

production of wool and it follows that the most important provision in the rule is that which lays down what kinds of sheep may be kept. Therefore, if this part of the rule is too vague to help persons who wish to claim exemption on this ground the whole rule as it stands must be held to be bad and the order of the Land Commission based on it must also fall. It may, however, be pointed out that all that is required, in my opinion, in order to make the rule good is to specify the breeds of sheep recognised as standard in item No. (2). In the circumstances I would accept the writ petition and quash the order of the Land Commission leaving the parties to bear their own costs.

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Commission  
and another.  
Falshaw, C.J.

A. N. GROVER, J.—I agree.

B.R.T.

#### REVISIONAL CIVIL

*Before Daya Krishan Mahajan, J.*

MOTI LAL AND ANOTHER,—Petitioners

*versus*

NANK CHAND AND OTHERS,—Respondents

**Civil Revision No. 27-D of 1963**

*Delhi and Ajmer Rent Control Act (XXXVIII of 1955)—Ss. 2(g) and 13(1) (e)—Building let out by one lease-deed for commercial and residential purposes—Land-lord—Whether entitled to bring an application for eviction of the tenant from the residential portion.*

1963  
Sept., 9th.

*Held*, that a land-lord is fully entitled to bring an application under section 13(1) (e) of the Delhi and Ajmer Rent Control Act, 1952, with regard to the portion of the premises which is exclusively used for residential purposes although the other portion was let out and is used for commercial purposes. It hardly matters that the document of lease for

both the portion is one or that the rent is one because there is no difficulty in bifurcating the rent *vis-a-vis* both thees purposes. The word 'separately' is used in the definition in connection with the whole or part of the premises and if the premises are in well-defined parts and have been let out for residential and commercial purposes together, the rules as to eviction regarding the portion that has been used for residence will govern the residential portion and the rules of eviction regarding the commercial premises will govern the commercial portion of the same as laid down in the said Act.

*Petition under section 35 of Act 38 of 1952, for revision of the Order of Shri P. P. R. Sawhney, District Judge, Delhi, dated 18th January, 1963, confirming that of Shri D. R. Khanna, Sub-Judge, 1st Class, Delhi, dated 12th October, 1959, dismissing the suit.*

K. L. MEHRA & SHRI YOGESHWAR DAYAL, ADVOCATES, for the Petitioners.

G. L. SETHI & SHRI R. S. NARULA, for the Respondents.

#### ORDER

Mahajan,  
J.

MAHAJAN, J.—This is a petition for revision and is directed against the order of the District Judge, Delhi, reversing on appeal the decision of the trial Court dismissing the suit of the plaintiffs. The plaintiffs are the successors-in-interest of the previous owner of the premises having acquired the same by purchase on the 5th January, 1957. The petitioners are the tenants of the premises. The tenancy is under a lease deed executed on the 6th April, 1954. It is specified in the lease deed that one house (four storeyed) including a garage and two shops has been rented out for commercial and residential purposes. It is stated by one of the tenants as D.W.9 on oath that the ground-floor had all along been used for commercial purposes and the remaining building was used for residential purposes. The landlords brought the present suit for eviction of the tenant on the ground of personal necessity. This suit was dismissed by the

trial Court on the ground that no application was competent under section 13(1)(e) of the Delhi and Ajmer Rent Control Act, 1952, because the whole of the premises in dispute were not let to defendants 1 and 2 for residential purposes. With regard to the question whether the premises were needed by the landlord for his own use and for the use of his family members, no finding was given. Against this decision an appeal was preferred to the District Judge, who on the basis of an unreported Single Bench decision of this Court in *Shanti Devi v. Gian Chand* (Civil Revision No. 394-D of 1958) decided on 1st February, 1961, held that it could be easily ascertained which part was rented out for commercial and which for residential purposes; and once that was ascertained there would be no difficulty in decreeing eviction on the basis of section 13(1)(e) *qua* the residential premises. In this view of the matter, the learned District Judge remanded the case for the decision on all the issues on the merits. It is against this decision that the present petition for revision has been filed in this Court.

The contention of the learned counsel for the petitioners is that if one refers to section 13(1)(e), which is in these terms :—

13. (1) Notwithstanding anything to the contrary contained in any other law or any contract no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated):

“Provided that nothing in this sub-section shall apply to any suit or other proceedings for such recovery of possession if the Court is satisfied—

(a) \* \* \* \* \*

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(b) \* \* \* \* \*  
(c) \* \* \* \* \*  
(d) \* \* \* \* \*

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(e) that the premises let for residential purposes are required *bona fide* by the landlord who is the owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation :

*Explanation.*—For the purposes of this clause, ‘residential premises’ include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes; or

\* \* \* \* \*

along with the definition of the ‘premises’ as given in section 2(g) of the Act, which is in these terms :—

“2. (g) ‘premises’ means any building or part of a building which is, or is intended to be, let separately for use as a residence for commercial use or for any other purpose, and includes—

No eviction can be ordered as there is no separate subletting of the premises for use as a residence. It is urged that if a building is let by one lease-deed for commercial and residential purposes then no eviction from the residential part of the premises can be sought because the letting out is not separately for residential purpose. There is an inherent fallacy in this argument. The premises are defined as whole or part of a building. In the present case the building

was let for commercial and residential purposes. That is indisputable because the lease-deed specifically says so. The user of the premises also clearly indicates the same. As I have already said, defendant Tarlok Nath appearing as his own witness as D.W. 9 clearly admitted that the ground floor was being used for commercial purposes and the remaining building was being used for residential purposes. Therefore, it must be held that the letting out was of the commercial part of the building separately for commercial purposes and of the residential part of the building for residential purposes. It hardly matters that the document of lease is one or that the rent is one because there would be no difficulty in bifurcating the rent *vis-a-vis* both these purposes. In my view the requirements of the statute are fully satisfied and the landlords are fully entitled to bring an application under section 13(1)(e) of the Act with regard to the portion of the premises which are exclusively used for residential purposes. I am supported in my conclusion by a decision of Khosla, J. in *Shanti Devi's* case, already referred to above. Learned counsel for the petitioners relies on an unreported Single Bench decision of Gosain J. in *Chander Kanta v. Dr. Dina Nath* (Civil Revision No. 64-D of 1960) decided on the 31st July, 1961. It was not established in the case that the premises were let out for residential purposes, particularly when the same had been used for commercial purposes. This was not a case where part of the building was rented out

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for commercial purposes and part for residential purposes, as in the present case. Therefore, this decision has no applicability to the facts of the present case. The next case relied upon is *Dr. Gopal Das Verma v. Dr. S. K. Bhardwaj* (1). In this case the premises were rented out initially to the tenant for residential purposes. They consisted of four rooms on the first-floor. To the knowledge of the landlord, three out of the four rooms on the first-floor were used by the tenant for his medical profession for 25 years. When the landlord sued for eviction of the tenant on the basis of section 13(1)(e) of the Act he was met with the plea that the substantial part of the premises had been mainly used for commercial purposes, to the knowledge of the landlord, and, therefore, the purposes of letting out the premises had been altered from residential to non-residential. That being so, the petition for eviction under section 13(1)(e) was rejected. This case again, as the facts disclose has no applicability to the facts of the present case.

Moreover, if the contention of the learned counsel for the petitioner is accepted, then it would defeat the purpose of the Act. The word 'separately' has been used in the definition in conjunction with whole or part of the premises and if the premises are in well-defined parts and have been let out for residential and commercial purposes together the rule as to eviction regarding the portion that has been used for residence will govern the residential portion of the

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(1) A.I.R. 1963 S.C. 337.

same and similarly the rules of eviction regarding the commercial premises will govern the commercial portion of the same as laid down in the Act.

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For the reasons given above, I see no ground to interfere in revision. The order passed by the District Judge is perfectly in order.

This petition fails and is dismissed with costs. September 9, 1963.

K.S.K.

CIVIL MISCELLANEOUS

*Before Gurdev Singh, J.*

THE AMRITSAR IMPROVEMENT TRUST,—*Petitioner*

*versus*

THE CUSTODIAN EVACUEE PROPERTIES AND OTHERS,—  
*Respondents.*

**Civil Writ No. 1780 of 1962.**

*Evacuee Interest (Separation) Act (LXVI of 1950)—  
S. 17—Competent officer—Whether entitled to issue injunction restraining a person, not a party to the proceedings from interfering with the possession of composite property.*

1963  
Sept., 9th.

*Held*, that section 17 of the Evacuee Interest (Separation) Act, 1950, makes a clear distinction between the powers of a competent officer and the procedure to be adopted by him in discharge of his functions. So far as the powers are concerned, they are contained in sub-section (1) while sub-section (3) refers to the procedure which he is to follow. Sub-section (1) does not authorize the competent officer to issue injunction and unless that power is conferred on the competent officer, the provisions of order XXXIX of the Code of Civil Procedure will not come into play to govern the proceedings and regulate the manner in which the power