RAKESH VIJ

v.

RAMINDER PAL SINGH SETHI

SEPTEMBER 30, 2005

[R.C. LAHOTI, CJ., G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

Rent Control and Eviction:

East Punjab Urban Rent Restriction Act, 1949:

*Section 13—Eviction Petition—***Bonafide** *requirement—Non-residential building—In Union Territory Chandigarh—Landlord was co-owner of premises described as Shop-cum-Flat—Landlord filed an eviction petition under S. 13 of 1949 Act on the ground that the landlord wanted to set up a bigger dental clinic with modern gadgets for which space currently in his occupation was wholly inadequate—The 1949 Act was amended by the 1956 Amendment Act as a result of which the landlord could only seek eviction of a tenant from a residential or a scheduled building, but was completely deprived of his right to seek eviction of a tenant from a non-residential building—The 1949 Act was extended to Union Territory Chandigarh by the 1974 Extension Act—Thereafter, the 1982 Amendment Act declared the suit premises i.e. the Shop-cum-Flat a non-residential building—Subsequently, the Supreme Court struck down the 1956 Amendment Act in* **Harbilas'** *case—The eviction petition was allowed by the Rent Controller—High Court dismissed the revision—Correctness of—Held: The provisions of the entire 1949 Act have been extended and made applicable to the Union Territory of Chandigarh—Therefore, it is open to a landlord to seek eviction of a tenant from a non-residential building on the ground of his own use—East Punjab Urban Rent Restriction (Amendment) Act, 1956—East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974—East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982.*

The respondent was a Dental Surgeon and was the co-owner along with his wife of a premises described as Shop-cum-Flat located at the Union Territory Chandigarh in which the appellant was a tenant. The respondent filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 on the ground that the respondent wanted to set up a

A bigger dental clinic with modern gadgets for which the space required was wholly inadequate in the rented premises currently in his occupation. The 1949 Act was amended by the East Punjab Urban Rent Restriction (Amendment) Act, 1956 as a result of which the landlord could only seek eviction of a tenant from a residential or a scheduled building or rented land, but was completely deprived of his right to seek eviction of a tenant from a B non-residential building even if he required it for his own use. The 1949 Act was extended to the Union Territory of Chandigarh by the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974. By the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 the premises in dispute became a non-residential building. The Amendment Act, 1956 was C struck down by this Court in *Harbilas'* case.

The eviction petition was allowed by the Rent Controller and the High Court dismissed the revision filed by the appellant. Hence the appeal.

The following question arose before the Court:-

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Whether a landlord in the Union Territory of Chandigarh can seek eviction of a tenant on the ground of his own use both from residential and also non-residential building under the East Punjab Urban Rent Restriction Act, 1949?

E Dismissing the appeal, the Court

HELD: 1. Section 3 of the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 makes the East Punjab Urban Rent Restriction Act, 1949, subject to the modification specified in the Schedule, applicable to the Union Territory of Chandigarh with effect from 4.11.1972. It is not a case F where any specific Section or provision of the 1949 Act may have been made applicable, but the provisions of the entire 1949 Act have been extended and made applicable to the Union Territory of Chandigarh. It is in fact a case of extension of an Act to a territory to which it was previously not applicable. [796-G-H; 797-A]

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2. On the date when the eviction petition was filed or at any stage subsequent thereto including the date when the matter was heard and is being decided by this Court, it is not possible to read the East Punjab Urban Rent Restriction Act, 1949 in a manner in which it was amended by the East Punjab Urban Rent Restriction (Amendment) Act, 1956 but has to be read as it H originally stood which contained a provision giving right to a landlord to seek

eviction of a tenant from a non-residential building on the ground of his own use. This is so because in *Harbilas'* case the provisions of the Amendment Act, 1956 were held to be violative of Article 14 of the Constitution. Therefore, in the Union Territory of Chandigarh it is open to a landlord to seek eviction of a tenant from a non-residential building on the ground of his own use. [798-A, B, C; D]

Deep Chand **v.** *State of U.P.,* **AIR (1959) SC 648,** *Mahendra Lal Jaini* **v.** *State of U.P.,* **AIR (1963) SC 1019,** *State of Haryana* **v.** *Ch. Bhajan Lal,* **AIR (1992) SC 604,** *Rananjaya Singh* **v.** *Baijnath Singh,* **AIR (1954) SC 749,** *State of M.P.* **v.** *M.V. Narasimhan,* **AIR (1975) SC 1835,** *U.P. Avas Evam Vikas Parishad* **v.** *Jainul Islam,* **[1998] 2 SCC 467 and** *M/s. Punjab Tin Supply Co.* **v.** *Central Government* **AIR (1984) SC 87, relied on.**

Harbilas Rai Bansal **v.** *State of Punjab,* **[1996] 1 SCC 1,** *Dr. Harkishan Singh* **v.** *Union of India,* **AIR (1975) P & H (FB),** *Pakala Narayanaswami* **v.** *Emperor,* **AIR (1939) PC 47 and** *Emperor* **v.** *Benoari Lal Sarma,* **AIR (1945) PC 48, referred to.**

Maxwell: On The Interpretation of Statutes **12th Edn. 1969 p. 28, referred to.**

3. To completely deprive a landlord of his right to seek eviction of a tenant from a non-residential building even on the ground of his own use for all times to come would be highly unjust and inequitable to him. [798-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2894 of 2001.

From the Judgment and Order dated 20.12.2000 of the Punjab and Haryana High Court in C.R. No. 5605 of 2000.

WITH

W.P.(C). No. 234/2003, C.A. Nos. 7049/2001, 3551, 7920-7921/2002 and S.L.P.(C) No. 20444 of 2001.

Amarendra Sharan Mohan Parasaran, Additional Solicitor Generals, Sudhir Chandra, A.K. Chopra, Sanjay Karol, (NP), M.L. Varma, (NP), Sudhir Chandra, Achintya Dvivedi, Manoj Swarup, Somiran Sharma, S.A. Haseeb, S.M. Sarin, P.N. Puri, Gopi Chand, Rakesh Joshi, Rajinder Singh, Himanshu Upadhyaya, Vikas Mahajan, Jaswant Rai Aggarwal, Bhaskar Y. Lulkarni, R.K. Talwar, Amit Talwar, Yash Pal Dhingra, Samir Ali Khan, Amit Anand Jiwary, Navin Prakash, Gaurav Dhingra, Chiadanand D.L., Ms.Kamini Jaiswal, Ms.

A Shomila Bakshi, Ms. Inklee Barooah, Balbir Singh Gupta, Ms.S. Janani, (NP), D.N. Goburdhan, K.L. Kohli, V.C. Mahajan, M.K. Dua, S.M. Sarin, Rajesh Khurana, Vimal Chandra S.Dave, (NP), R.K. Kapoor, Vikash Jain, M.K. Verma and Anis Ahmed Khan for the Appearing parties.

The Judgment of the Court was delivered by

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G.P. MATHUR, J. Civil Appeal No. 2894 of 2001.

1. This appeal, by special leave, has been filed against the judgment and order dated 20.12.2000 of the High Court of Punjab and Haryana at Chandigarh by which the revision preferred by the appellant against the order of eviction C passed against him by the Rent Controller as affirmed by the Appellate Authority was dismissed.

2. Before examining the legal issues raised by the learned counsel for the parties it will be convenient to notice the facts of the case in brief. The respondent Dr. Raminder Pal Singh Sethi is a Dental Surgeon and he is co- D owner along with his wife of a premises described as Shop-cum-Flat (for short "SCF") in Sector 37-A, Chandigarh, in which father of the appellant late O.P. Vij was a tenant. The respondent filed a petition for eviction of O.P. Vij on the grounds, *inter alia,* that he was having his clinic in House No. 5, Sector 16-A, Chandigarh, but the owner of the said premises, namely, Shri Wasan E Singh had filed an eviction petition against him on the ground that he was a specified landlord within the meaning of Section 2(hh) of the East Punjab Urban Rent Restriction Act, 1949 (for short '1949 Act') and the said petition was pending adjudication before the Rent Controller. The respondent wanted to set up a bigger dental clinic with modern gadgets, more number of dental chairs, provision for x-ray examination, orthopentamorgrams and radio video F graphs and other facilities for which the space required was wholly inadequate in the rented premises currently in his occupation. The tenant O.P. Vij contested the eviction petition on various grounds and the principal ground urged was that eviction of a tenant cannot be sought on the ground of personal requirement of the landlord under the relevant provisions of East Punjab G Urban Rent Restriction (Extension to Chandigarh) Act, 1974 or the amendment made to the said Act in the year 1982. The Rent Controller, after a thorough examination of evidence on record, allowed the eviction petition by the judgment and order dated 16.9.1999 and the said order was affirmed in appeal by the Appellate Authority on 16.11.2000. During the pendency of the appeal the original tenant O.P. Vij died and his legal heirs including the present H appellant Rakesh Vij, who is his son, were substituted in his place. Rakesh

Vij then preferred a revision under Section 15(5) of the 1949 Act in the High Court, but the same was dismissed on 20.12.2000. A

3. The principal submission made by Shri Ashwani Chopra, learned senior counsel for the appellant, is that eviction of a tenant on the ground of *bona fide* requirement of the landlord is not provided for in the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 and also after the amendment of the said Act in 1982 and, therefore, the eviction petition filed by the respondent landlord wherein he had sought eviction of the appellant's father, who was the sitting tenant, was not maintainable and the view taken by the Rent Control Authorities and also by the High Court is erroneous in law. B C

4. Shri Sudhir Chandra, learned senior counsel for the respondent has, on the other hand, submitted that on a correct interpretation of the provisions of the enactment applicable to Chandigarh a landlord can seek eviction of a tenant on the ground of his *bona fide* requirement and the contention to the contrary raised by the learned counsel for the tenant is wholly erroneous in law. D

5. In order to appreciate the controversy raised it is necessary to set out the relevant provisions of the concerned enactments. The main enactment wherein restrictions were imposed on the increase of rent of certain premises situated within the limit of urban areas and the eviction of tenants therefrom is the East Punjab Urban Rent Restriction Act, 1949, which was published in the East Punjab Gazette on 25.3.1949. Section 2 of this Act gives the definitions and sub-sections (d), (f) and (g) thereof are being reproduced below: - E

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

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

Provided that residence in a building only for the purpose of guarding it shall not be deemed to convert a "non-residential building" to a "residential building"; G

(f) "rented land" means any land let separately for the purpose of being used principally for business or trade;

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

A residential building."

Section 13 of this Act deals with eviction of tenants. Section 13(1) and the relevant portion of Section 13(3)(a), which have a bearing on the controversy in hand, are being reproduced below: -

B "13. *Eviction of tenants,* - (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section.

C (2) .....

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

(i) in the case of a residential or a scheduled building if -

D (a) he requires it for his own occupation;

(b) he is not occupying another residential or a scheduled building as the case may be in the urban area concerned; and

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

(ii) in the case of a non-residential building or rented land, if -

(a) he requires it for his own use;

F (b) he is not occupying in the urban area concerned for the purpose of his business any other such building or rented land, as the case may be and

(c) he has not vacated such a building or rented land without sufficient cause after the commencement of this Act, in the

G urban area concerned."

The aforesaid 1949 Act was amended by the East Punjab Urban Rent Restriction (Amendment) Act, 1956 (for short "Amendment Act, 1956"), which was published in Gazette on 24.9.1956 and the provisions thereof, which are relevant for the decision of the present case, are being reproduced below:

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"2. *Amendment of section 13 of East Punjab Act III of 1949.* - In clause (a) of sub section (3) of section 13 of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as the principal Act -

(i) (a) In sub clause (i), the words "or a scheduled" shall be omitted.
(b) In sub-paragraph (b), the words "or a scheduled" and the words "as the case may be" shall be omitted.

(ii) (a) In sub-clause (ii) the words "a non-residential building or" shall be omitted.

(b) In sub-paragraph (b), the words "building or" and the words "as the case may be" shall be omitted.

(c) In sub-paragraph (c), the words "a building or" shall be omitted."

As a result of the amendment made by the Amendment Act, 1956 the relevant provisions of the East Punjab Urban Rent Restriction Act, 1949 read as under: -

"13. *Eviction of tenants* - (1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1949, as subsequently amended.

(2) .....

(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 ....
(Omitted as not relevant)

(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

A after the commencement of this Act, in the urban area concerned.

....."

It will be seen that as a result of the amendment effected by the Amendment Act, 1956 the landlord could only seek eviction of a tenant from B a residential or scheduled building or rented land, but was completely deprived of his right to seek eviction of a tenant from a non-residential building even if he required it for his own use.

6. As a result of reorganization of the State of Punjab by Punjab C Reorganization Act, 1966, Chandigarh was carved out as a Union Territory with effect from 1.11.1966. The Central Government issued a Notification on 13.10.1972 by which East Punjab Urban Rent Restriction Act, 1949 was made applicable to the Union Territory of Chandigarh with effect from 4.11.1972. The validity of this Notification was challenged and a Full Bench of Punjab and Haryana High Court in *Dr. Harkishan Singh* v. *Union of India and Ors.*, D AIR (1975) P&H 160, declared the Notification to be invalid. The result of this decision was that East Punjab Urban Rent Restriction Act, 1949 ceased to be applicable to the Union Territory of Chandigarh. Thereafter, the Parliament enacted the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 (for short "Chandigarh Extension Act"), which was published in E Gazette on 20.12.1974. It is a short Act consisting of only 4 Sections and a Schedule. Sections 1, 2 and 3 of this Act read as follows: -

"1. *Short title.* - This Act may be called the East Punjab Urban Rent Restriction Act (Extension to Chandigarh) Act, 1974.

F 2. *Definition.* - In this Act "the Act" means the East Punjab Urban Rent Restriction Act, 1949 as it is extended to, and was in force in, certain areas in the pre-reorganization State of Punjab (being areas which were administered by municipal committees, cantonment boards, town committee or notified area committee or areas notified as urban areas for the purposes of that Act) immediately before the 1st day of G November, 1966.

3. *Extension of East Punjab Act III of 1949 to Chandigarh.*- Notwithstanding anything contained in any judgment, decree or order of any court, the Act shall, subject to the modifications specified in the Schedule, be in force in, and be deemed to have been in force with

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effect from the 4th day of November, 1972 in the Union Territory of Chandigarh, as if the provisions of the Act as so modified had been included in and formed part of this section and as if this section had been in force at all material times." A

Section 4 makes provisions for validation and savings of any judgment, decree or order passed by any court under the 1949 Act and the Schedule B makes some minor modifications whereunder it is provided that for "State Government" occurring in the 1949 Act "Central Government" shall be substituted and definition of "Urban Area" has been given, which means the area comprised in the Union Territory of Chandigarh and makes further provision empowering the Central Government to declare any area in the said territory C having regard to the density of the population and the nature and extent of the accommodation available to be urban for the purposes of this Act.

7. Thereafter, the Parliament enacted the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 (for short "1982 Act"), which also consists of only 4 sections. Sections 2 and 3 of this Act are being D reproduced below: -

"*Amendment of Section 1.* - In the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act III of 1949), as in force in the Union Territory of Chandigarh (hereinafter referred to as the Principal Act), in section 1, in sub-section (1), for the words "East Punjab", the word E "Punjab" shall be substituted.

3. *Amendment of Section 2.* - In section 2 of the principal Act, for clause (d), the following clause shall be substituted, namely: -

(d) "non-residential building" means F

(i) a building being used solely for the purpose of business or trade;

(ii) a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence.

Explanation.—For the purposes of this clause, residence in a building G only for the purpose of guarding it, shall not be deemed to convert a "non-residential building" to a "residential building".

Section 4 makes provisions for pending cases, which is not relevant for the purpose of the present case. The important amendment brought about by H

A this Act is that a "non-residential building" would also mean a building let under a single tenancy for use for the purpose of business or trade and also for the purpose of residence. It appears that there are many such buildings in Chandigarh where the ground floor is used as a shop and the first floor is used for residential purpose and they are known as Shop-cum-Flats (SCF). The premises in dispute in the present case is a Shop-cum-Flat and, therefore, B as a result of the aforesaid amendment brought about by the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 it became a non-residential building.

8. To complete the chain of events it is necessary to take note of C another development, which is of great significance. The constitutional *vires* of the East Punjab Urban Rent Restriction (Amendment) Act, 1956 was challenged and the same was held to be *ultra vires* and was struck down by this Court in *Harbilas Rai Bansal* v. *State of Punjab and Anr.*, [1996] 1 SCC 1. The judgment in this case was delivered on 5.12.1995. After a thorough examination of the provisions of the aforesaid Act the Court recorded its D conclusion as under in paragraphs 13, 17 and 18 of the reports: -

> "13. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a E view to restrict the increase of rents and to safeguard against the *mala fide* eviction of tenants. The Act, therefore, initially provided—conforming to its objects and reasons—*bona fide* requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the F amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the *bona fide* requirement of the landlord would not cause any hardships to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he *bona fide* requires the premises for his personal use G and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he *bona fide* needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the H widow may not need the shop for quite some time. She may like to

let out the shop till the time her children grow-up and need the premises for their personal use. It would be wholly arbitrary—in a situation like this—to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises.

17. In *Gian Devi's* case [1985] 2 SCC 683 the question for consideration before the Constitution Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The above quoted observations were made by the Bench keeping in view that hardship being caused to the landlords of commercial premises who cannot evict their tenants even on the ground of *bona fide* requirement for personal use. The observations of the Constitution Bench that *"bona fide* need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial" fully support the view we have taken that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of Article 14 of the Constitution of India and are liable to be struck-down.

18. We allow the appeal, set aside the impugned judgment of the High Court, declare the above said provisions of the amendment as constitutionally invalid and as a consequence restore the original provisions of the Act which were operating before coming into force of the amendment. The net result is that a landlord - under the Act - can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use. The parties to bear their own costs."

In view of the above quoted conclusions of this Court the position of law, which emerges, is that a landlord can seek eviction of a tenant on the ground of his own use both from residential and also non-residential building under the East Punjab Urban Rent Restriction Act, 1949.

A 9. Now, we turn to the main controversy involved in the present case where the landlord has sought eviction of his tenant from a Shop-cum-Flat on the ground of his own use. As shown earlier as a result of the East Punjab Urban Rent Restriction (Chandigarh Amendment) Act, 1982 a Shop-cum-Flat let under a single tenancy would be a 'non-residential building". The question, which arises for consideration is, whether in the Union Territory of Chandigarh B a landlord can seek eviction of a tenant from a non-residential building on the ground of his own use. Shri Ashwani Chopra, learned senior counsel for the tenant has submitted that the Parliament enacted the Chandigarh Extension Act, 1974 and this Act made the East Punjab Urban Rent Restriction Act, 1949 applicable to the Union Territory of Chandigarh. At the time when the C Parliament enacted this Chandigarh Extension Act, 1974, which was published in Gazette on 20.12.1974, factually the East Punjab Urban Rent Restriction Act, 1949 did not contain any provision whereunder a landlord could have sought eviction of a tenant from a non-residential building on the ground of his own use on account of the amendment made to it by the Amendment Act, 1956 by which the words "a non residential building or" occurring in Section D 13(3)(a)(ii) of the 1949 Act had been omitted. Consequently in the Union Territory of Chandigarh a landlord has no right to seek eviction of a tenant from a non-residential building on the ground of his own use as there exists no provision to that effect in the law applicable thereto.

E 10. Shri Sudhir Chandra, learned senior counsel for the landlord-respondent, has submitted that in the case of *Harbilas Rai Bansal* (supra), this Court declared the provisions of the Amendment Act, 1956, as constitutionally invalid being violative of Article 14 of the Constitution and consequently void in view of clause (2) of Article 13 of the Constitution. Since the provisions of the Amendment Act, 1956 have been found to be F void, the result, which would follow, would be as if the said Amendment Act, 1956, never came into existence and, therefore, by virtue of Sections 2 and 3 of the Chandigarh Extension Act what the Parliament made applicable to the Union Territory of Chandigarh was the East Punjab Urban Rent Restriction Act, 1949, as it existed prior to its amendment by the Amendment Act, 1956, which contained a provision whereunder a landlord could seek eviction of a G tenant from a non-residential building on the ground of his own use.

11. We find sufficient force in the contention raised by the learned counsel for the respondent-landlord. In *Harbilas Rai Bansal* (supra), this Court held in very clear terms that the classification created by the Amendment H Act, 1956, by which the words "a non residential building or" occurring in

Section 13(3)(a)(ii) were deleted and certain other amendments had been made, had no reasonable nexus with the object sought to be achieved by the Act and consequently the provisions of the Amendment Act were violative of Article 14 of the Constitution. The amendments made were thus struck down. Clause (2) of Article 13 of the Constitution says that the State shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution and any law made in contravention of this clause shall, to the extent of the contravention, be void. The real effect and import of this constitutional prohibition contained in clause (2) of Article 13 of the Constitution has been considered and examined in two Constitution Bench decisions of this Court. In *Deep Chand etc.* v. *The State of Utta: Pradesh and Ors.*, AIR (1959) SC 648, Subba Rao, J. (as His Lordship then was) held as under in paragraph 13 of the reports: -

> "13. .....A Legislature, therefore, has no power to make any law in derogation of the injunction contained in Article 13. Article 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void. The clause, therefore, recognizes the validity of the pre-Constitution laws and only declares that the said laws would be void thereafter to the extent of their inconsistency with Part III; whereas clause (2) of that Article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. There is a clear distinction between the two clauses. Under clause (1), a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III; whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception. If this clear distinction is borne in mind, much of the cloud raised is dispelled. When clause (2) of Article 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions; nor can we appreciate the argument

A that the words "any law" in the second line of Article 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound. The words "any law" in that clause can only mean an Act passed or
B made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; *the law made in spite of the prohibition is a still-born law."*

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(emphasis supplied)

The same question was considered by another Constitution Bench in *Mahendra Lal Jaini* v. *The State of Uttar Pradesh and Ors.,* AIR (1963) SC 1019, where Wanchoo, J. (as His Lordship then was) speaking for the Court
D said as under in paragraph 22 of the Reports: -

"22. ..... Further, Art. 13(2) provides that the law shall be void to the extent of the contravention. Now contravention in the context takes place only once when the law is made, for the contravention is of the prohibition to make any law which takes away
E or abridges the fundamental rights. There is no question of the contravention of Art. 13(2) being a continuing matter. Therefore, where there is a question of a post-Constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of
F this clear provision, it must be held that unlike a law covered by Art. 13(1) which was valid when made, the *law made in contravention of the prohibition contained in Art. 13(2) is a still-born law* either wholly or partially depending upon the extent of the contravention. *Such a law is dead from the beginning* and there can be no question
G of its revival under the doctrine of eclipse....."

(emphasis supplied)

These two Constitution Bench decisions clearly lay down that having regard to the prohibition contained in clause (2) of Article 13 of the Constitution
H any law made in contravention of Part III of the Constitution would be a

stillborn law and such a law is dead from the very beginning. A law, which is stillborn and is dead right from its inception, cannot at all be taken notice of or read for any purpose whatsoever. A

12. Section 2 of the Chandigarh Extension Act defines the words "the Act" as the East Punjab Urban Rent Restriction Act, 1949 as it is extended to, and was in force in certain areas in the pre-reorganization State of Punjab immediately before the first day of November, 1966. In view of Section 3 of the Chandigarh Extension Act "the Act", which would mean the East Punjab Urban Rent Restriction Act, 1949 as extended to and was in force will be deemed to have been in force in the Union Territory of Chandigarh with effect from 4th day of November, 1972. The words "as it extended to and was in force in" are very significant. Though as a matter of fact certain amendments had been made to East Punjab Urban Rent Restriction Act, 1949 by the Amendment Act, 1956, whereby Section 13(3)(a)(ii) had been amended and the words "non-residential building" occurring therein had been deleted, but the said amendment having been found to be violative of Article 14 of the Constitution and having been struck down cannot be taken notice of or read as the amendment itself was stillborn and dead from the very inception. Therefore, what the Parliament extended and applied to the Union Territory of Chandigarh by means of Chandigarh Extension Act was the East Punjab Urban Rent Restriction Act, 1949 as it existed prior to its amendment by the Amendment Act, 1956. Something which was stillborn or dead from the very inception cannot be read in "the Act", as Section 3 does not say anything except to make the 1949 Act applicable to the Union Territory of Chandigarh with effect from the 4th day of November, 1972. B C D E

13. It may be noticed that the Chandigarh Extension Act simplicitor, or if read in isolation, would carry no meaning and would be wholly ineffective. In order to make this Act effective and workable one has to necessarily read "the Act", viz., the East Punjab Urban Rent Restriction Act, 1949. The important words in Section 3 of the Chandigarh Extension Act are "the Act shall be-in force in and be deemed to have been in force with effect from 4th day of November, 1972 in the Union Territory of Chandigarh" and as if this Section had been in force at all material times, though the Chandigarh Extension Act was published in the Gazette on 20.12.1974. This Section not only made the 1949 Act applicable to the Union Territory of Chandigarh but gave it retrospective effect from 4th November, 1972 by virtue of the deeming provision. It is well known principle of interpretation of statute that full effect must be given to a statutory fiction and it should be carried to its logical conclusion. F G H

A In view of the mandate contained in clause (2) of Article 13 of the Constitution Section 3 of the Chandigarh Extension Act cannot be interpreted to mean that the Parliament while extending and applying the East Punjab Urban Rent Restriction Act, 1949 to the Union of Territory of Chandigarh also applied those provisions which were stillborn or were dead from the very inception. The mandate of Article 13(2) of the Constitution will equally apply to the B Parliament when it is functioning as a Legislature for making an Act. The Parliament cannot be deemed to have taken into consideration something which was stillborn or dead.

14. Learned counsel for the appellant-tenant has next submitted that at C the time when the Chandigarh Extension Act, 1974 was enacted, the judgment in the case of *Harbilas Rai Bansal* (supra) had not been rendered and the Parliament had before it the text of East Punjab Urban Rent Restriction Act, 1949 as it stood after its amendment by the Amendment Act, 1956 by which in Section 13(3)(a)(ii) the words "non residential building or" had been deleted. Naturally, therefore, the Parliament applied its mind to the said enactment D (1949 Act) which did not contain any provision regarding eviction of a tenant from a non-residential building and extended the same to the Union Territory of Chandigarh. Learned counsel has also submitted that in order to interpret the provisions of the Act the Court must look to the intention of the Parliament and having regard to the factual scenario then existing, namely, that at the time of passing of the Chandigarh Extension Act in the year 1974, the 1949 E Act stood amended by the Amendment Act, 1956, it is not possible to hold that the Parliament also intended to give a right to a landlord to seek eviction of a tenant from a non-residential building on the ground of his own use. In our opinion, it is not possible to interpret Sections 2 and 3 of the Chandigarh Extension Act in the manner suggested by the learned counsel for the tenant F as it is based upon the supposed intention of the Parliament. In Maxwell on The Interpretation of Statutes (Twelfth edition - 1969) on page 28 it is said that the primary rule is to give literal construction and if there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. In Chapter 2, page 28, the principle has been stated thus: - G

> "The rule of construction is "to intend the Legislature to have meant what they have actually expressed". The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used," for "it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament H

cannot make the law"." A

15. In *State of Haryana and Ors* v. *Ch. Bhajan Lal and Ors.,* AIR (1992) SC 604 in paragraph 42, this Court quoted with approval the following passage from the judgment of Lord Atkin in *Pakala Narayanaswami* v. *Emperor,* AIR (1939) PC 47: -

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> "When the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions ..... It, therefore, appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or accused."

C

In *Emperor* v. *Benoari Lal Sarma and Ors.,* AIR (1945) PC 48, Lord Chancellor Viscount Simon said, "In construing enacted words the Court is not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used." Therefore, any supposed intention of the Parliament cannot be taken into consideration for interpretation of the Chandigarh Extension Act, 1974. D

16. Learned counsel for the appellant has laid emphasis on the Statement of Objects and Reasons of the Amendment Act, 1956, which says that the provisions whereunder tenants of commercial premises can be evicted on the ground of personal requirements of the landlord entail a great hardship on such tenants and the provision allowing eviction on the ground of personal use has been misused by certain landlords and, therefore, it was considered necessary that the tenants of non-residential property in Punjab should be placed at par with tenants of such property in Delhi and other urban areas covered by the Delhi-Ajmer Act. It has thus been submitted that the Parliament while enacting the Chandigarh Extension Act, 1974 must have had this object in mind when it extended the East Punjab Urban Rent Restriction Act, 1949 to the Union Territory of Chandigarh with effect from 4.11.1972. In our opinion it will not be proper to interpret the provisions of Chandigarh Extension Act by taking into consideration the Objects and Reasons of another Act and the supposed intention or notions of the law makers. It will be apt to quote here what S.R. Das, J. (as His Lordship then was) said while speaking for a Constitution Bench in *Rananjaya Singh* v. *Baijnath Singh and Ors.,* AIR (1954) SC 749: - E F G

> "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition H

A to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court."

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This being the position of law, it will not be proper to take into consideration the Statement of Objects and Reasons of the Amendment Act, 1956 for interpreting the provisions of Chandigarh Extension Act.

17. Learned counsel for the appellant has lastly submitted that the C provisions of the 1949 Act have been incorporated into the Chandigarh Extension Act and, therefore, the provisions of the said Act, as they textually stood on 20.12.1974, became part and parcel of the later Act (Chandigarh Extension Act) and consequently the amendment made to the said Act by the Amendment Act, 1956 have to be taken into consideration and cannot be D ignored while examining the applicability of 1949 Act to the Union Territory of Chandigarh. The submission is that it is a case of incorporation, which means that if a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that is to write those Sections into the new Act as if they had been actually written in it with pen and ink or printed in it. The result thereof is to constitute the latter Act along with the E incorporated provisions of the earlier Act, an independent legislation, which is not modified or repealed by a modification or repeal of the earlier Act.

18. Shri Sudhir Chandra, learned senior counsel for the respondent-landlord has, however, submitted that the principle embodied in legislation by incorporation or legislation by reference can have no application here as the F said principle has relevance only in the case of amendment or repeal of an Act. According to the learned counsel as the effect of an amendment or repeal of the Act does not arise for consideration here, it will not be proper to apply the principle governing the cases of legislation by incorporation for the purpose of finding out the real import of Chandigarh Extension Act.

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19. Adopting or applying an earlier or existing Act by competent Legislature to a later Act is an accepted device of Legislation. If the adopting Act refers to certain provisions of an earlier existing Act, it is known as legislation by reference. Whereas if the provisions of another Act are bodily lifted and incorporated in the Act, then it is known as legislation by

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incorporation. The determination whether a legislation was by way of incorporation or reference is more a matter of construction by the courts keeping in view the language employed by the Act, the purpose of referring or incorporating provisions of an existing Act and the effect of it on the day-to-day working. Reason for it is the courts' prime duty to assume that any law made by the Legislature is enacted to serve public purpose.

20. In *State of Madhya Pradesh* v. *M.V. Narasimhan,* AIR (1975) SC 1835, after review of several earlier decisions, the following principle was enunciated: -

> "Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases :
>
> (a) where the subsequent Act and the previous Act are supplemental to each other;
>
> (b) where the two Acts are in *pari materia*;
>
> (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual; and
>
> (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

21. The same question was examined in considerable detail in *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam and Anr.,* [1998] 2 SCC 467, where a three Judge Bench of this Court considered the effect of Section 55 and Schedule of U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, which makes a reference to the provisions of the Land Acquisition Act and has laid down that any land or interest therein required by the Parishad for any of the purposes of the Adhiniyam may be acquired under the provisions of Land Acquisition Act, which for this purpose has to be subject to the modifications specified in the Schedule of the Adhiniyam. This Court, after referring to large number of earlier decisions, laid down the following principle in paragraph 17 of the report : -

> "17. A subsequent legislation often makes a reference to the earlier

A legislation so as to make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the B later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the C earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statue which has been so incorporated that is made D after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statue which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation. In the words of Lord E Esher, M.R., the legal effect of such incorporation by reference "is to write those sections into the new Act just as if they had been actually written in it with the pen or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all." [See: Wood's Estate, Re, (1886) 31 Ch D 607 at p. 615]. As to whether a particular legislation falls in the category of F referential legislation or legislation by incorporation depends upon the language used in the statute in which reference is made to the earlier legislation and other relevant circumstances."

In our opinion, the principle of law underlying legislation by incorporation or legislation by reference has not much relevance in the present G case. We do not have to examine the effect of any amendment or repeal of any enactment. Section 3 of the Chandigarh Extension Act makes the East Punjab Urban Rent Restriction Act, 1949, subject to the modification specified in the Schedule, applicable to the Union Territory of Chandigarh with effect form 4.11.1972. It is not a case where any specific section or provision of the H 1949 Act may have been made applicable, but the provisions of the entire

1949 Act have been extended and made applicable to the Union Territory of Chandigarh. It is in fact a case of extension of an Act to a territory to which it was previously not applicable.

22. This very question, namely, whether the 1949 Act was incorporated in the Chandigarh Extension Act came up for consideration before this Court in *M/s. Punjab Tin Supply Co., Chandigarh* v. *Central Government and Ors* AIR (1984) SC 87, and Venkataramiah, J. (as His Lordship then was) held as under: -

> "8. The Extension Act merely brought into force with effect from November 4, 1972, the Act which was an Act in force in the former State of Punjab with the modifications set out in its Schedule in the Union Territory of Chandigarh and validated all actions taken, notifications issued and orders made or purported to have been taken, issued or made under the Act. Having done that it withdrew from the scene. Thereafter the Act as modified by the Extension Act alone has to be looked into to consider its effect on the Union Territory of Chandigarh. As observed by this Court in *Rajputana Mining Agencies Ltd.* v. *Union of India,* [1961] 1 SCR 453 at p. 457 "there is neither precedent nor warrant for the assumption that when one Act applies another Act to some territory, the latter Act must be taken to be incorporated in the former Act. It may be otherwise, if there were words to show that the earlier Act is to be deemed to be re-enacted by the new Act". The Act in the instant case was only extended but not re-enacted. We should, therefore, proceed on the assumption that the Act itself with the amendments was in force with effect from November 4, 1972 in the Union Territory of Chandigarh."
>
> (In this judgment East Punjab Urban Rent Restriction Act, 1949 has been referred to as "the Act" and East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 has been referred to as the "Extension Act" see paras 1 and 3.)

It is, therefore, not possible to accept the submission of the learned counsel for the appellant that the 1949 Act was incorporated in the Chandigarh Extension Act.

23. The ultimate question is what is "the Act". For ascertaining the meaning of the words "the Act" we have to refer back to Section 2, *viz.,* the East Punjab Urban Rent Restriction Act, 1949 and the provisions of this 1949

A Act have to be seen and examined as they stood on the date when the eviction petition was filed or till the continuance of the litigation culminating in the final judgment. On the date when the eviction petition was filed or at any stage subsequent thereto including the date when the matter was heard and is being decided by this Court, it is not possible to read the East Punjab Urban Rent Restriction Act, 1949 in a manner in which it was amended by the B Amendment Act, 1956 but has to be read as it originally stood which contained a provision giving right to a landlord to seek eviction of a tenant from a non residential building on the ground of his own use. This is so because in *Harbilas Rai Bansal* (supra) the provisions of the Amendment Act, 1956 were held to be violative of Article 14 of the Constitution and were struck down. C Therefore, read in any manner the inevitable consequence is that the words "the Act" occurring in Section 2 of the Chandigarh Extension Act has to be read as the East Punjab Urban Rent Restriction Act, 1949 as it stood before the Amendment Act, 1956. The result that follows is that in the Union Territory of Chandigarh it is open to a landlord to seek eviction of a tenant from a non residential building on the ground of his own use.

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24. Apart from what has been said above, the Act has to be interpreted in a just and equitable manner. To completely deprive a landlord of his right to seek eviction of a tenant from a non residential building even on the ground of his own use for all times to come would be highly unjust and E inequitable to him.

25. In the present case the Rent Controller and the Appellate Authority have recorded concurrent finding of fact that the respondent landlord *bona fide* needs the premises in question for his own use and this finding has been affirmed in revision by the High Court. In this view of the matter we do not F find any illegality in the impugned orders. The appeal is accordingly dismissed with costs. The appellant-tenant is granted six months time to vacate the premises subject to his filing the usual undertaking within one month.

Writ Petition (Civil) No. 234 of 2003

G Raminder Pal Singh Sethi ....Petitioner

v.

Union of India and Anr. ....Respondents

In this writ petition filed under Article 32 of the Constitution following H prayers have been made: -

"(i) Issue a writ of *certiorari* striking down the provisions of Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974 on the ground of the same being *ultra vires* Article 14 of the Constitution of India; and A

(ii) declare that under the East Punjab Urban Rent Restriction Act, 1949 as extended to Chandigarh vide East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974, ejectment of tenant on *bona fide* ground can be made both in case of residential building as well as non-residential building; B

(iii) pass such other order(s) as this Hon'ble Court may deem fit and proper." C

In Civil Appeal No. 2894 of 2001, we have held that under East Punjab Urban Rent Restriction Act, 1949, as extended to Chandigarh by East Punjab Urban Rent Restriction (Extension to Chandigarh) Act, 1974, a landlord can seek eviction of a tenant from a non-residential building on the ground of his own use. In this view of the matter, we do not consider it necessary to D adjudicate the pleas raised in the writ petition as substantive relief has already been granted to the writ petitioner. The writ petition and the I.As. moved therein are disposed of.

Civil Appeal Nos. 7049/2001, 3551/2002, 7920-7921/2002 and Special Leave Petition (Civil) No. 20444/2001 E

In all these matters the Rent Controller and the Appellate Authority have recorded concurrent finding of fact that the landlord *bona fide* requires the premises for his own use and this finding has been affirmed in revision by the High Court. For the reasons given in Civil Appeal No. 2894 of 2001, there is no merit in the civil appeals and the special leave petition, which are F hereby dismissed with costs. The tenants are given six months time to vacate the premises subject to their filing usual undertaking within one month.

V.S.S. Appeals and SLP dismissed.
Writ Petition disposed of.