language employed by the legislature. Again, the statute talks not merely about the impairment and the diminishing of the financial value of the building but equally of the diminishing of its utility. Whilst, undoubtedly the true anvil for determining these factors would ultimately be the objective finding of the Court, the impairment of value or utility has to be examined from the point of view of the landlord. In particular it is not whether the utility is diminished *qua* the tenant because the acts complained of would be those committed by him and would obviously not diminish the utility of the building for his purpose. Therefore, the impairment of the utility is particularly relevant to either the needs of the owner of the building or in the larger prospect of its utility to an intending purchaser in the market. Equally well-settled it is that the words 'value or utility' in the aforesaid provision have to be read disjunctively. It is not that the impugned act must impair both the value and utility of the building but it suffices if the material impairment is either of the financial value of the building or similarly of the utility of the building. It consequently suffices for the purposes of the landlord if he is able to establish either of the two requirements. The use of the word 'material' in the provision only effectuates the hallowed rule of law that it does not take account of trifles and consequently both the impairing of its value or its utility must be of a substantial and not inconsequential nature. With the aforesaid approach towards section 13(2) (iii) of the Act, it must, therefore, be held that conversion of a Verandah into a room results in material alterations which tend to change the nature and the character of the building and would consequently fall within the mischief of the statute. (Paras 6, 7, 8 and 9).

Babu Ram *v.* Smt. Kesra Devi, Civil Revision No. 482 of 1964 decided on 11th December, 1964.

Shanti Devi *v.* Lekh Raj C.R. 528 of 1970, decided on 21st April, 1971.

OVERRULED.

Case referred by the Single Bench consisting of Hon'ble Mr. Justice S. P. Goyal, on 10th December, 1980, to the Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. P. Goyal, for deciding the important question of law involved in the case. The Division Bench has finally decided the case on 28th July, 1981.

Petition under Section 15(5) of East Punjab Rent Restriction Act, 1949, for revision of the order of the Court of Shri J. S. Chatha, Appellate Authority Jullundur, dated 22nd November, 1975 affirming that of Shri H. R. Nohria, Rent Controller, Jullundur, dated 17th January, 1975, dismissing the petition with costs.

Surjit Bindra, Advocate, *for the Petitioner.*

S. P. Jain, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the unauthorised permanent conversion of verandahs into rooms and the installation of a door by a tenant, are acts likely to impair materially the value or utility of the demised premises within the meaning of section 13(2)(iii) of the East Punjab Urban Rent Restriction Act, 1949, is the somewhat interesting question which has necessitated this reference to the Division Bench.

2. At the revisional stage the matrix of facts giving rise to the aforesaid issue are not in serious dispute and may, therefore, be briefly noticed. Narain Singh petitioner (now deceased) had preferred a petition for a ejectment against Messers Bakson Laboratories and its sole proprietor Shri R. L. Soni from Bungalow No. 456-L, Model Town Julundur. Amongst various other grounds it was specifically alleged that the respondent had covered the verandahs on the front and back sides of the bungalow and had opened a door by breaking a wall of a room and thus diminished the value and utility of the premises and further that their presence was a nuisance to the petitioner and his neighbours. In contesting the ejectment petition the respondent had admitted the tenancy and had controverted the allegations in the petition. On the pleadings of the parties the following issues were framed:—

(1) Whether the petition is bad for non-joining of necessary parties ?

(2) Whether a valid notice was served in this case ?

(3) Whether the respondent is liable to ejectment on the grounds mentioned in the petition ?

(4) Relief.

Issues Nos. 1 and 2 were found in favour of the petitioner but issue No. 3 was decided against him and consequently the petition was dismissed. The Rent Controller noticed that the parties were really in contest on the ground of the diminishing of the value and the utility of the premises because of the conversion of the verandahs and the installation of the door by the tenant. He found as a fact and in essence it was virtually the admitted position that the front and the back verandahs had been enclosed with a brick wall with the use of cement mortar and a door had been opened in the

wall in place of a window. Nevertheless he took the view that since the walls built by the respondent could be removed at any time there was no impairment of the utility of the premises.

3. On appeal, the appellate authority took the view that the only ground surviving was with regard to the material impairment of the value and the utility of the demised premises. It was observed as follows :—

> "* * * Thus the only point to be seen in this case is whether with the construction of temporary walls in the front and back verandahs and turning of a window into a door it can be said that material impairment of either the value or utility of the building has been brought about."

Affirming the findings of the trial Court the appellate authority also took the view that the offending walls joined with the other parts of the building can be removed at any time and further that the installation of the door was something which had been done by the tenant for his convenience and the building could be put back to its old shape. Consequently the appeal was also dismissed.

4. The present civil revision first came up before my learned brother S. P. Goyal J., sitting singly. Noticing the meaningful issue involved and some conflict of precedent on the point he referred the same for a decision by the Division Bench.

5. It would be plain from the above resume of facts that the concurrent findings of the Courts below are that without the authority or sanction of the landlord the respondent-tenant had enclosed the front verandah of the residential bungalow by a brick wall with cement mortar and some glass-panes therein. The rear verandah of the bungalow has again been converted into a room in the same fashion. Further the window of the kitchen has been removed and a door has been permanently installed in the wall. The crucial issue, therefore, is whether these acts would come within the mischief of section 13(2) (iii) of the Act.

6. Inevitably one must first turn to the language of the aforesaid provision which is in the following terms:—

> "S. 13(1) * * *.
>
> (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) * * *

(ii) * * *

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

(iv) * * *

(vi) * * *

The Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the applicant:

Provided — * * * * *."

Herein what first meets the eye and perhaps deserves highlighting (because it seems to have missed notice earlier) is the designed use of the word 'likely' in the aforesaid provision. The statute has not used pre-emptory or categoric language. Therefore it is not that the impugned acts must have conclusively diminished the value or utility of the building, but it would be within the mischief of the statute if they are likely to do so. A closer look at the provision would, therefore, indicate that it is titled in favour of the landlord because even if the acts may not conclusively impair the value or utility but merely have a tendency to the same effect they may well come within the wider net of the language employed by the legislature.

7. What next calls for notice is that the statute talks not merely about the impairment and the diminishing of the financial value of the building but equally of the diminishing of its utility. Whilst undoubtedly the true anvil for determining these factors would ultimately be the objective finding of the Court, there is a large body of judicial opinion that the impairment of value or utility has to be examined from the point of view of the landlord. In particular

it is not whether the utility is diminished *qua* the tenant because the acts complained of would be those committed by him and would obviously not diminish the utility of building for his purpose. Therefore the impairment of the utility is particularly relevant to either the needs of the owner of the building or in the larger prospect of its utility to an intending purchaser in the market.

8. Equally well-settled it is that the words 'value or utility' in the aforesaid provision have to be read disjunctively. It is not that the impugned act must impair both the value and utility of the building but it suffices if the material impairment is either of the financial value of the building or similarly of the utility of the building. It consequently suffices for the purposes of the landlord if he is able to establish either of the two requirements.

9. It is with the aforesaid approach towards section 13(2) (iii) of the Act that one must notice that broadly there is a consensus of judicial opinion in this particular context and also in the context of corresponding provisions of other rent statutes that any material structural alterations which tend to change the nature and the character of the building would come within the mischief of the statute. The use of the word 'material' in the provision only effectuates the hallowed rule of the law that it does not take account of trifles and consequently both the impairing of its value or its utility must be of a substantial and not inconsequential nature.

10. At the very outset I would wish to notice that the corner-stone of the argument on behalf of the respondent-tenant is rested on the observations of Chief Justice Falshaw in *Babu Ram* v. *Smt. Kesra Devi* (1). In this case a verandah in the front of the house divided into four arches had been bricked up and in two of the apertures doors had been fitted by the tenant unauthorisedly to convert the same into a room. The Rent Controller ordered the ejectment of the tenant and the appellate authority upheld the same. However, reversing the Courts below, the learned Chief Justice observed as follows:—

> "The lower Appellate Authority on the other hand found that the removal of bricks from the floor of the verandah

(1) C.R. 482 of 1964 decided on December 11, 1964,

could not be made a ground for ejectment because this had never been pleaded, but at the same time he was of the opinion that the closing of the arches impaired the value or utility of the building because, as recorded in his inspection note by the Rent Controller, the obstructions lessened the light and air in the rooms lying behind. He found that although there may not have been any impairment in the sense of any financial damage the quality of the building had been impaired, I myself should have thought that the amount of light and air reaching the back rooms was a matter for the concern of the tenant alone as long as he remains in occupation of the premises and does not concern the landlord at all, and I am unable to see how the creation of an extra room by enclosing the verandah can be said to have impaired the value or utility of the building in any way, since the doors and walls can easily be removed at any time. The learned counsel for the landlord sought to argue that the appearance of the front of the house was spoiled, but it seems to me that that is entirely a matter of opinion."

Now a close perusal of the very brief judgment recorded by the learned Chief Justice would indicate that the matter was decided as if it was one of first impression. It is patent that the issue was not adequately canvassed and neither any principle nor the large mass of authority on the point seems to have been at all adverted to. With the greatest respect, it seems to me that the aforesaid observations suffer from a triple fallacy. Firstly the view that the diminishing of the light and air to the rooms by enclosing of the verandah concerns the tenant alone and not the landlord, cannot possibly be supported on a closer analysis. As has been noticed earlier, the impairment of the utility of the building and the adverse results of the act of the tenant have relevance to the requirements of the owner of the building and not to those of the tenant who would have himself made the alterations. The observations seem to rest on the assumption that the tenant is to remain in perpetual possession and, therefore, the diminishing of the light and air to the rooms is his concern only. This view can hardly be justified because the ultimate diminishing of value may either be when the landlord resumes possession for his needs or may be compelled to transfer the property (even whilst still in the occupation of the tenant) despite the impairment of its utility and consequently of its value to the new owner.

11. Again the view that these material structural alterations cannot be said to impair the value or utility of the building because the doors and the walls can be easily removed at any time is again not sustainable on a closer analysis. Carried to their logical extent it would mean that any alteration, however, material which can be removed or where the building can be restored to its original state would never come within the ambit of the statute. With the present day construction technology one can hardly imagine any material structural alteration which cannot be either reversed or restored. Again this view suffers from the erroneous assumption that the building would be necessarily vacated and the tenant would be then either willing to remove the material alterations and restore the building to its original state or that the landlord would always be in a position to do so. Under the present Rent Laws it is not always that the landlord can secure possession and be in the enviable position of either removing the unauthorised structural changes and alterations and thus restoring the building to its original state. It was aptly argued by Mrs Bindra the learned counsel for the petitioner that a landlord may well be compelled to transfer the building whilst still in the occupation of the tenant and the impairment of its utility because of such material changes may gravely affect its value in the market. Therefore, the hypothetical consideration that either the landlord may be able to secure possession and restore the building to its original state or the tenant may well be willing to do so appears to be rather irrelevant to the issue. It is manifest that the statute visualises such acts as and when they are committed during the occupancy of the building by the tenant, which can give rise, to the remedy of ejectment. The matter has, therefore, to be considered *in presenti* and not *in future*.

12. Lastly, it has been observed that even though the appearance of the front of the house may be spoiled yet this was entirely a matter of opinion. Carried to its logical length these observations would give a *carte-blanche* to a tenant to completely alter the elevation and the aesthetic look of the building because this can always be termed as a matter of opinion. A hideous structural alteration obviously affecting the front or rear elevation of a house or building would inevitably impair its value or in any case is likely to do so and to slur it over on the ground that this would only be a matter of taste of opinion would hardly be justified,

13. With the greatest respect it appears to me that for the aforesaid reasons the view in *Babu Ram's case* (supra) is unsustainable and has to be overruled. In *Smt. Shanti Devi* v. *Shri Lekh Raj etc.* (2), even though the facts were slightly different the observations in *Babu Ram's case* were quoted with approval and followed. For the identical reasons this authority, therefore, also does not lay down the law correctly and has to be overruled. Once it is so, it would be unnecessary to individually advert to the authorities following the aforesaid line of reasoning and it suffices to say that in my view they do not enunciate the law correctly.

14. Once the view in *Babu Ram's case* and its line of reasoning have been effectively repelled the rest appears to be easy sailing. There is a long line of precedent both within this Court and without it to the effect that material structural alterations which changed the nature and character of the building are within the mischief of the statute. Can it be said that the permanent closure of verandahs on the front and the rear of a residential bungalow adversely affecting both its utility and the elevation of the house does not impair its value or utility. I believe it does. The same is more so where further windows are either removed and doors installed which inevitably have to be embedded in the flooring of the house.

15. Within this Court the case that directly covers the point is *Chatar Sain* v. *Bishan Lal and others* (3). Therein also the precise issue was with regard to the enclosing of a verandah and converting it into a part of the shop. Verma J. observed as follows:—

> "* * * A verandah has its own utility. It provides light and air to the rooms adjoining it. A building with a verandah is admittedly more useful than the one without a verandah. Therefore, there can hardly be any doubt that the inclusion of verandah into the shop constitutes structural alteration and had impaired materially the utility of the premises. So, the aforesaid act of the petitioner undoubtedly fell within the ambit of section 13(2) (iii)."

(2) C.R. 528 of 1970 decided on 21st April, 1971.
(3) 1976 P.L.R. 174.

The aforesaid view was then followed by Kang J., with the following observations in *Dewan Chand* v. *Babu Ram* (4):—

> "* * * The facts enumerated above, do not constitute minor changes. Drastic changes in the structure of the building have been made. They have caused cracks in the walls. The verandah has completely been merged in the room. The utility and the value of the shop in dispute has been impaired. The interest of justice demands that the finding of the Appellate Authority should be set aside."

Though the language of the Rajasthan Premises (Control of Rent and Eviction) Act, is slightly different yet in an identical factual situation Bhargava J., in *Khinva Ram* v. *Lakhi Prashad* (5) observed as follows:—

> "* * * The alteration should be of structural nature and not merely of decorative nature. Fixing a door to a room or to a garage by a tenant may not amount to material alteration within the meaning of section 13(1) (c) of the Act, but the same will not be the case when an open verandah is converted into a closed room by fixing doors on the open portion. The character and shape of the premises in the former case remain unchanged while in the latter case, the form and structure of the premises is changed. What was formally a Chabutra with a tin shed over it is converted into a closed room. In the present case it is admitted by the appellant that he has constructed a pucca masonry wall upon the floor of the Chabutra and has converted the whole of the open chabutra into a closed shop, a part of which in his own admission is occupied by his son."

It would be obvious from the above that the weight of authority directly covering the point is heavily tilted in favour of the petitioner. Mr. S. P. Jain learned counsel for the respondent could offer no meaningful criticism or lay any serious challenge to the reasoning and the ratio of the aforesaid cases.

(4) (1980) 2 Rent Control Reporter 629.

(5) (1964) 14 I.L.R. Rajasthan 819.

16. Again as regards other changes and the installation of a door the following observations of R. N. Mittal J., in *Bawa Singh* v. *Smt. Pushpa Wati and others* (6) are instructive:—

> "* * * It appears from the plan that a part of it is pucca and a part is wooden. There was a window in one of the rooms so made. That window has been removed and a door has been fitted in its place. This has been the consistent view of this Court that if any material alteration has been made which changes the nature of the property, then the impairment of the value and utility of the building is to be seen from the point of view of the landlord. In the above view, I am fortified by the observations in *Siri Krishan Dev* v. *Jhabu Ram* (7)."

To the same tenor are the observations in *Samoatraj* v. *Bhagwatilal and other* (8).

17. It would be wasteful and unnecessary to multiply authorities. It suffices to mention that the larger principle on which we are resting ourselves is equally borne out from *Siri Krishan Dev* v. *Jhabu Ram* (9), *Nirmal Devi Kapoor* v. *Kartar Singh and others* (10), *Raj Kumar* v. *Ram Kanwar and another* (11) and *Smt. Nirmal* v. *Ishwar Chander* (12).

18. In view of the above it must be held on principle, as also on the specific language of the statute and weight of authority, that the answer to the question posed at the outset has to be returned in the affirmative. The petitioner has fully established the requirements of section 13(2)(iii) and is, therefore, entitled to succeed. Setting aside the judgments of the Rent Controller and of the Appellate Authority the eviction petition is hereby allowed. However in view of the ticklish issue involved we leave the parties to bear their own costs.

N. K. S.

(6) (1980) 2 R.C.R 492.
(7) 1949 R.C.R. 36.
(8) A.I.R. 1976 Raj. 760.
(9) 1969 P.L.R. 39.
(10) 1972 P.L.R. short note 2.
(11) 1977 (2) R.L.R. 689.
(12) 1981 (C.L.J.) Civil 168.