"To take effect from examination of 1967". I am of the opinion that the foot-note cannot be considered to be a part of the regulation itself and it does not have the same force as the regulation. The Regulation 10, on the basis of which the appellant had been declared to have failed must be held to have come into force only on 5th August, 1967, when it was published in the Gazette of India, and since it had not received the assent of the Central Government by the time the appellant had taken his examination and it was not published before the appellant's results were declared, it could not be applied to the appellant's case to his detriment. As the appeal must succeed on this ground alone, we do not consider it necessary to deal with the questions whether the University Authorities could amend the Regulation to the disadvantage of a candidate during the period of his study for a particular examination and whether the rule-making authority can give retrospective effect to a rule made by it without such power having been conferred on it by the statute.

In the result, the appeal is accepted, and setting aside the order of the learned Single Judge, we quash the impugned result of the appellant and direct that his result be declared on the basis of regulation 10 as it stood before the amendment published in the Government Gazette of August, 1967.

D. K. MAHAJAN, J.— I agree.

K.S.K.

REVISIONAL CIVIL

Before Daya Krishan Mahajan and Gurdev Singh, JJ.

DR. LEKH RAJ LAROYA,—*Petitioner*

versus

JAWALA DEVI,—*Respondent.*

Civil Revision No. 932 of 1966.

February 20, 1968.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 2(a), (d), (g), (h)—'Scheduled building'—Meaning of—Building casually used for one of the professions specified in the schedule of the Act—Whether becomes 'scheduled building'—Words and Phrases—Word 'use'—Meaning of.

Held, that only a 'residential building' can be a 'scheduled building'. A 'residential building' only becomes a 'scheduled building', if any one of the professions mentioned in the Scheduled to the Rent Restriction Act is carried on in a part of it. If the whole of it is used for such a profession and part of it is not used for residence and *vice versa,* it will cease to be a 'Scheduled building'. Thus the object is to give protection to certain persons whose residence and profession is normally carried on at one place. Of course, there is no bar that in addition to the 'Scheduled building', they can carry on their work elsewhere. But it is imperative that they do use part of the building for their profession, before a residential building can be said to be a 'scheduled building'. The object seems to be that certain persons in certain professions are not dislocated from the buildings where they reside and carry on their respective professions. In their case, an owner cannot ask that the building be vacated as he or his family members require it *bona fide* for their own residence. But a residential building does not become a scheduled building merely because a person carrying on the profession set out in the Schedule resides in it. He must also use part of the building for his profession. If the definitions of 'residential building' and 'non-residential building' in the Act are read together, it will be apparent that there could be a residential building where a business is carried on by the tenant and yet the tenant could be evicted by the owner if he requires that building for his residence. It is only in those cases that a residential building is taken out of this category and is put in the category of 'Scheduled building', wherein a person, who carries on one of the professions specified in the Schedule, resides. A mere casual use of a building by a person carrying on any one of the professions specified in the Schedule would not convert a residential building into a Scheduled building.

Held, that the phrase 'used' in section 2(h) of the Act signifies 'constant or regular use' and not casual use.

Case referred by Hon'ble Mr. Justice D. K. Mahajan on 23*rd May*, 1967 *to a larger Bench, for decision of an important question of law involved in the case, and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice Gurdev Singh, on* 20*th February*, 1968.

Petition under section 15(*v*) *of Act III of* 1949, *for revision of the order of Shri Gurbachan Singh, Appellate Authority, under the East Punjab Urban Rent Restriction Act, Ludhiana,* dated 11*th October*, 1966, *reversing that of Shri P. R. Aggarwal, Rent Controller, Ludhiana, dated* 1*st October*, 1965 *and ordering the respondent to put the landlord in possession of the Premises in dispute.*

H. L. Sarin, Senior Advocate, with B. S. Malik, A. L. Bahl, B. R. Bahl and H. S. Awasthy, Advocates, for the Petitioner.

H. S. Gujral, Advocate, with Labh Singh, Advocate, for the Respondent.

ORDER OF THE DIVISION BENCH

MAHAJAN, J.—This petition for revision was referred by me to a larger Bench because of certain seeming conflict of decisions of this Court and the importance of the question involved.

On facts, there is no dispute. The landlady brought a petition for eviction of the tenant on the ground that the building in dispute was a residential building and she *bona fide* required it for her personal use. The tenant contested the claim on two grounds, namely:—

(1) That she did not require the building for her personal use; and (2) that the building was a scheduled building and if she required it for her personal use, the tenant could not be evicted because he was carrying on the profession of a doctor, one of the professions mentioned in Schedule to the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Rent Act).

The Rent Controller found that the building was a Scheduled building and, therefore, the tenant could not be evicted. The question, whether the landlady *bona fide* required it for personal use was found in her favour. On appeal by the landlady, the Appellate Authority has found that the building is not a Scheduled building because it is only casually being used for the profession of a doctor. The finding of the Rent Controller, that the landlady required the building *bona fide* for her personal use, was upheld. Against this decision, the tenant has come up in revision to this Court.

The other findings against the petitioners than the one under discussion are findings of fact and have rightly not been challenged before us. The only finding, on which the controversy has arisen, is whether the building in dispute is a 'Scheduled building' or a 'Residential building'? It is common ground that if the building is a 'Scheduled building', the petition must succeed and if it is not, it must fail. Mr. Sarin, who appears for the tenants, contends that on the facts found by the Appellate Authority, it should have been held that the building is a 'Scheduled building'; whereas Mr. Gujral contends to the contrary and maintains that the building is a 'Residential building' and not a 'Scheduled building'. The relevant part of the finding of the Appellate Authority is as follows:—

"* * * In the instant case, the evidence on the record is that Dr. Lekh Raj is having a clinic at Gill Road where he

works from 8 a.m. to 12.30 p.m. in the morning and from 4.30 p.m. to 6.30 p.m. in the evening during Summer Season and from 9.00 a.m. to 1.00 p.m. in the morning and from 5 p.m. to 7 p.m. in the evening during Winter days. These hours of work show that Dr. Lekh Raj is practising medicine in his clinic at Gill Road and he is working as a medical practitioner casually at his residence, Kothi No. 558-L. If Dr. Lekh Raj was using the premises in dispute partly for his practice at his residence and must have maintained a regular register of patients at his residence and must have kept a Dispenser also. These facts show that the premises in dispute are not being used partly for medical profession and partly for residence. After giving my careful consideration to the evidence on the record, I hold that the premises in dispute do not constitute a Scheduled building and that these premises are being used by the tenant mainly for his residence and casually for seeing the patients.

* * * * *".

We have also gone through the statement of the petitioner as R.W. 8 and we find that the finding of the Appellate Authority is cent per cent in consonance with that statement. Thus the only question, that has really to be examined, is whether casual use of a building for business by a person specified in the Schedule of the Rent Act would convert a residential building into a 'Scheduled building'? It is no longer in the pale of dispute that if a specified part of a building is actually used by a person specified in the Schedule for his profession, the building will be a 'Scheduled building'. In this connection, it will be advisable first to refer to the definitions of 'building'; 'non-residential building', 'residential building' and 'scheduled building'. These definitions are to be found in section 2(a), (d), (g) and (h); and are reproduced below for facility of reference:—

"2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context—

(a) 'building' means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding house;

(b) — — — — — —

(c) — — — — — —

(d) 'non-residential building' means a building being used solely for the purpose of business or trade;

(e) — — — — — —

(f) — — — — — —

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

(h) 'scheduled building' means a residential building which is being used by a person engaged in one or more of the professions specified in the Schedule to this Act, partly for his business and partly for his residence.

Thus only a 'residential building' can be a 'scheduled building'. A 'residential building' only becomes a 'scheduled building', if any one of the professions mentioned in the Schedule to the Act is carried on in a part of it. If the whole of it is used for such a profession and part of it is not used for residence and *vice versa*, it will cease to be a 'Scheduled building'. Thus the object seems to be to give protection to certain persons whose residence and profession is normally carried on at one place. Of course, there is no bar that in addition to the 'Scheduled building', they can carry on their work elsewhere. But it is imperative that they do use part of the building for their profession before a residential building can be said to be a 'scheduled building'. The object seems to be that certain persons in certain professions are not dislocated from the buildings where they reside and carry on their respective professions. In their case, an owner cannot ask that the building be vacated as he or his family members require it *bona fide* for their own residence. But a residential building does not become a scheduled building merely because a person carrying on the profession set out in the Schedule resides in it. He must also use part of the building for his profession. For instance, a doctor, who has a residential house and carries on his business in premises other than his residential house, can be evicted from the same in case the requirements of section 13 are satisfied. But if he resides in the premises, a part of which he uses for his profession, he cannot be evicted from those premises by the owner of the premises because the owner requires those premises for his residence; whereas in the former case, the owner could have evicted the doctor from the residential premises on the plea that the owner required them for his own use. This distinction clearly brings out why a special category of building has been carved out, namely, a 'Scheduled

building' by section 2(h) of the Rent Act. If the definitions of 'residential building' and 'non-residential building' are read together, it will be apparent that there could be a residential building where a business is carried on by the tenant and yet the tenant could be evicted by the owner if he requires that building for his residence. It is only in those cases that a residential building is taken out of this category and is put in the category of a 'Scheduled building', wherein a person, who carries on one of the professions specified in the Schedule, resides. If what has been said above is kept in view, a mere casual use of a building by a person carrying on any one of the professions specified in the Schedule would not convert a residential building into a Scheduled building. The word 'use' in section 2(h) in the definition of 'Scheduled building' further highlights this conclusion. The phrase 'used' signifies 'constant or regular use' and not casual use (See Shorter Oxford Dictionary, Volume II). The view, that has been taken of the matter, finds support from the decision of my learned brother, which was affirmed by Mehar Singh, J. (as he then was) in *Dr. Benarsi Dass* v. *Bhagwan Kaur* (1). That was also a case of a doctor; and while dealing with his case, it was observed as follows:—

> "* * Even if it be believed that outside his regular working hours as medical practitioner and during the period in which his shop in Pindi Gali is closed, Dr. Banarsi Das does not refuse to see his patients at his house, that would not go to prove that the house in dispute was being used by him partly for the purpose of business. Occasional or sporadic user is not what is contemplated by the definition of the 'Scheduled building' as contained in Section 2(h) of the East Punjab Urban Rent Restriction Act, 1949. If a patient out of necessity comes to the doctor, who has a fixed and well-known business premises, it would not convert the residential premises into non-residential. In *Dr. Gopal Das Verma* v. *Dr. S. K. Bhardwaj* (2) at page 360, the Hon'ble Chief Justice observed as follows :—
>
> 'A building which was let out primarily for use as a place of abode and in which no business is carried on except incidentally must be said to be let for residential purposes.' "

(1) C.R. 533 of 1958 decided on 12th November, 1958.
(2) 1957 P.L.R. 355.

To the similar effect are the observations of R. P. Khosla, J., in *Shrimati Ravinder Kaur* v. *Dr. Sewa Singh* (3). This exposition of the law is in consonance with the provisions of section 2(h) as well as the scheme of the Act. The petitioner has only been able to prove that he casually uses the building in dispute for his profession. The petitioner, as R.W. 8, states that he examines the patients in the premises in dispute for two hours every morning. But he has not stated that he has reserved any part of the building for this purpose. Even his statement, that he examines the patients for two hours every morning, has not been accepted by the Appellate Authority; and, therefore, the Appellate Authority came to the conclusion that the use was merely a casual use. This conclusion, in our opinion, is correct.

In whatever perspective the matter is examined, it is beyond any pale of doubt that a casual user by a person mentioned in the Schedule to the Act will not make it a 'user' within the meaning of section 2(h) and convert a 'residential building' to a 'Scheduled building'.

Mr. Sarin has relied upon a number of decisions; but none of them really touches the question which we are called upon to determine.

In Durga Das v. *Devi Das Nayar* (4) it was found as a fact that the building was partly used by a lawyer as his office. That case, therefore, does not help the contention of Mr. Sarin. So was the case with the decision in *Ranjit Singh* v. *Anup Singh* (5). The *decisions in Mela Ram* v. *Uttam Chand* (6), by Falshaw, C.J., and in *Raghunandan* v. *Ralu Ram* (7) by my Lord, have no application.

For the reasons recorded above this petition must fail and is dismissed; but there will be no order as to costs in this Court. The petitioner is given three months' time to vacate the premises, provided he regularly deposits the rent for the same; otherwise, he will be liable to eviction.

GURDEV SINGH, J.—I agree.

R.N.M.

(3) C.R. 370 of 1966 decided on 6th January, 1967.
(4) 1961 P.L.R. 640.
(5) C.R. 249 of 1964, decided on 27th September, 1965.
(6) C.R. 356 of 1964 decided on 4th February, 1966.
(7) C.R. 369 of 1966 decided on 28th November, 1967.