its jurisdiction under Section 115, correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked.

(15) In view of the aforesaid, no case is made out to interfere with the impugned order. This revision is consequently dismissed.

R.N.R.

Before N. K. Sodhi, J. S. Narang, & Jasbir Singh, JJ

UMED SINGH—*Petitioner*

versus

ARYA SMAJ SEWA SADAN —*Respondent*

C.R. No. 4999 OF 2000

23rd August, 2002

Haryana Urban (Control of Rent & Eviction) Act, 1973—S.13—Rights of juristic persons—Nature & extent of —S.13(3) (a)(i)—Requires for 'his own occupation'—Interpretation of vis-a-vis a Charitable Trust—Requirement of a residential property by a Charitable Trust for housing a library—Whether falls within the ambit of the words 'for his own occupation'—Such residential property, whether can be used for a purpose other than residential purpose—Held, yes—Residential & non-residential buildings—Difference between, defined—Any activity not tainted with business or trade and essentially not connected with profit & loss would not render the usage of the building as 'non-residential building'.

Held, that there is considerable substance in the analysis of definition of both the words 'non-residential building' and 'residential building' as have been defined in the Act. A very wide meaning has been ascribed to the word 'residential building' by stating that all other buildings which are not termed as 'non-residential buildings' would

be termed as 'residential buildings'. The non-residential buildings have been restricted by virtue of the ingredients provided in the definition. It is necessarily required that building which is tainted with business or trade shall be taken as non-residential building.

(Para 29)

Further held, that any activity, whether it is to be carried out or is being carried on in a building by a juristic person or an individual but is not tainted with business or trade and is essentially not connected with profit and loss, such activity would not render the usage of the building as 'non-residential building' but shall necessarily define it to be ' residential building'. Unless the user has been defined under a statute to be commercial dehors of element of profit and loss, such building shall be termed as 'non-residential building'. Thus, in each case it shall have to be examined whether the element of business or trade has crept in with the necessary element of profit and loss and as a sequel thereto, the purpose and object of occupation by the landlord shall stand defind accordingly.

(Para 31)

R.M. Singh, Advocate, *for the petitioner.*

Sanjay Bansal, Advocate, *for the respondent.*

JUDGEMENT

J. S. NARANG, J.

(1) The question which has been referred to this Bench reads as under:—

> "Whether "his own occupation" and the "residential purpose" in relation to a corporate body/juristic person can be read in wider perspective or in *stricto senso* of the dictionary meaning ?"

(2) It shall be apposite to notice some of the facts before adverting to the discussion relating to the aforesaid question.

(3) The petitioner Umed Singh is the tenant of Arya Samaj Sewa Sadan, Ballabhgarh (Landlord) of a portion of the residential house owned by the landlord. The premises are stated to be situated

in the Main Bazar Sabzi Mandi Chandawali Darwaja, Ballabhgarh. The tenancy had been created at a monthly rent of Rs. 150 inclusive of all cesses.

(4) An ejectment application has been maintained on various grounds and that one of the grounds is that the landlord being a charitable religious society has been running a library in the name of Smt. Durga Devi Library at Arya Samaj Bhawan situated in Ward No. 5, Ballabhgarh. The said library has to be closed down at the time of Hawan, Satsang and recitals-cum-interpretation of Vedas becuase such activities cause inconvenience to the public at large, who may be using the library at the relevant time. Moreover, the space provided for using the aforesaid library by the aforesaid Bhawan has fallen short and is, therefore, inadequate. Resultantly, it has necessitated that the library should be shifted to the premises which are sufficient and are away from the place where the aforesaid activities have to be undertaken. Nature of both the activities is public in character. The premises which are the ownership of the landlord are none else but the demised premises which have been defined as "residential premises".

(5) The tenant contested the claim on the ground that using the demised premises for housing of a library though the purposes may be charitable purpose, would not amount to using the premises for "residential purposes". As such, the ground set out by the landlord does not fall within the ambit of personal necessity. The landlord does not require the demised premises for residential purpose as no such claim is inferable from the pleadings of the landlord.

(6) Upon the pleadings of the parties issues had been struck and the evidence had been led. Apart from all other issues the issue which subsisted between the parties relates to ejectment of the tenant from the demised premises on the ground that the same are required for the purpose of using library by way of shifting the same from the earlier premises, to the demised premises on account of the inconvenience, caused to the users of the library and the inadequancy of the space.

(7) The Rent Controller returned the finding in regard to this issue in favour of the landlord and against the tenant which has been further affirmed by the appellate authority under the statute. The consensus of the forums below is that the landlord has been able to

make out a case for occupation of the demised premises for using the library on the ground of personal necessity.

(8) Dissatisfied with the view of the forums below, the present petition has been filed. However, while admitting the petition of the tenant and granting the interim relief, the aforesaid question has been referred by the Single Bench for consideration of the Larger Bench. As a sequel thereto, the present Bench has been constituted by Hon'ble the Chief Justice.

(9) Learned counsel for the petitioner has argued that the demised premises, which have been defined as "residential premises", cannot be got vacated to be used for a purpose other than residential purpose. The argument is that admittedly the premises were let out to the petitioner for residence and that now the eviction is being sought by the landlord for the purpose of housing library, though run on charitable basis, which is certainly not akin to "residential purpose". The premises are certainly not to be used for residential purpose as the object and purpose for seeking eviction has been spelt out by the landlord categorically and clearly in the eviction petition i.e. housing the library. In this regard, reference has been made to relevant provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the "Haryana Act"). It shall be apposite to reproduce the said provision which reads as under:—

"13. Eviction of tenants :—

xxx xxx xxx

(3) A landlord may apply to the Controller for and order directing the teant to put the landlord in possession:

(a) In the case of a residential building, if :

(i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area;

xxx xxx xxx"

(10) Emphasis has been laid on the word "own occupation" which cannot be read independently but has to be read in consonance and conformity with the other conditions spelt out in the aforesaid provision i.e. the landlord requires if for his own occupation, is not occupying another residential building in the urban area concerned; and has not vacated such building without sufficient cause after the commencement of 1949 Act in the said urban area.

(11) It is argued by Mr. R.M. Singh, learned counsel appearing on behalf of the petitioner that the cumulative reading of clause (i), as noticed above, would make one reach an irresistable conclusion that the landlord can get the possession of the tenanted permises **only if he needs it for his own residential purpose.** The argument is that the building cannot be used for any other purpose by the landlord except for his own residence. Thus, seeking eviction on the ground, that the landlord needs the premises for housing the library, is not a purpose falling within the ambit of "residence" and, therefore, the application is not sustainable which should have been dismissed by the Rent Controller. In support of this argument, reliance has been placed upon a judgement of the apex Court rendered in ***Attar Singh*** versus ***Inder Kumar (1).***

(12) It may be noticed that before the apex Court the aforesaid provision was not required to be discussed and that in fact the provision which came up for interpretation is Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the "Punjab Act"). It shall be necessary to notice the said provision which reads as under :—

(Punjab Act)

13. Eviction on tenants :—

xx xx

3(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession :—

(i) in the case of a residential building if—

(a) he requires it for his own occupation ;

(1) AIR 1967 SC 773

(b) he is not occupying another residential building in the Urban area concerned; and

(c) he has not vacated such a building without sufficient cause after the commencement of this Act in the said urban area concerned ;

(d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the teant has ceased, whether before or after the commencement of this Act, to be in such service or employment :

Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his services or employment in contravention of the provision of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under the Act confirms the order of discharge or dismissal made against him by the landlord.

xxx xxx xxx xxx

(ii) in the case of rented land, if—

(a) he requires it for his own use;

(b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land; and

(c) he has not vacated such rented land without sufficient cause after the commencement of this Act, in the urban area concerned :

xx xxx xxx xxx

(13) It is further submitted by the learned counsel for the petitioner that the comparison of both the provision shows that the language used is verbatim and that the only difference is instead of "residential building" the word used is "rented land". Thus, the principle enunciated by the apex Court would be applicable mutatis mutandis.

Pointed reference has been made to paras 7, 8 and 9 of the judgement which read as under :—

"7. We are of the opinion that the contention raised on behalf of the appellant is correct, and the view taken by the High Court in the case of Municipal Committee, Abohar cannot be sustained. It is true that in sub-clause (a) the words "for his own use" are not qualified and at the first sight it may appear that a landlord can ask for eviction from rented land if he requires it for his own use, whatever may be the use to which he may put it after eviction. Now if sub-clauses (b) and (c) were not there this would be the correct interpretation of sub-cluase (a). This interpretation has been put by the High Court in Municipal Committee Abohar; but in that case the High Court has not considered the effect of sub-clauses (b) and (c) on the meaning to be given to the words "for his own use" in sub-clause (a) and seems to have been proceeded as if sub-clauses (b) and (c) were not there at all. We are of opinion that sub-clause (a) has to be read in this provision along with sub-clauses (b) and (c) and it has to be seen whether the presence of sub-clauses (b) and (c) makes any difference to the meaning of the words "for his own use" in sub-cluase (a), which is otherwise unqualified. Now if sub-clauses (b) and (c) were not there, a landlord can ask for an order directing the tenant to put him in possession in the case of rented land if he required it for his own use. In such circumstances it would have been immaterial what was the use to which the landlord intended to put the rented land after he got possession of it so long as he uses it himself. But as the provision stands, the landlord cannot get possession of rented land merely by saying that he requires it "for his own use" (whatever may be the use to which he may put it after getting possession of it): he has also to show before he can get possession, firstly, that he is not occupying in the urban area concerned for the purpose of his business he cannot ask for eviction of his tenant from his rented land even though the rented land of

which he may be in possession for the purpose of his business may not be his own land and he may only be a tenant of that land. This shows clearly that though the words "for his own use" in sub-clause (a) are not qualified, the intention of the legislature must have been that if the landlord is in possession of other rented land, whether his own or belonging to somebody else, for his business he cannot evict a tenant from his own rented land. it clearly follows from this that the intention when the words "for his own use" are used in sub-clause (a) is that the landlord required the rented land from which he is asking for eviction of the tenant for his own trade or business. Otherwise we cannot understand why, if it is the intention of the legislature that the landlord can ask for eviction of his tenant of rented land for any purpose whatever, he should not get it back if he is in possession of other rented land for his business. This to our mind clearly implies that sub-clause (a) has to be read in the light of sub-clause (b), and if that is so, the words "for his own use", must receive a meaning restricted by the implication arising from sub-clause (b).

8. Turning now to sub-clause (c), we find that the landlord has not only to prove before he can get the tenant evicted on the ground that he requires rented land for his own use that he is not in possession of any other rented land for the purpose of his business in that urban area but also to prove that he had not vacated any rented land without sufficient cause after the commencement of the Act. Thus he has not only to prove, that he is not in possession of any other rented land for his business but also to prove that he had not vacated any other rented land which he used principally for business without sufficient cause. For example, even if the landlord is not in possession of any rented land for his business but had vacated other rented land which means land that he had taken for business without sufficient cause he would still not be entitled to ask for eviction of a tenant from his own rented land.

This again shows that if the landlord had been in possession of land for business principally and vacated it without sufficient cause he cannot ask for the eviction of a tenant from his own rented land on the ground that he requires it for his own use.

9. It should therefore be clear that "for his own use" in sub-clauses (a) means use for the purpose of business principally, for otherwise we cannot understand why, if the landlord had given up some rented land which he had taken for business principally, he should not be entitled to recover his own rented land if he required it (say) as in this case, for constructing a residential building for himself. The very fact that sub-clauses (b) and (c) require that the landlord should not be in possession of any rented land for his own business and should not have given up possession for any other rented land, i.e. land which he was principally using for business, show that he can only take advantage of sub-clause (a) if he is able to show that he requies the rented land for business. Otherwise the restrictions contained in sub-clause (b) and sub-clause (c) would become meaningless, if it were held that sub-clause (a) would be satisfied if the landlord requires the rented land for any purpose as (for example) constructing a residential house for himself. We are of opinion therefore that sub-clauses (a), (b) and (c) in this provision must be read together and reading them together there can be no doubt that when sub-clause (a) provides that the landlord requires rented land for his own use, the meaning there is restricted to use principally for business or trade. We have already said that the Act is an ameliorative piece of legislation meant for the protection of tenants, and we have no hesitation in coming to the conclusion that the words "for his own use" in sub-clause (a) in the circumstances must be limited in the manner indicated above, as that will give full protection to tenants of rented land and save them from eviction unless the landlord requires such land for the same purpose for which it had been let i.e. principally for

trade or business. We are therefore of opinion that the view taken in the case Municipal Committee, Abohar is incorrect and as the respondent landlord required the land in this case not for business or trade principally but only for constructing a house for himself he is not entitled to eject the appellant under S. 13(3)(a)(ii)."

(14) Their lordships of the Supreme Court have categorically held that the view taken in the case of ***Municipal Committee (Abohar)*** *versus* ***Daulat Ram (2),*** is incorrect. The dicta is that the sub-clauses (a), (b) and (c) in the aforesaid provision must be read together and that reading them together there can be no manner of doubt that when sub-clause (a) provides that the landlord requires rented land for his own use, the meaning thereof is restricted to use the demised premises principally for "business or trade".

(15) Thus, it has been argued that likewise the Haryana provision needs to be read in the same perspective meaning thereby that the clauses contained therein have to be read together and the resultant effect would be that the landlord is restricted to use the premises principally for residential purpose and no other purpose. Thus, in view of the dicta of the apex Court, the application of the landlord deserves to be dismissed on this ground.

(16) Learned counsel for the petitioner has further argued that setting up of a library or using a library is a purpose which falls within the domain of the word "business" and it has no nexus whatsoever with the word "residence". In support of his argument, reliance has been placed upon the Full Bench judgement of this Court in ***The Model Town Welfare Council, Ludhiana*** *versus* ***Bhupinder Pal Singh, (3).*** It may be noticed that before the Full Bench also the provision which came up for interpretation is Section 13(3)(a)(ii) of the Punjab Act. In that case, the eviction from the land had been sought for the purpose of construction and setting up of a library. The pointed reference has been made to the following paragraphs :—

"27. After carefully considering the law laid down in all the above cases. I am inclined to hold :—

(1) That the word "business" is by itself not a word of art and is capable of being construed both in the wider as

(2) ILR (1959) Punjab 1131
(3) AIR 1973 Pb. & Hy. 76

well as in the narrower sense depending on the context in which it occurs.

(2) Since the "landlord" within the meaning of section 2(c) of the Act can include an individual as well as a juristic person and there is no special restrictive definition of the word business in the Act, the expression "business" has been used in Section 2(f) of the Act (in the definition of "rented land") as well as in Section 13(3)(a)(ii)(b) in the wider sense and not in the narrower sense.

(3) The word business in Section 2(f) and Section 13(3)(a)(ii) of the Act need not necessarily be commercial business carried on with a profit motive. The word includes within its scope a charitable business or a dealing in the interest of the public or a section of the public.

(4) The scope of the word "business" in the aforesaid provision of the Act is not controlled or coloured by the word "trade" occurring alongside it in Section 2(f) of the Act. Whereas every trade would be a business the reverse of it is not true. Business is a genus, of which commercial and non-commercial business and trade are some of the species.

(5) The next question that calls for decision is whether in the light of the findings on the legal aspect of the first issue which faces us, the building of a library on the rented land in question can or cannot be held to be the business of the society. This is a pure question of fact. Taking into consideration the memorandum and Articles of Association of the society and the terms and condition of the allotment of the plot by the Government to the Society it is held that the organising of a library including the construction of its building is one of the business of the society".

(17) It has been argued that the Full Bench has interpreted the word "business" as used in Section 2(f) of the Punjab Act in conjunction with section 13(3)(a)(ii) of the Punjab Act and has held that the said word i.e. "business" need not necessarily be commercial

business carried on with a profit motive. The word includes within its scope a charitable business or dealing in the interest of the public or section of the public.

(18) The scope of the expression "business" is not controlled or coloured by the word "trade" and occurring along side it in section 2(f) of the Punjab Act. Thus, the word "business" has wider import than "trade" and is not restricted to something which must necessarily yield profit. Business is the gensis of which commercial and non-commercial business are some of the species. Though every trade would be business the converse of which is not true. However, question before the aforesaid Full Bench was entirely different what has been raised before this Bench. It has been ruled by the aofresaid Full Bench that landlord on getting the rented land vacated is not bound to use it in the same condition in which it was being used by the tenant but is entitled to raise construction over it which is necessary and needed for the purpose of carrying on his own business. It is not necessary that the landlord must use the land for the same business as was being used by the tenant.

(19) Reference has also been made to a judgment rendered by a learned Single Judge of this Court in Re: **Shri Mohan Lal** *versus* **Arya Samaj Sewa Sadan, C.R. No. 1217 of 2000 decided on November 30, 2000.** It may be noticed that the petitioner in the present petition and the petitioner in the aforesaid revision petition had been inducted as tenants by the respondent in both the cases i.e. Aryas Samaj Sewa Sadan i.e. the landlord. The eviction petitions had been filed against both the aforesaid tenants and that both of them suffered eviction orders by the appellate authority and that both of them filed petitions before this court. By an order dated 30th November, 2000 C.R. No. 4999 of 2000, was dismissed by J.S. Narang, J. However, the petition i.e. C.R. No. 1217 of 2000, has been allowed and the eviction order passed against Mohan Lal the tenant has been set aside. Consequent thereto, a review petition was filed placing reference upon the judgment rendered in C.R. No. 1217 of 2000 by J.S. Khehar, J. It is under these circumstances, the reference has been made to this Bench. It may also be mentioned that a review application has been filed in C.R. No. 1217 of 2000 and the same has been adourned *sine die* to await decision of this Bench in C.R. No. 4999 of 2000.

(20) Pointed reference has been made to the paragraph of the judgment rendered in C.R. No. 1217 of 2000 which reads as under :—

> "I find force in the contention of the learned counsel for the petitioner-tenant. In Attar Singh's case (supra), the Hon'ble Supreme Court had the occasion to interpret Section 13(3)(a)(ii) of the Rent Act. The aforesaid provision has been extraced in this order. In the instant case, the controversy relates to Section 13(3)(a)(i) of the Rent Act,which has also been extracted herein above. In Attar Singh's case (supra), one finds that while interpreting clause 13(3)(a)(ii) of the Rent Act, reliance was primarily placed by the Apex Court on sub-clauses (b) and (c). Likewise, while interpreting Section 13(3)(a)(i) of the Rent Act, Sub-clauses (b) and (c) must be read along with sub-clause (a) to determine the true purport of the words "for his own occupation". In sub-clauses (b) and (c) of Section 13(3)(a)(ii) of the Rent Act, the connotation relates to occupation of land by the landlord for business purposes, whereas in sub-clauses (b) and (c) of Section 13(3)(a)(i) of the Rent Act, the connotation relates to occupation of a building by the landlord for residential purposes. On the basis of the connotation in sub-clause (b) and (c) of Section 13(3)(a)(ii), the Apex Court concluded that the words" for his own use" occurring in sub-clause (a) must be restricted to include use for business or trade only. On absolutely the same analogy, in my considered view on the basis of the connotation in sub-clauses (b) and (c) of Section 13(3)(a)(i) the words "for his own occupation" occurring in sub-cluase (a) must be restricted to include occupation for residence only.
>
> The appellate authority while upholding the claim of the respondent landlord had relied on Mst. Bega Begum's case (supra), i.e. the same authority relied upon by the counsel for the respondent landlord. The statutory provision interpreated by the Apex Court in the aforesaid case i.e. 11(i)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966, is

distinctively different from Section 13 of the Rent Act. In Section 11(i)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, the words "for his own occupation" were interpreted at their face value, whereas in the instant case, the words "for his own occupation" must be interpreted in conjunction with sub-clauses (b) and (c) of Section 13(3)(a)(i) of the Rent Act. In the aforesaid view of the matter, it would not be proper to rely upon the decision, relied upon by the learned counsel for the respondent-landlord to determine the true connotation of the words "for his own occupation".

(21) Reference has also beenmade to a Division Bench judgment of this Court rendered in ***Swami Triguna Nand versus Mahabir Dal of Kalka, (4).*** A pointed reference has been made to para 16 of the judgment which reads as under :—

"16. The argument advanced by the learned counsel before us was that by using the premises for the storage of sticks and durries, the landlord in this case was converting the nature of the building, that is to say, converting a residential building into a non-residential building without the permission in writing of, the Controller in violation of Section 11 of the Act. A reference to the definitionof the words non-residential building and residential building', however would show that it is only where a residential building is going to be used for any 'business or trade' that the conversion as contemplated in Section 11 would take place. In the present case I am of the view that by no stretch of imagination can it be held that a body like the Mahabir Dal, Kalka, by using the premises, which are residential premises, for the storage of sticks and durries is converting a residential building into a non-residential building."

(22) Learned counsel for the petitioner has argued that in view of the dicta in the aforesaid judgments, it cannot be inferred that the landlord is entitled to use the premises which were primarily

(4) 1963 PLR 1124

rented out as residential premises for a purpose other than the residential purpose. The principle enunciated by the apex Court in **Atter Singh's case (supra)** requires us to read the provisions collectivelly since the interpretation given by this Court in re: **Municipal Committee (Abohar)** *versus* **Daulat Ram, (supra)** having been overruled by the Hon'ble Supreme Court, the building cannot be used for any other purpose. It has been further argued that at best the juristic person may use the residential premises for housing their employees which would mean that the usage of the demised premises is not being changed but is to be used as residential accommodation.

(23) On the other hand, Mr. Sanjay Bansal, Advocate, learned counsel for the respondent has argued that the demised premises are being sought to be vacated by the landlord for its own occupation. The word "own occupation" has to be read widely and the usage of the building cannot be restricted by strictly adhering to the definition of the word "residence". It is the absolute discretion of the landlord to get the premises vacated and thereafter use it himself in the manner and method in which he may prefer it to be used. If the meaning has to be restricted to a water tight compartment, the juristic persons may not be able to get the residential house vacated ever. The word "own occupation" would mean that it should be used by the juristic person for its own purpose and that the purpose may be any, such as, opening a school or the like, which would also include shifting library from its own premises to the premises which were primarily used for residential purpose. Reliance has been placed upon a Division Bench judgment of this Court rendered in re: ***Siri Kishan and others*** versus ***Ghanesham Dass, (5).*** A pointed reference has been made to para 24 of this judgment which reads as under :—

> "24. It has been stressed before us that the words **"own occupation"** exclude by implication the case of juristic persons. In Stroud's Judicial Dictionary, Volume 3 (1953 edition), it is stated that "occupation" does not necessarily mean residence, and "occupation" does not involve a continual personal living in the house. in Shorter Oxford English Dictionary, Volume-II, the word "own" when used as an adjective is described as "of or belonging to oneself or itself". This meaning does not exclude the

(5) 1962 PLR 1141

occupation by a juristic person like an association or trust.

The use of the words "he", "his" or "him" likewise does not exclude by implication the case of a limited company. The words "own occupation" used in conjunction with 'his' may well include either a human being or a notional entity like an association

In our opinion, the preponderance of authority is clearly in favour of the contentions raised on behalf of the landlord and even if we were inclined to disagree with the Division Bench authority of this Court in **Municipal Committee Abohar** *versus* **Daulat Ram, AIR 1955 Pb. 345,** we would not be disposed to refer this case for decision by a larger bench as these petition for revision could be decided on the question of fact which has already been discussed in detail".

(24) It shall be apposite to mention here that in both the Division Bench judgments reliance has been placed upon the judgment rendered by this Court in ***Municipal Committee Abohar*** *versus* ***Daulat Ram, (supra)***. This judgment has been overruled by the apex Court while rendering judgment in **Attar Singh's** case (supra).

(25) It has been argued by the learned counsel for the respondent that the meaning ascribed to word "residential building" and "non residential building" need to be perused as defined in the Haryana Act. The said definition read as under :—

2. **Definitions :**

(a) to (c) xxx xxx xxx xxx

(d) "non-residential building" means a building being used;

(i) mainly for the purpose of business or trade; or

(ii) partly for the purpose of business or trade and partly for the purpose of residence, subject to the condition that the person who carries on business or trade in the building resides there:

Provided that if a building is let out for residential and non-residential purposes separately to more than one person, the portion thereof let out for the purpose of residence shall not be treated as a non-residential building.

Explanation.—Where a building is used mainly for the purpose of business or trade, it shall be deemed to be non-residential building even though a small portion thereof is used for the purpose of residence;

(e) and (f) xxx xx xx xx xxx

(g) "residential building" means any building which is not a non-residential building

(h) (i) xxx xxx xxx xxx

(26) The argument is that restrictive meaning has been provided so far as non-residential building is concerned but a very wide meaning has been ascribed to the word "residential building". A bare perusal of the definition of non-residential building" would show that such a building would be defined as "non-residential building" only when it is being used for the purpose of business or trade and so far as other clauses are concerned, a situation which fall s under buts and ifs has been dealt with. The definition spells out that if a building is not being used for the purpose of business or trade that building would necessarily be defined as **"residential building".** Thus, the necessary ingredient is that the usage of the building should be tainted with business or trade and that the word "business" has to be read **ejusdem generis** with the word "trade". The essential pre-requisite of the doctrine is that there must be coupling of words together to show that they are to be understood in the same sense. Thus, the word "business" has to be read in that perspective. Therefore, the element of profit would necessarily define and corroborate the usage of the building accordingly. Reliance has been placed upon a Single Bench judgment of this Court rendered in ***Smt. Harwant Kaur and others*** versus ***Harinam Sankirtan Madan (Regd.) Yamuna Nagar and another, (6).*** Pointed reference has been made to paras 6 and 7 of the aforesaid judgment which read as under:—

"6. The learned counsel submits that the landlord himself should require the residential building for his own

(6) 1973 PLR 111

occupation and should prove that he is not occupying another residential building in the urban area and that he has not vacated such a building without sufficient cause after the commencement of the Act. These requirements are fulfilled in the present case as the landlord has not vacated any residential building without sufficient cause after the commencement of the Act. The landlord is, no doubt, occupying another residential building wherein the school is being run, but that accommodation is not sufficient and, therefore, the landlord requires the premises in dispute for his own occupation, that is the running of the school. Occupation does not mean residence, but it means that it should be occupied for a purpose for which residential building can be used. A residential building cannot be converted into a non-residential building without the permission of the Rent Controller under section 11 of the Act and, therefore, 'own occupation' must be occupation of the building as residential building. On behalf of the landlord, it is submitted that a residential building can be got vacated for the running of a school which is neither trade nor business, particularly because no fees are charged from the students and no pfofit is made by the landlord from the running of the school. The expenses of running the school are met from the income of the endowments, which have been set apart for this purpose. The judgment in **Siri Kishan and other (supra)** is a direct authority in support of the proposition that a residential building can be got vacated for the running of a school. Therefore, even if the observations of their Lordships of the Supreme Court in **Attar Singh's case** (supra) are to be applied to this case, the requirements of section 13(3)(a)(i) have been fully satisfied. It has to be remembered that the landlord is a juristic person engaged in the philanthropic object of spreading education by setting up a school for the children and for that purpose the residential building can be get vacated.

The learned counsel for the petitioners brought to my notice the Full Bench judgment in ***The Model Town Welfare Council Ludhiana*** versus ***Bhupinder Pal Singh,*** wherein the word "business" was interpreted with reference to rented land; which has been defined in section 2(f) of the Act to mean any land let separately for the purpose of being used principally for business or trade. The learned counsel for the petitioners submits that the definition of 'non-residential building' in section 2(d) of the Act is:

"a building being used solely for the purpose of business or trade".

and for this reason the running of a school is business in its wider sense and a residential building cannot be got vacated for running a business because it will get converted into a non-residential building. In my opinion, running of a free school does not amount to business. It means the rendering of service to the community and, therefore, a residential building can be got vacated for the purpose of a school which is not run on commercial lines for making a profit therefrom. The matter has to be decided on the facts of each case. Therefore, the learned Appellate Authority and the Rent Controller have correctly held that the landlord could get the premises in dispute vacated on the ground of its own occupation for running a school".

(27) It shall be apposite to note that the dicta of the apex Court as laid down in ***Attar Singh's case (supra)*** has also been noticed and applied accordingly. This judgment has been further followed by Single Bench of this Court in Re: ***Joginder Singh*** versus ***Sheo Parshad Modi, (7).*** In this judgment also, the dicta laid down in ***Attar Singh;s case (supra)*** has been noticed and the opinion in ***Harwant Kaur's case (supra)*** has been relied upon. It shall be apposite to notice para 4 of the aofresaid judgment which reads as under :—

"4. After hearing the learned counsel for the parties, I do not find any merit in these petitions. There is nothing

(7) 1984 (2) RLR 725

on record to show that the landlord wanted the premises to be vacated for the purpose of running the school for a commercial purpose. As a matter of fact, this was never the case set up by the tenants. Admittedly, the landlord is an Educational Trust and Management Society. As observed earlier, the said society is not seeking the ejectment of its tenant for any commercial purpose, but rather for running the school. Though the purpose may be non-residential as much as understood in the common parlance but at the same time, the premises continued to be residential as the definition of the non-residential building, as given in the East Punjab Urban Rent Restriction Act, 1949, is "a building being used solely for the purpose of business or trade", whereas the definition of the "residential building" is "any building which is not a non-residential building". Thus the requirement of the landlord-society in the present case is quite bona fide when it wanted the premises for using the same as school. It was so held in Smt. Harwant Kaur and others' case (supra) that where a landlord is a juristic person engaged in the philanthropic object of spreading education by setting up a school for children then the running of a free school, does not amount to business. It means the rendering of service to the community and therefore, a residential building can be got vacated for the purpose of a school which is not run on commercial lines for making a profit thereon. No judgment taking the contrary view has been cited at the bar. In this view of the matter, both the petitions fail and are dismissed with costs. However, both the tenants are allowed three months time to vacate the premises provided all the arrears, if any, and the advance rent for three months is deposited with the rent controller within a month".

(28) So far as the cumulative reading of the provision is concerned, we need not delve into the question as the same stands answered by the apex Court while rendering judgment in Attar Singh's case (supra). It has been succinctly held that the words "own occupation" cannot be defined as per the discretion of the landlord, the meaning

has been restricted by virtue of the restraints provided in section 13(3)(a)(ii) of the Punjab Act. The apex Court has categorically observed that the sub provisions in the aforesaid section cannot be read independently but a cumulative reading has to be given while interpreting a word used therein. It shall be apposite to observe that the judgment rendered by the Division Bench of this Court in Municipal Committee Abohar's case (supra) has been overruled. Thus, the judgments rendered by the two Division Benches of this Court in ***Swami Triguna Nand*** versus ***Mahabir Dal of Kalka, (supra)*** and in ***Siri Kishan's case*** *(supra)* would be effected accordingly as in those judgments reliance has been placed upon the judgment rendered in ***Municipal Committee Abohar's case*** *(supra).*

(29) After hearing respective arguments of learned counsel for the parties, we have pondered over the view propounded by them and we find that there is considerable substance in the analysis of definition of both the words "non residential building" and "residential building" as have been defined in the Act. A very wide meaning has been ascribed to the word "residential building" by stating that all other buildings which are not termed as "non-residential buildings" would be termed as "residential-buildings". The non-residential buildings have been restricted by virtue of the ingredients provided in the definition. It is necessarily required that building which is tainted with business or trade shall be taken as non-residential building. The words "business or trade" are so intertwined and are, therefore, complimentary to each other. In both the situations, the element of profit and loss would be the necessary result. If from an activity the element of business or trade is taken out or is not reflected, the building where such activities are carried out would acquire its character as "residential building" in view of the definition ascribed to the word "residential building" in the Haryana Act. Thus, it is imperative to see in each case as to whether the activity which is to be carried on in the building is tainted with business and/or trade or not. If such element is missing in the activity which is to be carried on or is being carried on in the building, such building would not be defined as "non-residential building".

(30) It has nowhere been defined as to what meaning should be or shall be ascribed to the word "residential purpose" vis-a-vis a juristic person. The statute is silent as no distinction has been made

between an individual or a corporate body. However, the apex Court while dealing with a case where the residential house was being occupied by the Managing Director of the Company but some portion thereof was being used as office/study room, has made some observations. The question arose, by using a portion of the residential building as an office, could be termed as change in the user and that such user could be taken as non-residential. The answer has been given in the negative. The apex Court has categorically observed that if in a residential building there is no regular commercial activity, or business is being carried on by using it as regular office with interaction of the public and customers etc. it is not possible to say that use of one room for doing home work or study would itself change the user of the building and that the classification and character of the building would change. Such user in a residential building for personal use should be distinguished from use of such room for business or industry or other commercial activity or as a regular public or professional office. Thus, each case has to be considered on its own facts on the basis of the pleadings and evidence, to arrive at such conclusion. The relevant para of the judgment rendered by the apex Court in ***M/s Atul Castings Ltd.*** versus ***Bawa Gurvachan Singh (8),*** reads as under :—

> " xxx xxx xxx xxx xx
>
> There is no specific clause in the agreement that the appellant tenant shall not use even one room as study room for the members of the family or he shall not use one room to do any office work at home. The respondent landlord having chosen to incorporate conditions 6 & 7 in the agreement (Exh. P-3) relating to the sub-letting and addition or alteration in the premises has not chosen to add a specific clause prohibiting use of any portion of the building in a particular manner although it is stated in the introductory para of Exh. P-3, that the premises is leased for the residence only. There is no evidence to show that in one room the office of the appellant-company was functioning or that any transactions used to take place in that room relating to the tenant company or any regular business of the

(8) AIR 2001 SC 1684

company was carried out or that officials or other members of the public used to visit the building as the office of the company. It is not uncommon that the officials, executives, officers, businessmen, industrialists and people engaged in the other vocations may have some home work to do. In these days computers, internet and other like facilities are kept at home for convenience and use. In residential buildings where persons live with family members, a room may be used for the purpose of doing home work relating to office files or study of children or allied or ancillary use in a building leased for residential purposes. So long as in a residential building, there is no regular commercial activity or carrying on of business and regular office with interaction of the public and customers, etc. it is not possible to say that use of one room for doing home work or study itself will change the user of the building and that the classification and character of the building is changed. But it continues to remain a residential building so also its purpose remains as residential. Use of a room in a residential building for personal purpose should be distinguished from use of such a room for business, industry or other commercial activity or as a regular public or professional office. We must add that each case has to be considered on its own facts on the basis of the pleadings and evidence to find out as to whether there has been a change of user in the building from residential to non-residential as it is not possible to give exhaustive list of situations as to change of user of buildings".

(31) Thus, the question which has been referred before this Bench is answered as under :—

"Any activity, whether it is to be carried out or is being carried on in a building by a juristic person or an individual but is not tainted with business or trade and is essentially not connected with profit and loss, such activity would not render the usage of the building as "non-residential building" but shall necessarily define

it to be "residential building". Unless the user has been defined under a statute to be commercial dehors of element of profit and loss, such building shall be termed as "non residential building". Thus, in each case, it shall have to be examined whether the element of business or trade has crept in with the necessary element of profit and loss and as a sequel thereto, the purpose and object of occupation by the landlord shall stand defined accordingly".

(32) In view of the above, the interpretation rendered by a judgment in re: ***Shri Mohan Lal*** versus ***Arya Smaj Sewa Sadan, C.R. No. 1217 of 2000 on November 30, 2000,*** by a Single Bench of this Court stands overruled. However, review application is pending before the learned Single Judge which has not been listed before us. It shall be appropriate that the review petition be decided by the learned Single Judge accordingly.

(33) In view of the above, the case file be placed before Hon'ble the Chief Justice for listing the case as per the roster for finally deciding the revision petition i.e. C.R. No. 4999 of 2000.

R.N.R.

Before J.S. Narang, J

AMAR NATH—*Petitioner*

versus

STATE OF HARYANA —*Respondent*

Crl. M. No. 5238/M of 2000

24th October, 2002

Code of Criminal Procedure, 1973—S. 319—Accused filing an application under section 319 Cr. P.C. for summoning the petitioner as an accused—Trial Court allowing the application—Ist Appellate Court setting aside the trial Court order while holding the application under section 319 Cr. P.C. by a co-accused not maintainable—Prosecution filing application for summoning the additional accused after the