

**IN THE HIGH COURT OF HIMACHAL PRADESH**  
**SHIMLA**

**Civil Revision No. 32 of 2018**  
**along with Civil Revision No. 86**  
**of 2018, and, Civil Revision No.**  
**183 of 2018.**

**Reserved on : 18<sup>th</sup> December, 2019.**

**Decided on : 31<sup>st</sup> December, 2019.**

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**1. Civil Revision No. 32 of 2018.**

Santosh Aggarwal and another

**.....Petitioners/Tenants.**

Versus

Sawaran Kanta Sood (since deceased) through her legal  
heir Vinay Sood

**..Respondent/Landlord.**

**2. Civil Revision No. 86 of 2018.**

Gainda Mull Hem Raj

**.....Petitioner/Tenant.**

Versus

Sawaran Kanta Sood (since deceased) through her legal  
heirs

**....Respondents/Landlords.**

**3. Civil Revision No. 183 of 2018.**

Ram Pal Budhwar

**.....Petitioner/Tenant.**

Versus

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Sawaran Kanta Sood (since deceased) through her legal heirs

...**Respondents/Landlords.**

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***Coram:***

***The Hon'ble Mr. Justice Sureshwar Thakur, Judge.***

*Whether approved for reporting?*<sup>1</sup> Yes.

**For the Petitioner(s) :** Mr. Satyen Vaidya, Sr. Advocate with Mr. Vivek Sharma, Advocate in C.R. No.32 of 2018.

Mr. Neeraj Gupta, Sr. Advocate with Ms. Rinki Kashmiri, Advocate in C.R. No. 86 of 2018.

Mr. Y.P. Sood, Advocate, in C.R. No. 183 of 2018.

**For the Respondent(s):** Mr. G.C. Gupta, Senior Advocate with Ms. Meera Devi, Advocate in all petitions.

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**Sureshwar Thakur, Judge**

Through, Civil Revision Petition No. 32 of 2018, Civil Revision Petition No. 86 of 2018, and, through, Civil Revision Petition No. 183 of 2018, the, aggrieved tenants,

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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in, the, demised premises, respectively, cast, challenges, vis-a-vis, the, concurrent verdicts, as, become, recorded, initially, by, the, learned Rent Controller concerned, upon, the, apposite rent petitions, and, thereafter, upon, the, respectively, constituted thereagainst(s) appeals, hence, before the learned Appellate Authority concerned, (a) wherethrough, the landlord's petition(s), hence, seeking eviction, of, the, tenants concerned, from, the, apposite demised premises, on, the, ground, vis-a-vis, hers requiring them, for rebuilding, and, reconstructing, the, apposite building, wherein they exist, hence, became allowed.

2. Since, the landlord, is, the owner, of, the, building, wherein, each, of, the demised premises, as, become leased, to, the, tenants concerned, hence, exist, (a) and, also when common grounds became reared, for, seeking eviction, of, the, tenants, hence, residing, in, the, demised premises concerned, thereupon, hence, all, the,

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afore civil revision petitions, are, amenable, for, a, common verdict, being, recorded thereons.

3. Even though, in, Rent Petition No. 167/2, of, 2016/11, wherefrom, Civil Revision Petition No. 86, of, 2018, rather, arises herebefore, hence, besides, the, afore statutory ground, common, vis-a-vis, the, apposite, connected therewith eviction petitions, common statutory ground whereof, became, successfully availed, hence, by, the, landlord, (a) also, a, further ground became espoused, in, the, apposite rent petition, for, seeking eviction, of, the apposite petitioner, from, the demised premises, and, appertains, to, there happening hence change, of, user, by the petitioner/tenant, in, C.R. No. 86, of, 2018, from, the initial purpose, qua, wherewith, it, became leased, to, him/it, (b) yet, hence, the import, of, the, afore espousal, can also become, adjudged, by, this Court, upon, its, proceeding, to, after making a common verdict, upon, the afore common ground(s), rather, its

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thereafter, hence, meteing, an, adjudication, upon, the, afore reared separate espousal, in, the, apposite rent petition(s), constituted, by, the, landlord concerned, who, as, aforestated, is, the, owner, of, the, building, wherein, all, the, respectively leased demised premises, hence, exist.

4. The common ground, reared, in, the apposite rent petitions, by, the landlord, for hers seeking, the, eviction, of, the tenants concerned, from, the respectively leased demised premises, qua each, of, them, as, aforestated, (a) is, comprised, in, hers requiring, the, eviction(s), of, the tenants, hence, therefrom(s), for hers, thereafter becoming fully capacitated, and, also hers becoming efficaciously facilitated, to, rebuild, and, reconstruct, the apposite building, (b) and, whereafter, the, tenants concerned, would also avail the statutory right, for theirs, upon, the apposite building, wherein, there respectively leased premises exist, rather becoming

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reconstructed, hence, becoming reinducted therein, on, fresh terms, and, conditions. The afore reared statutory ground, would not, became stained with any stain, of, malafides, unless, cogent evidence becomes adduced, at, the, instance, of, the tenants concerned, and, its making, with, candour, hence, explicit echoings, qua, the landlord, not possessing, any, sufficient financial empowerments, to, reconstruct, the, apposite building. However, the afore purported vitiatory stain(s), for thwarting, the, afore valid endeavour, of, the, landlord, rather became enjoined, to be, proven by adduction, of, cogent evidence, yet no cogent evidence, qua, therewith, becomes adduced. (c) The sequel thereof, is, qua the landlord becoming concluded, to, possess, adequate, and, sufficient financial resources, and, also means, to rebuild the apposite building. Furthermore, the afore endeavour, of, the, landlord, is, also well merited, as, the latter enjoyed, the, fullest latitude, in, law, to, ensure,

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qua, hers deriving handsome, and, enhanced pecuniary gains, from, the building, wherein, the demised premises concerned, rather exist, (d) and, the afore justifiable, and, vindicable, endeavour, of, the, landlord, rather would become, untenably balked, upon, the tenants, in, the demised premises concerned, and, who at this stage, may not, be attorning rent, to, the, landlord, in monetary sums equivalent, to, the, ones, which she expects to rear, upon, a, new building becoming raised, rather, yet becoming permitted, to, hence reside therein, (e) besides when the salutary, hence, statutory bestowment, invested, upon, the tenants, to, upon, completion, of, reconstruction, of, the apposite building, hence, seek, their re-induction(s) therein, rather, on, fresh terms, and, conditions, is, also naturally, a, sufficient statutory protective cover, invested in them, to, ensure theirs becoming re-inducted, in, the, newly constructed demised premises. (f) Moreover, given, the, assignable

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import, and, also parlance, vis-a-vis, the, statutory phrase, as, occurring, in, the, apt statutory provisions, inasmuch, as, qua, “on fresh terms, and, conditions”, is, rather, qua, the, statute, hence, making trite contemplations, qua, upon, reconstruction, of, the, apposite building, the tenants becoming obliged, to, attorn, to, the, landlord, rents, in, sums, higher than the one(s), they hitherto attorned, to, the landlord concerned, (g) given, the, building becoming, re-oriented, rather with modern amenities, and, facilities, and, as, obviously would become inbuilt therein, after, the reconstruction, of, the apposite building, obviously, upon, the respective order(s), of, evictions, from, the respectively leased demised premises, to, each, of, the tenants, hence, becoming pronounced. Consequently, hence, the, afore inbuilt statutory investments, upon, the, tenants, also ousts them, to, contest, the, afore reared, statutory ground, hence, in, the, apposite eviction petitions.



5. Be that as it may, the learned counsel(s) appearing for the aggrieved tenants, who become entailed, with, concurrently pronounced decrees, of, eviction, from, both the learned courts below, all make, a, vehement address before this Court, that, when evidently, the demised premises, rather, occur, within, the local limits, of, the, jurisdiction, of, the, municipal corporation, Shimla, (i) and, when, hence, there arises a statutory necessity, for, the landlord, to, prior to hers, proceeding to, reconstruct, the, apposite building, hers, imperatively possessing, hence, validly meted sanctions, vis-a-vis, her building plans, rather by, all, the, authorities concerned, (ii) whereas, the afore peremptory statutory approvals, qua, the apposite building plans, remaining unpurveyed, to, her, (iii) thereupon, the, afore reared ground, as, became accepted, by, both the learned courts below, rather becoming stained, with, an, aura of malafides, as, the effect of the afore concurrent

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pronouncements, does obviously, become denuded, vis-a-vis, their vigour(s), for, wants, of, the afore peremptory statutory necessity(ies), rather remaining uncomplied with, hence, by the landlord. Even though, the afore submission, as, addressed before this Court, has, some vigour, as, in, a, verdict, rendered, by, the, Hon'ble Apex Court, in, a, case, titled, as, ***Jagat Pal Dhawan vs. Kahan Singh (dead) by LRs, and, others, reported in Latest HLJ 2003 (SC) 124***, in paragraph six thereof, paragraph whereof stands extracted hereinafter, (a) the Hon'ble Apex Court, has, though, made an expostulation, of, law, vis-a-vis, though, the afore reared statutory ground, rather not containing, any echoings, vis-a-vis, the afore necessity, becoming enjoined, to be, imperatively complied, with, by, the, landlord concerned, (b) yet thereafter it also become(s) expostulated therein, vis-a-vis, depending, upon, facts, and, circumstances, of, every case, rather, it, being, incumbent, upon, the, courts

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concerned, to, determine, qua, vis-a-vis, upon, non compliances, qua the afore statutory necessity, rather, the apposite eviction petition(s), becoming construed, to, become, hence, ingrained, with, an, aura, of, malafides.

“6. Section 14(3)(c) provides inter alia that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession of tenancy premises in case of any building or rented land being required bona fide by him for the purpose of building or rebuilding which cannot be carried out without the building or rented land being vacated. The provision does not have as an essential ingredient thereof and as a relevant factor the age and condition of the building. The provision also does not lay down that the availability of requisite funds and availability of building plans duly sanctioned by the local authority must be proved by the landlord as an ingredient of the provision or as a condition precedent to his entitlement to eviction of tenant. However still, suffice it to observe, depending on the facts and circumstances of a given case, the Court may look into such facts as relevant, though not specifically mentioned as ingredient of the ground for eviction, for the purpose of determining the bona fides of the landlord. If a building, as proposed, cannot be constructed or, if the landlord does not have means for carrying out the construction or

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reconstruction obviously his requirement would remain a mere wish and would not be bona fide."

The afore expostulation, of, law, is, grooved, in, the reason, inasmuch, as, if, the afore apposite building, is, not befittingly amenable, to, reconstruction, given the requisite approval(s) remaining unmeted, by, the apposite statutory authorities concerned, thereupon, the afore reared, statutory ground, may become unworkable, vis-a-vis, the landlord concerned.

6. Even though, the afore submission, as, made before this Court, by, the, learned counsel appearing, for, the aggrieved tenants, though, becomes succored, by, the, afore expostulation, of, law, enshrined, in, Jagat Pal Dhawan's case (supra), yet when, an, exception thereto also stands therein carved, inasmuch, as, vis-a-vis, (a) the, lacks, of, the, afore statutory necessities, as, become pronounced therein, to, may be hence enveloping, the, eviction petition, as, becomes reared by the landlord

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concerned, and, its containing, the, afore statutory ground, rather with an aura, of, malafides, (b) exception whereof, is, grooved, in, the courts concerned, in making any conclusion, vis-a-vis, hence, the apposite eviction petition becoming mis-coloured or stained, theirs bearing in mind, all the facts, and, circumstances, appertaining, to, each case. Necessarily only, within, the, ambits thereof, hence, from, the, hereat evident facts, and, circumstances, hence, the, afore, discernments, are, enjoined, to, become unearthed. Nowat, as, aforestated, since, the afore statutory leverage, as, become(s), bestowed, upon, the landlord, has, become concluded, to become, fully available to her, except for the afore impediment, (a) thereupon, for ensuring, qua, no imbalances occurring, inter se, the afore reared statutory ground, and, the imperative play thereon(s), of, all, the applicable statutes, hence, entailing, the necessity, of, the landlord concerned, for, becoming fully facilitated, to,

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rebuild, the, apposite building, wherein, the, demised premises, are housed, hers becoming, statutorily enjoined, to, become meted approvals, vis-a-vis, the apposite plans, as, maybe submitted by her, before, the, authorities concerned, (b) hence, this Court deems fit, and, appropriate, that the making, of, a, conditional order, of, eviction, against, the tenants, would strike, the adequate balance, inter se, the afore statutory ground, and, the applicable thereon statutory provisions, as enshrined, in, the Municipal Corporation Act, (c) wherein, a, dire categorical statutory necessity becomes cast, upon, the landlord, to, prior, to, hers, proceeding, to, reconstruct, the apposite building, hers, obtaining, the, apposite approvals, from, the apposite authorities concerned, vis-a-vis, hers maybe(s) therefore submitted, hence, apposite building plans. Nonetheless, the only exception thereto, becomes rather comprised, in, the, authorities concerned, declining meteing(s), of,

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sanctions, vis-a-vis, the apposite building plan(s), whereupon, obviously, the, apposite eviction petition(s) would become stained, with, malafides. In aftermath, a, conditional apt order of eviction, hence, is, deemed to become both justifiably, and, vindicably, rather become pronounced, inasmuch, as, till the landlord places, before, the, learned Rent Controller concerned, the, apposite sanction purveyed, vis-a-vis, her rebuilding plans, by the authorities concerned, (d) rather thereupto, the affirmed hereat concurrent verdicts, of, evictions, as, became pronounced, against the tenants concerned, rather by both the learned courts below, rather being unamenable, for, becoming completely enforced, through, warrants, of, possession hence becoming ordered to be issued, against, the demised premises, and, obviously against the tenants, who, occupy them.

7.           However, the landlord also cannot become deprived, of, seeking, determination, of, use, and,

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occupation charges, qua, the apposite demised premises, until, the, phase rather whereat, the afore conditional order, as, becomes pronounced against the tenant(s), hence, becomes completely complied, with, (a) and, whereafter the Rent Controller concerned, becomes fully empowered, to, for hence ensuring the tenants concerned, residing, in, the, apposite demised premises concerned, becoming evicted therefrom, to, issue apt warrant(s), of, possession(s), (b) thereupon, it is also deemed fit, and, appropriate, to, order, that, upon, the landlord instituting, hence, an, appropriate application(s), before, the, Rent Controller concerned, seeking, therethrough, determination(s), of, use, and, occupation charges, vis-a-vis, the apposite demised premises, rather from, the date of pronouncement, of, eviction orders, against them, and, upto the afore imperative condition, becoming completely complied, with, by, the, landlord,



rather, the, Rent Controller concerned, making adjudication(s) thereon, hence, in accordance with law.

8. In eviction petition No. 167/2 of 2011, wherefrom, Civil Revision Petition 86 of 2018, has, arisen before this Court, the landlord in the afore petition, has apart, from, the, afore common ground, of, eviction, as, becomes reared, in the connected therewith civil revisions, hence, also reared another ground(s), of, eviction against, the, tenant, and, comprised, in, his changing the user of the demises premises, from, the, purpose, qua, wherewith, it, became initially leased/rented, to, the, petitioner herein.

9. In proof, of, the, afore reared statutory ground, there exist rent receipts, on record, hence, personificatory, vis-a-vis, the, tenant attorning rent, to, the landlord, for, the, use, of, the, demised premises, rather, as, a shop, and, also evidence has become adduced by the landlord, hence, exemplificatory,

vis-a-vis, the extantly demised premises, rather becoming used, as, a godown, by, the apposite tenant. Even if, the afore manner, of, change, of, user, of, the demised premises, as, has evidently happened, and, occurred, yet, it would not entail any ill-consequence, of, rather the apposite tenant becoming ordered, to, become evicted, from, the, demised premises, (i) as, the connotation, of, the statutory phrase “change of user”, is, to the considered mind, of, this court, is, qua it rather happening, upon, the demised premises, becoming, leased, for, residential purpose, and, thereafter, theirs, becoming used, for, commercial purpose, or vice versa. Since, the afore manner, of, user of the demised premises, hence, by, the, apposite tenant, rather, does not tantamount, to, absolute change of user, rather, when it capitalizes an inference, vis-a-vis, yet, the, demised premises becoming used, for, commercial purpose, hence, as, a, godown, for therein, hence, the,

apposite material, owned by the apposite tenant, becoming stacked, for, thereafter, it, becoming sold, obviously, for, commercial gains, rendering, hence, user thereof, being construable, to be, also for a commercial purpose.

9. For the foregoing reasons, there is no merit in the extant civil revision petitions, hence, all the afore civil revision petitions, are, dismissed. Accordingly, the concurrently recorded the orders, of, eviction, are affirmed, and, maintained. However, it, is, made clear that, all, the orders of eviction, as, concurrently pronounced against the petitioners herein, shall be subject, to, the landlord herein obtaining, all, the, requisite sanctions/approvals, of, rebuilding site plans, from, all, the, apposite authorities concerned, and, till then the tenants shall not become coercively evicted from the demised premises. Further, it is made clear that the landlord can claim use, and, occupation charges, vis-

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a-vis, the demised premises, from the tenants concerned, through, hers making, an apposite motion, before the learned Rent Controller concerned. Furthermore, upon, apposite rebuilding(s), hence, happening, the statutory right, of, re-entry(ies), is, also reserved in favour of all the tenants, hence, on fresh terms, and, conditions, of, tenancy(ies). All pending applications also stand disposed of. Records be sent back forthwith.

**31<sup>st</sup> December, 2019.**  
**(jai)**

**(Sureshwar Thakur)**  
**Judge.**