CHAPTER V

EVICTIE ON THE TENANT ON
THE GROUNDS OF:

(a) ACTS OF THE TENANT WHICH MATERIALLY IMPAIR
    THE VALUE OR UTILITY OF RENT PREMISES

(b) NUISANCE

(c) NON-OCCUPANCY

(d) DELAPIDATION
EVICTION OF THE TENANT ON THE GROUNDS OF

(a) ACTS OF THE TENANT WHICH MATERIALLY IMPAIR THE VALUE OF UTILITY OF RENT PREMISES
(b) NUISANCE
(c) NON-OCCUPANCY
(d) DELAPIDATION

In this Chapter, we shall take up for a brief discussion the following grounds for the eviction of a tenant:

(a) Acts of the tenant which materially impair the value or utility of the rented premises
(b) Nuisance
(c) Non-occupancy
(d) Delapidation

Chandigarh, being a completely new city, and the construction of buildings being regulated under the bye-laws of the Capital Project, there are no cases on the ground of delapidation. Leaving aside a few cases in the town of Mani Majra (Notified Area Committee) which falls within the jurisdiction of Chandigarh Session's Division, there is not even a single case on the ground of delapidation from the city. In the course of the survey, no case could be located exclusively on the ground of non-occupancy. The reason for this was found to be that a tenant of residential as well as commercial premises prefers to induct another person rather than leaving the premises unused. The tenants know that at best the landlord will ask for the eviction of the sub-tenant on the ground of sub-letting. It will take the landlord more than fifteen
years to evict the sub-tenant if he succeeds in establishing the sub-tenancy. Thus, when a premises is no more required by a tenant, instead of locking it, he will induct a sub-tenant for a premium. The premium factor was mainly noticed in case of commercial properties.

Some cases of nuisance as a ground for the eviction of the tenants were noticed. But in all these cases, the eviction of the tenant was sought on other grounds as well. Not even a single case could be located in the course of the survey where eviction of a tenant was sought exclusively on the ground of nuisance. Our survey reveals, that cases of nuisance on the part of the tenant are handled by the landlords with the help of the police. Since the law provides for apprehending of an accused with the charge of nuisance, the landlords prefer to have recourse to the police rather than the Rent Controller. In most of such cases, they succeed in evicting their tenants with the help of police.

Cases of eviction on the ground of material impairment to the value of the property were found to be mainly about non-residential properties. Here too the ground of alterations impairing the value of the premises was found to be invoked along with some other grounds like non-payment of rent, change of user etc. In case of
commercial premises, whenever a tenant will have some shift in his business, some alterations have to be made commensurate with the new business. The landlord then seeks eviction on the grounds of change of user and material alterations. There were very few cases for eviction of a tenant of residential building on the ground of material impairment of the value of the property.

These grounds are being discussed in this Chapter mainly to focus on their significance in other areas of Punjab where the Act applies. Non-discussion of these grounds due to the paucity of cases from Chandigarh would have created the fallacious impression that these grounds are redundant for all times. Since the Act applies to Chandigarh in its entirety it was thought proper that these provisions and their implications are given the consideration they deserve.

In the face of the virtual non-existence of case law on these grounds from Chandigarh the discussion revolves around the cases from other areas where the Act applies. The ground reality which is generally reflected through the case law is minimal in relation to these four grounds in the context of Chandigarh.
Impairing the Value or Utility:

Section 13(2)(iii) dealing with impairing in value or utility of the building or rented land as a ground for the eviction of the tenant reads: that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land.

The purpose of this ground apparently is to ensure that the tenant must refrain from doing such acts which in the ultimate analysis will adversely affect the value or utility of the building or rented land. To 'impair' is to diminish or reduce in quality value or strength of a thing. The word 'impair' means "to make worse; diminish in quantity, value, excellence or strength: do harm to." Impair seems to be in regard to injure as the species to the genus: what is impaired is injured but what is injured is not necessarily impaired. To impair is to injure in a lasting manner so that the detriment though partial is permanent and can reduce the quality or quantity.

Impairment of the building per se is not enough, because it is used in the provision along with the term material. "Materially" as an adverb means "to a significant extent or degree, with regard to material cause." Thus all impairments cannot be held to be

2. Ibid p. 1397.
material. Only those are material which in one way or the other affect the value or utility to a significant extent or degree.

Before ordering ejectment on this ground the Rent Controller has to be satisfied that the tenant has committed such acts as are likely to impair materially either the value of the rented land or the utility of the building. If a landlord succeeds in proving one of these two grounds he can get his tenant evicted. However the landlord will have to prove only the material facts and the inference as to whether the value or utility of the building has been impaired has to be drawn by the court upon the facts proved by the landlord. It is necessary that certain objective standards are set before a tribunal or court, engaged in the adjudication of rights of parties, decisively concludes that the act complained of is or has to be characterised as one impairing materially the value or utility of the building. Mere rendering of subjective opinion may not be of any avail unless such opinion is duly supported by expert evidence. What is contemplated in the provision is the lowering of the economic value of the building and not a mere imaginary diminishing of utility, value or harm suffered subjectively by the landlord. The

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act of the tenant must be such which is significantly diminishing the utility or value of the building or endangering the safety, or shortening the period of its utility. It is not necessary that the damage is physical. If any act of the tenant leading to an addition or alteration is such that some or the other adverse effect on the value or utility of the building is bound to be there; it will bring the case within the mischief of the provision. If the additions/alterations are purely of a temporary nature and have been made by the tenant for the appropriate or comfortable use of the rented premises by him these will not be hit by section 13(2)(iii) of the Act. When a shop is let out to a photographer it is natural that the photographer will use a part of the shop for the purpose of washing his photographic material. The landlord cannot object to the construction of a small tank for collecting water or temporary construction of a separate cabin with artificial ceiling to be used as dark room.4

Whether a construction made by the tenant has materially impaired the value or utility of building is a question of fact. The impairment of the value and utility of the building is to be seen from the point of view of the landlord. Where the tenant converted a big room into two rooms by raising a partition wall which was partly

pucca (cemented) and partly wooden the tenant was held liable for eviction under the provision. Removal of doors by the tenant which can be refixed within a very short time was not held to have materially impaired the value or utility of the demised premises. But the inclusion of a verandah into the shop will constitute such structural change as will amount to an act materially impairing the utility of the premises. When the building was leased to the tenant for the purpose of running a hotel, the mere construction of an artificial wooden ceiling by him or making a few holes in the roof for letting out smoke were held not to be such material alterations as cannot be removed when the building is to be restored in the original position to the landlord.

Thus if the alterations made in the building by the tenant are of vital character which change the nature of building the case will be covered by section 13(2)(iii). But if the alterations are of a minor nature and have been made by the tenant for his comfortable living these will not fall in the ambit of this provision. In every case the courts have to determine as to what are the alteration and whether they are of such a material character which

is likely to impair the value or the utility of the building. It is also not necessary that while making alterations the tenant has to remove something from the rented structure so as to make a case under the provision. Even additions made by the tenant at his own cost may lead to an adverse effect on the utility or value of the rented premises. For instance, if a new room is constructed by the tenant on the roof of a single story house rented to him it would involve considerable expenditure on the part of the tenant, but it was held to be an act which materially impaired the value and utility of the house because the house has to be restored as it was rented out and, if the room has to be demolished, it will cause serious damage to the house.  

5.2 Failure of Tenant to Apply for Repair under Section 12 of the Act

If the landlord, after he has been approached by the tenant to repair the building, fails to do so the tenant must apply to the Rent Controller under Section 12 of the Act. If the tenant does not do so and his failure results in causing material impairment to the building the tenant shall be liable to be evicted. The tenant has no right to demolish a part of the building and then reconstruct

the same. He cannot step into the shoes of the landlord.

When during the pendency of an ejectment application filed on the ground that the building has become unsafe or unfit for human habitation the tenant carries out repairs and replaces a roof without first applying under section 12 of the Act it was held that he could not do so and would be liable for ejectment on the ground that the building had become unsafe or unfit for human habitation.9

Alterations with Permission of the Landlord

Where it was amply borne out by the evidence on the record that landlord had given express permission to the tenant to raise the wall at his own expenses which was to be adjusted in rent, it was deemed in law as if the landlord himself made the construction and thus there would arise no question of the tenant having impaired the value or utility of the rented premises.10

In case of Mrs. K. Atma Ram v. Kanwar Mohinder Singh11 the tenant had made unauthorised construction of a hutment in the backyard of the rented house which was

11. 1976 R.C.J. 326 B&S.
in contravention of the **Capital of Punjab Act** 1952. The landlord sought ejectment of the tenant under section 13(2)(iii). It was held that the unauthorised construction of that hutment set up in contravention of rules framed under the **Capital of Punjab Act** cannot alone by deemed to give rise to an inference that the value and utility of the main building had been impaired, unless and until it is shown that the construction of such a temporary hutment has impaired (and impaired materially) the value or utility of the demised building and it cannot be utilised by the landlord. It was further held that the temporary construction which is in contravention of the local bye laws may invite liability or prosecution to the person who has raised the same which is a matter quite extraneous to grounds of eviction as enumerated in the Rent Act.

In one case, it was established that the tenant had removed the two doors from a wall. He had removed rafters from wall and had instead placed lintel thereon. He had also constructed two walls on two sides of the verandah and these changes had caused cracks on the walls of the first floor. It was held that the case is clearly covered under section 13(2)(iii).\(^\text{12}\)

\(^\text{12}.\) *Dewan Chand v. Babu Ram* 1980(2) R.C.J. 615 P&N.
In Nandu Mai Durga Dass v. Lekh Raj\(^\text{13}\) the tenant demolished the varandah and started construction of a room but was stopped from doing so in consequence of an injunction obtained by the landlord from a civil court. Dismissing the revision of the tenant it was observed:

That the intention of the tenant howsoever laudable to reconstruct the building or part thereof in a much better manner is not the sine qua non for adjudging as to whether the utility or value of the building has been materially impaired or not. On the other hand the moment the tenant intentionally demolishes the building the cause of action accrues to the landlord to claim his eviction on the ground of material impairment. xxx

Indeed Rent Legislations are to be interpreted more for the benefit of the tenants but as the same time the Rent Act is not designed to give a free handle to the tenant to deal with the demised premises in whatever manner he wishes. In other words, the tenant cannot assume the role of a landlord.

In Roshanlal v. Dharam Pal\(^\text{14}\) allowing the revision petition of the tenant it was held that the landlord could only succeed if it can be proved that the construction of 'parchhatis' (artificial ceiling below a part of the roof) has materially impaired the value and utility of the demised premises. The tenant is carrying on hosiery business and the 'parchhatis' have been constructed by him for storing hosiery goods. A weight of about five to seven

\(\text{13. } \text{AIR 1981 P&H 150.}\)
\(\text{14. } 1985(1) \text{ R.C.J. 49 P&H.}\)
pounds has been placed on the walls because of these parchhatis. In the absence of any evidence about the manner in which the construction of 'parchhatis' has materially impaired the utility of the building no finding could be given that this construction has materially impaired the value and utility of the building.

The question relating to material alterations is considered at length by the Apex Court in Om Parkash v. Amar Singh. The Court has admitted that due to the 'vexed' character of the question it is not possible to give an exhaustive list of constructions which do not constitute material alterations as the determination of material alteration would depend on the facts of each case. Nevertheless, the Apex Court has laid down the following tests to determine whether the alterations made by the tenant adversely affect the rented premises so as to lead to the eviction of the tenant: (i) The tenant has made constructions/alterations without the consent/permission of the landlord. (ii) Constructions/alterations are major and substantial in nature as distinguished from minor and temporary alterations. (iii) Constructions/alterations so made have materially impaired the value or utility of the rented premises. (iv) In determining (iii) the court

must address itself to the nature/character of the constructions and the extent to which the same have been made giving full regard to the purpose for which the premises are let out to the tenant. (v) The viewpoint of the landlord and not of the tenant regarding utility/value of the building has to be kept in view.

Besides the above essentials, the Apex Court in its recent decision in the case of Vipin Kumar v. Roshan Lal Anand has further held that once the landlord proves the factum of alterations made by the tenant the Court could infer its adverse effects on the value and utility of the building keeping in view the nature of the alteration.

If the above norms laid down by the Apex Court from time to time are applied in their letter and spirit it is hoped that they would contribute in maintaining a balance between the interests of the tenants and those of the landlords.

5.4

Nuisance

Section 13(2) (iv) of the Rent Act incorporates nuisance created by the tenant as a ground for the eviction of the tenant. The provisions read:

that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood.

The word nuisance is derived from the French word *nuire* which means to hurt or to annoy. The term nuisance literally means annoyance. It could include any act or omission which causes injury, danger or offence to another. Nuisance means 'harm injury; an offensive, annoying unpleasant or abnoxious thing or practice; a cause or source of annoyance that although often a single act is usually a continuing or repeated invasion or disturbance of another's right'.

Any material interference with the ordinary comfort of existence would be nuisance. In *Heatley v. Beham* it was observed:

that the law in defining nuisance does not protect the fancies because the mere fancies of the people are not an element of the definition and does not give action in respect of that which is a matter only of delight and not of necessity.

The purpose of incorporating nuisance by the tenant as a ground of eviction evidently was to ensure that the tenant must use the premises as a man of ordinary prudence.

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would do. The tenant must refrain from doing any acts of commission or omission which would make other people in the same or adjoining building miserable and would upset the psychological balance of the neighbours. The test is not of an individual having facination for something in particular but that of a reasonable person.

A tenant can be guilty of nuisance if for example he does such acts whereby the premises start stinking keeps wild animals, abusing and quarrelling with landlord or neighbours, blocks the passage, plays music at a very high volume, carries on illegal activities such as drug trafficking, prostitution etc.

In Baij Nath v. Shanti Devi20 the tenant used the room for storing mobile oil and other petroleum products. This was done so carelessly that, as a result not only the walls of the house were drenched with oil but the oil seeped through the walls and reached the other side into the houses of neighbours damaging their walls and floors. It was held that the case is covered by section 13(2)(iv) of the Act leading to the eviction of the tenant.

A tenant had taken a house on rent and was using the premises as a brothel. The Calcutta High Court held

that the conduct of tenant in running a brothel and inviting people to visit that house is a conduct which is proximate cause of annoyance or nuisance. But when the landlady herself makes certain defective sanitary arrangements the tenant cannot be held liable for creating nuisance on the ground of any inconvenience caused to the neighbours as a result of such insufficient arrangement.

In Gaurishanker v. Bhikhalal the tenant who was already married allegedly brought his sister-in-law in the house. The tenant married his sister-in-law which was deemed to be illegal. Children were born to the sister-in-law of the tenant and there were often quarrels between the wife and the sister-in-law of the tenant. The Gujarat High Court held that these quarrels do not amount to nuisance.

It would remain a matter of controversy whether the conclusion arrived at by the learned judge in the above case is the correct one because it was on record in this case that the quarrels and use of abusive language was a daily affair between the two ladies. Such a behaviour could have an adverse effect on the children of the

23. AIR 1978 Guj. 72.
neighbours—the apprehension of which could be a cause of pressure on the parents i.e. the neighbours. It remains a matter of controversy whether causing such annoyance and inconvenience makes a fit case for eviction of the tenant on the ground of nuisance.

In *Pirthi Raj v. Sardara* the tenant encroached upon the vacant land adjoining the rented premises of the landlord and constructed a *kacha* room there. It was rightly held that the case is not covered under Section 3(2) IV of the Act because it was a separate question of trespass and had nothing to do with the tenancy in question.

Where a tenant was habitually indulging in quarrels, vulgar abuses, taking photographs of landlord's daughter, and writing innumerable letters and applications against the landlord to various persons all along, the Bombay High Court held that the accumulative effect of those factors is that the tenant is liable for eviction of the ground of nuisance.

In *Ghanshyam Singh v. Mahmur Rehman* the tenant had put the luggage and waste on the stair case thus

obstructing the landlord from exercising his rights as lessor. It was held to be a case of nuisance.

In Bhagwan Dass v. Kaushalya Devi a room in the front portion of the house was let out to carry the business of bicycle repairs. The landlady adduced sufficient evidence to the effect that the tenant had set up a welding plant in the premises and the gas released from welding was a health hazard for her children. The tenant blocked the passage to her house by parking cycles in front thereof, and when the landlady protested the tenant misbehaved and abused the landlady in the presence of her young daughters. J.V. Gupta J. (as he then was) upheld the eviction order against the tenant passed by the Rent Controller.

In Manohar Lal Mulwani v. The Punjab State Co-operative Bank the tenant was running a canteen in the premises let out by the bank. The tenant was alleged to have installed an exhaust fan. This fan was allegedly throwing dirty smell and smoke towards the hall making it impossible for the bank officials to sit and work there. It was held to be a clear case of nuisance and the eviction of the tenant was ordered.

27. AIR 1988 P&H 186.
In view of the fact that there are very few cases for seeking eviction of a tenant on the ground of nuisance, the above case was followed up in the course of field survey. The tenant told me that he had been running the canteen for the last thirty years or so in the demised premises. He said that initially the hall towards which the exhaust fan was operating was a store for keeping old records of the bank. It was at that time the fan was installed. With the increase in the business of the bank and the number of its employees this hall/store was put to use for seating the staff. The tenant was no more using coal as fuel and was making nominal use of L.P.G. for making tea. On being asked as to how he was continuing in possession of the premises after the decision of the High Court ordering his eviction the tenant said that he had filed a special leave petition in the Supreme Court which has been admitted and his dispossession has been stayed. The tenant has now installed a photocopy machine in the premises and the cooked eatable are brought to the premises and kept in hot cases. No fresh eatables are prepared at the premises. The bank management when contacted could not give their exact reaction because of the lack of complete information with them about the case. The only thing mentioned by the Managing Director was that they really needed the accommodation. I was also told that
the bank is involved in litigation under the Rent Act about many premises with it mostly as a tenant and in some cases as the present one as a landlord. The tenant is confident that the Apex Court will decide in his favour in view of the fact that he is not cooking eatbles in the premises any more. In fact he cannot use any such equipment which will have an adverse effect on his costly photocopying machine.

From the above discussion it emerges that whether an act of commission or omission by the tenant will amount to nuisance or not is essentially a question of fact. What is seen as nuisance in a particular case may not be seen as nuisance in another case. However, in adjudicating the disputes concerning nuisance, the test continues to be that of a reasonable person placed in those circumstances whether as a landlord or a tenant or a neighbour. If the tenant is indulging in only those activities which a reasonable person in those circumstances would normally be doing it will not make out the ground of nuisance against him. Therefore it is not merely an unusual conduct or behaviour which can be claimed as an instance of nuisance on the part of the tenant. As long as a tenant is not indulging in any activity which makes the lives of the neighbours difficult by causing them inconvenience or annoyance or which has adverse effect on
their health, morals etc. a case against him under section 13(2)IV is not likely to succeed.

5.5 Non-occupancy

Section 13(2)(V) reads: "that where the building is situated in a place other than a hill-station the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause".

The object of incorporating non-occupancy of the building as a ground for the eviction of the tenant is that when the tenant no more needs the rented premises the same could be made available to another. The rule under section 13(2)(v) is applicable to all types of buildings and rented land. After the reorganisation of Punjab in 1966 the first part of this clause relating to buildings situated at a hill station has become redundant."

In order to sustain an application for the eviction of the tenant under section 13(2)(v) two conditions are to be fulfilled: (1) that the tenant has ceased to occupy the building for a continuous period of four months and (2) that there was no reasonable cause of this non-occupancy.

The term 'occupy' means "to reside in as owner or tenant" while term occupancy means "the taking and holding
possession of real property under a lease or tenancy at will." Thus occupancy is not mere possession. It implies something more. It could mean the actual use of building. Mere presence of some goods or machinery in case of a non-residential building and that of furniture and household goods in case of a residential building will not mean the occupation of the premises by the tenant. The basic point in cases of non-occupancy shall be as to whether the purpose of creating the tenancy is in any way being served or not. If a non-residential building has been let out for doing a particular business or trade the landlord is well within his rights to expect from the tenant to make use of the premises as per the agreement. Similarly if a residential building is let out and the tenant simply locks it and goes away it goes contrary to the very purpose of the tenancy.

On the same pattern a provision under The Delhi-Rent Control Act 1958 makes use of the term 'residence'. In case of residence the tenant or any one of his family members has to be residing in the rented building. Whereas

30. Section 14(1)(d) reads: that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof.
in case of occupancy the premises must be continuously in use for the purpose for which the tenancy was created. The provision under The Delhi Act is confined only to residential building whereas section 13(2)(V) of the Punjab Act applies to any type of building and rented land. Under the Punjab Act use of rented premises is to be primarily made by the tenant continuously whereas under the Delhi Act the residence of mother, sister or brother when the tenant, his wife and children have moved out shall be a valid residence and would disentitle the landlord from seeking eviction. 31

In order to cease to occupy the leased premises it is not necessary that the tenant must completely vacate the premises and remove all his property therefrom. However if the tenant has not only kept his furniture in the building but also carries on though not regularly his business through his agent this would mean that he is still in occupation of the building. 32

Section 13(2)(v) covers a case where the premises are locked and have not been actually used for a period of over four months and does not cover a case where the premises are continuously in use though the tenant himself

does not stay there. Such a case could be covered by the
ground of subletting but not by the ground of non-
occupancy. Mere absence of the tenant from the premises
is not sufficient for making a case of non-occupancy.\textsuperscript{33}
Where the tenant had stopped his business for quite
sometime because he had shifted his business to another
place and the rented premises remained locked beyond the
prescribed limit the ground of non-occupancy was held to
be clearly made out and the tenant liable for eviction.\textsuperscript{34}

The term 'cease' is not defined in the Act. The
term 'cease' means "to leave off; bring to an end:
discontinue, terminate, come to an end".\textsuperscript{35} The term 'cease'
in case of tenancy could also mean "no more". When a
tenant is not making the use of the rented premises any
more it will be a situation where he has ceased to occupy
the premises.

In \textit{Sat Parkash v. Shiv Lal}\textsuperscript{36} Majithia J. held that
it is not enough for the landlord to prove that the tenant
has not used the rented premises for four months. He must
also prove that the tenant has discontinued the occupation

\begin{thebibliography}{1}
\bibitem{33} \textit{Balwant Singh v. Gurdial Singh} 1971 P.I.R. 1032.
\bibitem{34} \textit{Vora Rahim Bhai Haji Haranbhai Popat v. Vora Sunder Lal Mani Lal} AIR 1986 SC 174.
\bibitem{36} AIR 1991 P&H 199 at 201.
\end{thebibliography}
to terminate the tenancy for all intents and purposes. It was observed:

The legislature in its wisdom has allowed the landlord to seek eviction of the tenant on the ground that the latter has ceased to occupy the premises continuously for a period of four months without reasonable cause. The landlord has to prove that the tenant by his conduct has brought the tenancy to an end with that intention and discontinued the occupation of the demised premises. (emphasis added)

The High Court by the above decision introduced a new element i.e. the intention of the tenant to discontinue his occupation to make out a case under Section 13(2)(V). The above reading of the provision makes it practically impossible for a landlord to establish that for all intents and purposes the tenant has terminated the tenancy. The legislature has explicitly provided the conditions of (i) non-occupancy for a continuous period of four months, and (ii) without reasonable cause as grounds available to the landlord for the eviction of the tenant. The landlord is first to prove that there is the factum of non-occupancy for four months or more and then it is for the tenant to defend that non-occupancy by him was for a reasonable cause or justification. If the requirement of intention to discontinue is also to be proved by the landlord it will render the provision virtually non-available to him.
Reversing the decision of the High Court the Apex Court observed:

The High Court has held that the landlord has to prove that the tenant by his conduct has brought the tenancy to an end and with that intention discontinued the occupation of the demised premises and since this has not been done the applications have to be dismissed. The relevant clause of Section 13(2) of the Rent Act states that a tenant will be liable to eviction if he ceases to occupy the building for a continuous period of four months without reasonable cause. The section does not require the cession of tenancy in question. The only condition which has to be satisfied is the non user of the building for the requisite period. The principle underlying the provision is that if a premise is not required by the tenant it should become available to another person who may be in need thereof. The High Court therefore was clearly in error in assuming that unless the cession of the tenancy is proved eviction cannot be ordered.

(emphasis added)

From the above it emerges that it is not necessary that non-user of the premises by the tenant should be coupled with the fact of cession of the tenancy.

To make out a case of non-occupancy by the tenant, factors like non-consumption of water or electricity, non-payment of other municipal taxes

during that period, report of the Commissioner appointed by the Court for on the spot inspection of the premises, postal entries recorded by the postman as premises locked, shall be relevant to establish the non-occupancy by the tenant. Such factors if corroborated by oral evidence can lead to a reasonable conclusion that the tenant is guilty of non user of the rented premises. The landlord should normally specify the exact period of non-occupation of the building by the tenant in the ejectment application. However it has been held that the ejectment application should not be dismissed on the sole ground that the exact period was not specified by the landlord in the ejectment application unless the tenant can show that he was prejudiced on that account.\(^38\)

5.6 Reasonable Cause

The reasonable cause connotes sufficient reason or genuine reason. If the tenant could not occupy the premises for four months or more and there was a cause for it which was beyond the control of the tenant it will be a reasonable cause. In other words the issue is whether a reasonable person will cease to occupy the premises in circumstances similar to the one in which the tenant is placed.

Once it is proved by the landlord that the building in dispute remained closed and thus unoccupied by the tenant for a continuous period of more than four months the burden will be on the tenant to prove that it was not so without reasonable cause. In Jagdish Parshad v. Mohan Lal a shop was let out to the tenant for setting up grinding machine (Atta Chakki) and the tenant installed the machinery but electric connection though sanctioned was not released by the electricity department. Consequently the shop by and large remained closed for want of electric connection. It was held that the tenant could not operate Atta Chakki earlier for want of power connection. It was accepted as a reasonable cause for not carrying on business in the shop.

Initially the onus is on the landlord to substantiate his plea that the tenant has ceased to occupy the premises for four months but once it is done then it is for the tenant to establish that he had a reasonable cause for his non-occupancy of the premises. Where the tenant of a commercial premises fails to produce his account books and other documents concerning his business which he claims to be carrying on in the demised premises it was held as circumstance to draw an inference of non-occupancy against him.40

40. Dr. Dewan Chand & Others v. Mohinder Singh Atrra.
1983(2) R.C.J. 764.
The fact that the tenant had gone out of station to reside with his wife was held to be a reasonable cause for his non-occupancy of the residential premises. When the family members of the tenant living with him from the beginning of the tenancy and dependent upon him were in occupation of the rented house during his absence, it was held that the tenant had not ceased to occupy the building without any reasonable cause although he had permanently shifted his business and residence to another place.

Thus in cases where a tenant can establish sufficient or reasonable cause for his absence and non-occupancy of the rented premises the landlord will not succeed. But in those cases where without any rhyme or reason the tenant has put the premises to disuse for a period of four months or more he will be liable for eviction.

5.7 Continuous Period of Four Months:

The minimum period of non-occupancy prescribed under the provision is four months. In case non-occupancy is for a period of less than four months eviction petition against the tenant on this ground shall not be maintainable. If the non-occupancy by the tenant is

periodic and at no stage it is continuously for four months a case under this clause shall not be made out. Where a tenant visited and used the premises twice a week and his furniture and goods were lying there it was held that the tenant has not ceased to occupy the premises. Therefore, to establish the ground of non-occupancy the landlord must prove that there was non-user of the premises by the tenant for four months at a stretch.

The fact that the tenant is continuously away from the scene and nobody is using the premises would mean that the tenant does not require it and therefore it must be made available to another person. Another likely rationale for fixing this time limit seems to be that if a building is not put to use for quite sometime, the non-use is likely to have an adverse effect on it. Some damage is bound to be caused to the building due to the lack of normal upkeep of the building. Thus to ensure that the rented premises are actually put to use and remain in use this ground has been incorporated.

With regard to the expression "the tenant has ceased to occupy the building". It was held in Jai Chand-Jain v. Sohan Lal:

that the occupancy must be by the tenant and not that of his relatives. xxx the provision in Cl.(V) of sub-section (2) of S.13 of the Act takes away the statutory protection against eviction from a tenant who has himself failed to occupy the building for continuous period of four months without reasonable cause notwithstanding that his family members may have been occupying the same during the relevant period.

But in *Balwant Singh v. Gurdial Singh* the above view was not accepted. In this case the father was the tenant and was doing the business jointly with his sons. Father went abroad and the sons carried on the business in his absence. Father stayed abroad for more than four months. It was held that Section 13(2)(v) is to cover a case where the premises are locked and have not been actually used for a period of over four months and it will not apply to a case where the premises are continuously in use though the tenant himself does not stay there. It was further observed that the mere absence of the tenant from the premises is not material for the purpose of Cl.(v). Chief Justice Harbans Singh(as he then was) further observed:

> It was put to the counsel for the landlord as to whether a tenant would be in occupation of the premises within the meaning of Cl.(iv) if he himself sits at his house and his business at the demised shop is carried on by his employee or if the tenant starts another business in some other city say Delhi

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45. (197) 73 P.L.R. 1032.
or Bangalore and his business there takes him to that place and he has to stay there for more than four months while his business at his first shop is being carried on his behalf by his paid employees. The learned counsel had to concede that in both these cases the tenant would still be treated to be in occupation. It would obviously make no difference if instead of the employees the business is carried on by his sons and instead of being away to Delhi or Bangalore his business or other vacation takes him to a foreign country.

The above observation was quoted with approval by a Division Bench of the High Court in Buta Ram v. Balwant Singh. In Banarsi Dass v. Surinder Kumar, it was held that the expression "ceases to occupy" would mean that the demised premises are left unattended. But in Dr. Bhagat Singh v. Sarabjit Singh the tenant had gone abroad and claimed that business in the rented premises was carried out by his brother and nephew in his absence. Since the tenant could not adduce evidence to establish that during his absence the business was actually carried on by his brother and nephew the eviction of the tenant was ordered.

In Harjit Singh v. Harbans Lal the facts were that the tenant left for England on a tourist visa to meet his sons there in May 1984. The tenant arranged for the regular payment of rent and his son who was posted at

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46. AIR 1989 P&H 17.
49. AIR 1991 P&H 217.
distance of 120 km periodically visited the house, paid the electricity and water bills, and kept the house clean. The tenant because of his illness and that of his wife could return only in February 1985. The landlord filed eviction petition on the ground of non-occupancy since May 1984.

Reversing the decision of the courts below the High Court held that the tenant had not ceased to occupy the premises as the facts indicate and even if it was so it was for a reasonable cause. The rule of animus revertendi (intention to return back and occupy the premises) was applied in favour of the tenant.

Similarly in Arjan Dass v. Krishan Kumar it was held that simply because the tenant is working as a part-time occupant with another person in the same locality will not lead to the inference that he has closed his own shop and has ceased to occupy it. It was pointed out that the closing of shop during these two hours (the time for which the tenant worked as a part time accountant) does not mean that he has ceased to occupy the demised premises.

In Navrang Lal v. Suresh Kumar it was held that once a forfeiture has been incurred by the tenant on the

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50 AIR 1991 P&H 278.
51 1964 P.L.R. 505.
ground of non-occupancy the landlord gets the ground to evict him even if the tenant has occupied the building again. There is no period of limitation prescribed for the landlord to take action on the ground that the tenant had ceased to occupy the building for more than four months. This has been done primarily with the idea that the landlord may not be aware of the non-occupancy by the tenant immediately especially when he lives at another station and does not visit the rented premises frequently. The tenant's liability to eviction arises once the fact of having ceased to occupy the building for four months or more is established.

The Apex Court in the case of Babu Ram Copal v. Mathra Dass had the occasion to comment on Section 12(2)(v). As per the facts of the case the landlord filed an eviction petition in 1973 on the ground that the tenant had ceased to occupy the shop without reasonable cause for more than four months during the period 1969 to 1971. The landlord successfully proved that the tenant ceased to occupy the shop for more than four months during the 1969-1971 period. The Rent Controller ordered eviction of the tenant which was affirmed by the Appellate Authority. After unsuccessfully moving the High Court in revision the

52. ATR 1990 SC 879.
tenant preferred the special leave petition to the Apex Court.

The Apex Court observed:

the reason of including Section 13(2)(V) is to ensure that the buildings which are scarce in number specially in the towns necessitating rent control legislation do not remain unused at the instance of the tenants who do not actually need them. A tenant who is in possession of a building in the legal sense only cannot be said to be in occupation thereof for the purpose of Section 13(2)(v); otherwise a question of his eviction as envisaged in that section would not arise. The section by making provisions for his ejectment assumes that he is in possession but still includes cessation of occupation as one of the grounds. The clause therefore has to be interpreted in this background and it must take colour from the context.

The Apex Court went on to add:

On an examination of all the provisions of the Act and on taking into account the relevant considerations we are of the view that the non occupation of the premises by a tenant must continue till the date of filing of the application for his eviction on the ground covered by S.13(2)(v).

Since in the present case the tenant had ceased to occupy the shop for more than four months during the period 1969-71 and the eviction petition was filed in 1973 the Special Leave Petition of the tenant was allowed and his eviction ordered by all the three courts below set aside.

It is submitted that the Second conclusion arrived at by the Apex Court is likely to complicate the matter.
and create further problems. While arriving at this conclusion the Apex Court relied upon two decisions and none of these decisions related to non occupancy of the tenant. Both the decisions related to subletting as a ground for the eviction of the tenant. If the conclusion that cessation of occupancy must continue until the time of filing the eviction petition is accepted, it will have far reaching consequences as it will render the ground virtually inoperative for the landlords. A landlord cannot file a case on the spur of the moment and he will certainly take time to make up his mind to file a case after he comes to know that the tenant has ceased to occupy the rented premises. For filing the case the landlord has to engage a lawyer who in turn will prepare the brief and then file the eviction application. During this period i.e. the landlord coming to know that the premises have been put to disuse and filing of the eviction petition, the tenant can put the premises once again to use to defeat the very purpose of the petition. Now as per the ruling from the Apex Court the landlord's case is to fail even if he can prove that the tenant had ceased to occupy the rented premises without reasonable cause upto ten days prior to the filing of the eviction petition because the cessation of occupancy will not continue till the date of filing the application.

Therefore it is submitted that if a tenant is guilty of non-user of the premises for more than four months the landlord should be able to seek his eviction on the ground under Section 13(2)(V) even if the tenant has again put the premises to use. This calls for a review of the decision in Babu Ram Gopal's case.

5.8 Delapidation:

The construction work for the Capital Project better known as the City of Chandigarh, was started during the early fifties. In view of the strict bye laws governing the construction of buildings including the material to be used and the advantage of new technology being available, the buildings in the city are expected to have a longer life span as compared to most of the buildings in old cities. However in Mani Majra (N.A.C.) there are many buildings which have outlived the normal life and are due for reconstruction. The few cases covered by the field survey relate to these buildings in Mani Majra. So far there is not even a single case from the city itself regarding the eviction of a tenant on the ground that the building has become unsafe or unfit for human habitation.

54. Supra
The cases of landlords seeking eviction of the tenants on the ground that the building has become unsafe or unfit for human habitation are mainly from the old cities in Punjab. The faulty rent structure under the Act has contributed considerably towards the delapidation of buildings in the old cities. The fair rent under the Act when pegged to the rental of a similar building in 1938 is so low that the landlords are left with no other alternative except to neglect the maintenance of their rented buildings. Keeping the rental of 1938 as the base if the fair rent of a premises has been fixed anywhere below Rs. 100/- (which was a significant amount in 1938) it will be unreasonable to expect the landlord to spend thousands of rupees (these days) from his own pocket for the maintenance of the building which virtually gives him no return in terms of its current market value. In such a situation the landlord prefers to allow the building to delapidate, or for want of maintenance seek the eviction of the tenant before reconstructing it. This approach has further intensified the existing shortage of houses in urban areas since the relatively old houses available for tenancy are allowed to fall much earlier than their normal life span. This approach becomes intelligible when we see it in the context of the relevant provision of the Act and totality of circumstances.
Sub clause (iii) of clause (a) of sub-section (3)
of Section 13 of the Act reads:

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

(i) xx xx xx

(iii) in case of any building or rented land
if he requires it to carry out any building
work at the instance of the Government or
local authority or an Improvement Trust under
some improvement or development scheme or
if it has become unsafe or unfit for human
habitation:

Section 13(3)(a)(iii) provides for the eviction of
a tenant in two situations namely a) when the landlord
either requires the building or rented land to carry out
any building work at the instance of the Government or a
local authority or b) when the rented premises become unfit
or unsafe for human habitation. In the first place if a
directive from the competent authority has been received
by the landlord asking him to construct a new structure
in place of the existing one he is entitled to seek the
eviction of his tenant from the demised premises. For
example, if the Government or the Improvement Trust for the
city decides to have the buildings of a particular pattern
or design in an area and directs the landlord to construct
the building as per their plan, the landlord will be
entitled to seek the eviction of his tenant. In such a
situation it is not the desire of the landlord but the order from the competent authority which is relevant for directing the tenant to vacate the premises. The eviction of the tenant in such a case will relatively be a simple affair since all that the landlord is required to establish is that the competent authority has asked him to undertake reconstruction of the premises and for that purpose the tenant must go out.

In the second place when the rented premises has become unfit or unsafe for human habitation the landlord can seek the eviction of the tenant. In this context it is the landlord himself who seeks the eviction of his tenant because the premises are in a delapidated condition. Since it is not at the instance of any competent authority that something needs to be done by the landlord, the landlord's plea for the eviction of the tenant on the ground of delapidation is invariably vigorously contested by the tenant.

In view of the above it is the latter part of section 13(3)(a)(iii), pertaining to the rented premises being unfit or unsafe for human habitation which deserves a detailed discussion.

Although the term building is not exclusively used, to make out a case of delapidation there are not very many
situations where a landlord can seek the eviction of the tenant from the rented land on account of its becoming unfit or unsafe for human habitation. Thus the ground of the premises becoming unfit or unsafe for human habitation is primarily available to the landlord in the case of buildings.

5.9 Condition of the Building:

Whether a building is delapidated enough so as to render it unfit or unsafe for human habitation is essentially a question of fact. If a landlord on facts succeeds in proving that the premises have been rendered unsafe or unfit for one or reason or another, the tenant will be liable for eviction. The expression "unfit or unsafe" has not been defined in the Act. The term 'unfit' would mean "not fit: unsuitable, inappropriate"\(^{55}\) whereas the term 'unsafe' would mean "not safe: exposed or exposing to danger"\(^{56}\). Thus a building which is no longer suitable for the purpose of the tenancy or is in a condition considered dangerous to human life will be considered as delapidated for the purpose of evicting the tenant therefrom. It is to be noticed here that the words "unfit"


\(^{56}\) Id. at page 2509.
and "unsafe" are separated by the word "or" and not "and". The term unsafe emphasises the safety standard of the premises in view of the user by the tenant whereas the term unfit relates to the condition of the rented building as a whole i.e. whether the condition of the building has deteriorated to such an extent so as to render it unsuited for human habitation.

In Hakumat Rai v. Anand Lal⁵⁷ eviction of the tenant was sought from a tabela (a place used for tethering cattle). One beam of the verandah had cracked and was supported by wooden support. The remaining part of the verandah had bent downwards. It was held that the building had become unfit and unsafe for human habitation and eviction of the tenant was ordered. In Shamsher Singh v. Shanti Parkash⁵⁸ the rented shop consisting of three rooms was more than 60 years old. The roofs of all the rooms were made of wooden shahtiries and balas and the shahtiries had been eaten by moth and white ants. It was held that the premises had become unfit and unsafe for human habitation.

The Apex Court in the case of Sardari Lal Vishwa Nath v. Pritam Singh⁵⁹ had held that merely because the building was standing erect even after the protracted litigation of fifteen years does not mean that the building

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⁵⁷. 1985(2) R.C.J. 103 P&H.
⁵⁸. 1985(1) R.C.J. 537 P&H.
⁵⁹. 1978(2) R.C.R. 589 (SC).
was not unsafe or unfit for human habitation. However in the case of Bhim Sain Nardosh Kumar v. Raj Pal the Punjab and Haryana High Court has held that the fact the building remained intact for 10/11 year even after the filing of the eviction petition proves that there is no delapidation. It is interesting to note that the decision of the Apex Court in Sardari Lal's case was neither cited at the bar nor does it find a mention in the judgement. Thus this decision of the High Court is per inquirim.

In Gandhi Khaddar Bhandar v. Banwari Lal the rented shop was over 50 years old with mud plaster on walls and the roof was supported by six girders. It was in evidence that the supporting girders which did not appear to be very old were put by the tenant seeing the condition of the roof. It was held that it stands amply established that the shop had become unfit and unsafe for human habitation. In Shakuntla Devi v. Darshan Kumar there was the report of the lady local Commissioner that the roofs of the house were supported on wooden pillars and that she had to walk through those pillars cautiously to carry out the inspection. It was held that as per this

60. 1993(1) R.C.R. 165 P&H.
61. 1987(2) R.C.J. 122 P&H; where the building was 100 years old it weighed heavily in favour of landlord that it was delapidated. Sunder Dass v. Avinash Chander Sood 1992(1) R.C.J. 290 P&H.
62. 1987(1) R.C.R. 240 P&H.
report the building had become unfit and unsafe for human habitation.

In Parkash Chand v. Jagdish Rai the second and third storey of the building had already fallen and eviction of the tenant from the ground floor was sought on account of delapidation. It was held that the safety or fitness of ground floor for human habitation cannot be judged ignoring the state of the superstructure on the above floors. There would be every likelihood of the roof of ground floor coming down if the upper floors collapse. It was further held that merely because a building may not be so imminently dangerous as to be likely to fall down within a few weeks or months, it should not induce the court to hold that it can by no means be considered to be a building which is unsafe and unfit for human habitation.

The above referred case law amply indicates that the cases of delapidation of the building as a ground for the eviction of the tenants are decided without following any uniform or standard criteria. Although it is essentially a question of fact as to whether the building has become unfit or unsafe for human habitation there must be some consistent test to hold the same. The approach

63. 1975 R.C.J. 11 P&H.
of the courts in some cases that unless the precise part of the building in possession of the tenant is almost in a ruinous state or is likely to tremble down in a short period it cannot be said to be unfit or unsafe for human habitation is not correct. However it will be equally wrong if a landlord is allowed to over-reach the court to evict his tenant for some ulterior purpose. To say that since the building is 100 years old it must be in delapidated condition is as wrong as to say that since the building is only 50/60 years old it cannot be unfit or unsafe for human habitation.

The safety or fitness of the building needs to be considered in the light of the facts taken in their totality. While doing so another factor which deserves due consideration is the aspect of risk to the property and the subsequent expenditure likely to be incurred by the landlord if the major repairs are currently undertaken, or a complete reconstruction in the distant future is forced on the landlord by not permitting major repairs needed by the building. The landlord should not be treated as an unconcerned party or stranger. The difference in expenditure to be made by the landlord, if he is permitted to carry out major repairs or has to rebuild, should be viewed as a relevant factor while deciding the case of a tenant's eviction on the ground of the building having become unfit or unsafe for human habitation.
5.10 **Human Habitation:**

In order to bring a case under section 13(3)(a)(iii) the rented premises must have become unfit or unsafe for human habitation. The term "habitation" could mean "the act of inhabiting: state of inhabiting or dwelling or being inhabited: occupancy". What is to be established by the landlord under this sub-clause is that the building is no more suited for human habitation or has a serious risk factor for the occupants. It is not necessary that the building must be used as a residence by the tenant. As long as the premises are visited by human beings and it becomes a danger for them the ground of delapidation will be available. Thus a premises used as godown or tethering of cattle which is occasionally visited by human beings can be covered under this clause if it has become unsafe or unfit for human habitation.

5.11 **Eviction during the Agreed Term of the Tenancy:**

The proviso to section 13(3)(a) of the Act reads:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant the landlord shall not except under sub-paragraph(i-a) be entitled to apply under this sub-section before the expiry of such period:

In cases where the agreed term of the tenancy has not expired the eviction of the tenant cannot be sought on the ground that the building has become unfit or unsafe for human habitation. The disability under the proviso is not about the passing of an order of eviction but is attached to the filing of the eviction petition against the tenant. In the case of Kundan Lal v. Bhagwan-Dass it was held that the proviso being mandatory cannot be disregarded and a tenant holding premises under a subsisting lease cannot be evicted by saying that the premises are no more fit or safe for human habitation. Thus even if an application for eviction is made under section 13(3)(a)(iii) and the term of the lease expires during the pendency of the case a tenant cannot be evicted in pursuance of such an eviction petition. From this it emerges that in view of the proviso even if the rented premises actually become unfit or unsafe for human habitation during the agreed term of the lease the landlord cannot seek the eviction of the tenant under Section 13(3)(a)(iii) of the Act before the expiry of the agreed period of tenancy.

5.12 Delapidation and Personal Necessity:

In cases where a landlord seeks eviction of the

tenant from a building on the ground of bonafide requirement for his own use the question arises as to whether the ground of the building having become unfit or unsafe for human habitation can be simultaneously pleaded or not. *Prima facie* there seems to be a contradiction between the two grounds because if a building has become unfit or unsafe for human habitation it may not lie in the mouth of the landlord to say that he needs it for his personal use. In one of its earlier decisions the Punjab High Court in the case of *Bihari Lal v. Bisheshar Nath* had held that the ground of the building having become unsafe for human habitation and that of bonafide personal requirement are inconsistent with each other. D.Falshaw C.J. (as he then was) further pointed out that if the building is in such a delapidated condition that it cannot be used and needs reconstruction it would be futile to urge that it was required for personal use of the landlord.

But in *Jagan Nath Aggarwal v. Smt. Neelam Rani* it was held that the grounds of personal necessity and delapidation for the eviction of the tenant can be pleaded together by the landlord as the two are not mutually exclusive or contradictory to each other.

The Apex Court in the case of *Radhey Shyam v. Kalyan Mai* held that where bonafide requirement is the main ground and eviction has been ordered for the same the mention of additional grounds of demolition and reconstruction would not attract the provision regarding landlord's obligation to provide accommodation of equal extent to the tenant in the new building.

In the recent case of *K.A. Anthappal v. C. Ahmed* the Apex Court has reiterated the earlier view that a landlord can plead the grounds of bonafide requirement and the building having become unfit or unsafe for human habitation together for seeking eviction of his tenant.

5.13 A Part of the Building Becoming Unfit or Unsafe for Human Habitation:

In such cases where a rented premises is an integral part of a building and a part of that building becomes unfit or unsafe for human habitation the question arises as to whether a landlord can seek eviction of his tenant under section 13(3)(a)(iii) of the Act. The question was considered at length by a Division Bench of the Punjab and Haryana High Court in the case of *Sardarni Sampuran Kaur*.

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68. 1984(4) S.C.C. 447 (a case under the M.P. Act).
v. Sant Singh. In this case the rented shop was an integral part of the building comprising of two shops a room in the backyard and two chaubaras (rooms) on the first floor. The first floor portion was burned in a fire and had fallen. The second shop was lying vacant in possession of the landlady. The roof of the room in the rear side had fallen. The landlady sought eviction of the tenant from the shop under section 13(3)(a)(iii). Rejecting the contention of the tenant that the rented shop as such is not in a delapidated condition the Division Bench held:

If the substantial part of the integrated larger building has become unsafe and unfit for human habitation the tenant can be ejected from the demised premises forming part thereof under section 13(3)(a)(iii) of the Act despite the fact that the particular portion in his occupation may not be so.

In the case of Piara Lal v. Kewan Krishan Chopra the rented premises consisted of all the five rooms on the ground floor. The only room on the first floor was in possession of the landlord. The roof of one of the five rooms in the rear side fell. The tenant moved the Rent Controller seeking permission to repair the fallen roof under section 12 of the Act. After notice to the landlord the Rent Controller permitted the tenant to repair the roof

71. AIR 1988 SC 1432.
and the same was carried out by the tenant at a cost of about Rs. 200/-.

The landlord sought eviction of the tenant on other grounds. It was at the appeal stage before the Appellate Authority that the landlord requested for amendment of the eviction petition. He was allowed to include the ground under section 13(3)(a)(iii). The Apex Court distinguishing this case from Sampuran Kaur's case held that the tenant was not liable to be evicted under section 13(3)(a)(iii) of the Act. Reversing the decision of the High Court the Apex Court observed:

Unless the evidence warranted an inference that the falling down of the roof in one room was fully indicative of the damaged and weak condition of the entire building and that the collapse of the roof was not a localised event we fail to see how the High Court could have concluded that the entire building had become unsafe and unfit for human habitation.

Thus where the rented premises forms part of a building and there is major or substantial damage to building (not necessarily the part occupied by the tenant) rendering it unfit or unsafe for human habitation the tenant shall be liable for eviction under section 13(3)(a)(iii) of the Act.

72. Supra.
73. Supra at Page 1434.
In its recent decision in the case of Shadi Singh v. Rakha the Apex Court has held that when a tenant has been evicted on the ground that the building has become unfit or unsafe for human habitation the landlord is obliged to re-induct the tenant under section 13(4) of the Act after reconstructing the building. In this case the facts were that the rented premises consisted of one shop. The landlord in his eviction petition under section 13(3)(a)(iii) pleaded that out of the five khanas(columns) of the roof two had fallen down and the remaining three khanas may fall any time; the flooring had given way and the walls were crumbling; some of the wooden balas(batons) in the remaining three khanas of the roof had been eaten by white ants and thus the building had become unfit and unsafe for human habitation.

The Rent Controller ordered eviction of the tenant under section 13(3)(a)(iii). The Appellate Authority reversed the order of the Rent Controller by holding that after the tenant had carried out the repairs of the fallen two khanas though without obtaining the permission of the Controller under section 12 of the Act the ground of the
building having become unfit and unsafe for human habitation did not exist any more. The Appellate Authority had observed:

The report of Nazir Richpal Singh shows that out of five khanas of the roof of the shop two have fallen down and that the remaining three require replacement of a few balas. He also reported that no portion of the wall had fallen down and the tenant had carried out replacement of that part of the roof which had fallen down and no more.

In revision the High Court reversed the order of the Appellate Authority by holding that the subsequent replacement of the two khanas by the tenant cannot be taken note of in view of the requirement of taking prior permission of the Controller under section 12 of the Act. Since the permission of the Controller under Section 12 was not obtained by the tenant and he carried out the replacement of the fallen part of the roof after the eviction petition was filed by the landlord he was liable for eviction.

Reversing the decision of the High Court the Apex Court held that the High Court was wrong in ordering the eviction of the tenant in the face of the subsequent event of the fallen portion of the roof being replaced by the tenant. The Apex Court further held that under section 11(1) of the Act a landlord must re-induct the evicted tenant after carrying out structural changes or reconstructing the building.
It is submitted that this decision of the Apex Court is not sound either on facts or in law or by precedent for the following reasons:

1. Primarily it is the duty of the landlord to carry out the necessary repairs of the rented premises from time to time. However if a landlord fails to get the repairs done the tenant can request the Controller to permit him to do the needful under section 12 of the Act. Section 12 of the Act reads:

> If a landlord fails to make the necessary repairs to a building other than structural alterations it shall be competent for the Controller to direct on application by the tenant and after such inquiry as the Controller may think necessary that such repairs may be made by the tenant and that the cost thereof may be deducted from the rent which is payable by him.

What is required under section 12 of the Act is that firstly the rented building needs repairs (not structural alterations in which case the tenant will be liable for eviction) and the landlord has failed to make the necessary repairs. Secondly the tenant must approach the Controller seeking his permission to make the necessary repairs. Thirdly the Controller makes such inquiry into the genuineness of the tenant's request as he thinks fit. (The minimum will be a notice to this effect to the landlord). Fourthly if the Controller is satisfied with the request of the
tenant, he will direct the tenant to make the repairs and the cost of repair may be adjusted against the rent to be paid.

The Apex Court after observing that

It is sought to be contended that the unilateral act of the tenant effecting repairs the right of the landlord for eviction under section 13(3)(a)(iii) was frustrated and it could not be permitted to be done. Normally it would be so. A tenant is under a statutory obligation to approach the Controller and seek an order for effecting repairs provided the landlord refuses or neglects to effect repairs. After the Rent Controller passes an order, the tenant acquires right to effect repairs. (emphasis added). went on to hold:

Whether the repairs effected by the tenant at its own cost without taking recourse to section 12, would alter the situation? Our answer is no.

Accepting this proposition laid down by the Apex Court would amount to giving the benefit to the tenant of his own illegal act. The tenant had violated the mandate of section 12 and this flouting of the statutory requirement should not have been allowed to be operative in tenant's favour. It is submitted that the High Court was right in holding that the repairs made by the tenant without having recourse to section 12 of the Act were of

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75. Supra 74 at 506.
76. Supra 74 at 505.
no consequence. Acceptance of the view of the Apex Court would render section 12 of the Act otiose.

2. With regard to the significance of 'subsequent events' in the present case the Apex Court observed:

It is settled law that subsequent events can be taken note of and the relief would be moulded suitably, vide Hasmat Rai and another V. Raghunath Prasad and M/s Variety Emporium V M/s Variety Emporium V V.P.M. Mohd. Ibrahim Inain. Therefore, the appellate authority (District Court) is well justified in its conclusion that the cause of action for eviction of the appellant no longer subsisted after the tenant effect repairs and replaced that part of the fallen roof and the order of eviction, thereafter became unnecessary and wrongly. (Emphasis added).

It is submitted that it is, undoubtedly, the settled law that subsequent events after the filing of a case, can be taken into account while deciding the relief to be provided to a litigant. But in the present case the subsequent event, that is the roof is no more in fallen condition, is the outcome of an illegal act on the part of the tenant. If the position taken by the Apex Court is to be accepted, it would amount to acknowledging an act of the tenant as lawful which is otherwise prohibited by law. Consequently, an act, which was void ab initio, will become a valid act of the tenant and would work to his

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1. Supra 74 at 507.


advantage. Since the tenant did an illegal act of replacing the fallen roof without complying with the mandate under section 12 of the Act, it should have been completely ignored and no relief could emerge for the tenant as a consequence of an illegal act of his. The position, in fact, should have been that this illegal act of the tenant should have operated against him and the fact of replacement of roof completely ignored.

3. As per the judgement, a landlord is under an obligation to restore the premises to the tenant after reconstruction. The Apex Court observed: 80

The word 'required' cannot be read in isolation, but in conjunction with sub-section (4) of section 13. Sub-section (4) which enjoins the landlord, after effecting repairs or reconstruction or structural alteration and making it safe and fit for human habitation, to restitute the same to his erstwhile tenant.

It is submitted that Section 13(3)(a)(iii) of the Act applies not only to all types of buildings but also to rented land. 81

If a landlord has let out his rented land for tethering cattle and selling milk and the landlord is

80. Supra 74 at 505.
81. Section 2(f) of the Act reads: "rented land" means any land let separately for the purpose of being used principally for business or trade.
directed by the competent public authority to construct a multi-storeyed residential complex there, what will the landlord do after constructing the building? As per the judgement the tenant shall have to be re-inducted. In such a situation, re-induction of the tenant would mean that he must be given some residential apartment (of course on the ground floor) for tethering his cattle and selling milk. Any other use of these apartments by the tenant will be a change of user under the original lease which by itself will be a ground for the eviction of the tenant. It seems the Apex Court lost sight of such unforeseen problems which are bound to arise as a result of implementing its decision.

4. Further, the question of the re-induction of the tenant will not arise after the building has been reconstructed afresh because all new constructions have been exempted from the operation of the Act for the first five years after their construction by the Government under Section 3 of the Act. How can a tenant seek his re-induction under section 13(4) of the Act when the Act itself is inoperative for the new building for the first five years? Thus the Apex Court did not notice this lacuna in their decision that law under which a tenant is being held entitled for re-induction itself does not apply to the new building.
In order to conclude that, in the given case, the building had not become unfit or unsafe for human habitation, the Apex Court relied upon its decisions in the cases of Maharaj Jagat Bahadur Singh v. Badri Parsad Seth and Piara Lal v. Kewal Krishan Chopra. The first case related to Rivoli Cinema building, in possession of the tenant, at Shimla. The Municipal Committee, in this case, noticed some defects and directed the owner/landlord to remove those defects in the theatre. The landlord tried to use the notice as a handle to evict the tenant under Section 13(3)(a)(i) of the Act. The Apex Court held that as long as the repairs to be carried are of such a nature which will not call for the ouster of the tenant from the premises, a case under Section 13(3)(a)(iii) shall not be maintainable.

In the second case, the roof of one of the five rooms in possession of the tenant had fallen. The room in question was on the rear side of the premises. The tenant obtained the permission of the Controller under section 12 of the Act and replaced the roof. The Apex Court held that unless it is established that the falling down of roof of one room was fully indicative of the damaged and weak condition of the entire building and that

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83. AIR 1988 SC 1432.
the roof collapse was not a localised event, it could not be held that the building had become unfit or unsafe for human habitation.

It is submitted that these two decisions of the Apex Court were not relevant for reaching the present conclusions. In the Rivoli Cinema case, the repairs were of a minor nature and, thus, there was no question of the building becoming unfit or unsafe for human habitation. The facts of the case had nothing in common with the present case. The facts of the second case also were substantially different from the present case. In Piara Lal's case only the roof of one room on the rear side had fallen. If one is to take into account only the roofs of the five rooms, in possession of the tenant, the damage was to the tune of 20%, whereas in the present case, two khanas out of the total five khanas of the shop (one only) had fallen down. The outright damage to the roof was 40%. If the poor condition of the remaining three khanas is also taken into account, it was an outright case of the shop being in a delapidated condition.

Moreover, in Piara Lal's case, the tenant had obtained the permission from the Rent Controller under section 12 of the Act to replace the fallen roof. Thus the act of the tenant in replacing the roof was in
accordance with the provisions of the Act. Whereas in the present case, the tenant flouted the mandate of section 12 to repair the fallen portion of the roof. Thus the act of tenant, in the present case, was illegal and should not have come to his rescue in the face of the eviction proceedings.

The Apex court did concede the above two points which were materially different in Piara Lal's case when it said:

"It is true as contended by Shri Harbans Lal that in that case there were five rooms and the roof of one room alone had fallen and that the tenant had obtained orders of the Rent Controller under section 12, and thereafter the tenant replaced the roof. (Emphasis added)"

But still went on to hold that in the present case the shop had not become unfit or unsafe for human habitation.

6. The expression used in section 13(3)(a)(iii) of the Act is unfit or 'unsafe for human habitation' instead of 'complete destruction' of the building. This is apparently for two reasons: 1. The moment the risk factor for human habitation increases, the occupants must move out; 2. In terms of money, it will cost the landlord far less if he is to carry out major repairs in comparison to the reconstruction of the entire building."
The refusal by the Apex Court to hold the shop unfit for human habitation after two of the five khanas had fallen down and the balas (batons) of the other three khanas had been damaged by moth, would mean that the entire roof must fall and the shop should be a khola (room with fallen roof and damaged walls) when the landlord will be entitled to get it under section 13(3)(a)(iii) of the Act.

7. With regard to sub-section (4) of section 13 of the Act, the Apex Court observed:

Sub-section (4) which enjoins the landlord, after effecting repairs, or reconstruction or structural alteration and making it safe and fit for human habitation, to restitute the same to his erstwhile tenant. If he commits breach thereof, the Controller has been invested with the power to pass an order in that behalf. (Emphasis added).

The operative part of sub-section (4) of section 13 of the Act reads:

Where a landlord who has obtained possession of a building or rented land in pursuance of an order....under sub-paragraph (iii) of paragraph (a) puts that building to any use or lets it to any tenant other than the tenant evicted from it, the tenant who has been evicted may apply to the Controller for an order directing that he shall be restored to possession of such building or rented land and the Controller shall make an order accordingly. Section 12 gives right to a tenant to effect necessary repairs: (Emphasis added).

In such cases when the eviction of a tenant has been ordered on the ground that the building had become unfit or unsafe
for human habitation, under section 13(4), the tenant has a right to ask for his re-induction to the vacated premises in two situations: firstly, that the landlord after evicting his tenant on the ground of the building having become unfit or unsafe for human habitation puts that building to use; secondly, instead of using it himself, lets it out to another person as his tenant. The underlying principle here is that a landlord cannot be allowed to approbate and reprobate. When a landlord has sought eviction of his tenant alleging that the building has become unfit or unsafe for human habitation and after the tenant's eviction is using the building as such, this would mean that the landlord has committed a fraud on the process of law. Therefore, the tenant shall have the right for the restoration of the possession of the demised premises. Similarly, the second situation, when the landlord, after the eviction of the tenant, inducts another person as his tenant, is indicative of the fact that though the building had actually not become unfit or unsafe for human habitation, the landlord had somehow managed to establish it in the court. In both these situations, the subsequent act of the landlord is contrary to the earlier position adopted by him to gain an undue advantage. If a case can be brought under any one of these two situations, the Rent Controller is under legal duty to order restoration of possession to the tenant after the tenant made a request for the same.
What has been held in the present case is that under all circumstances the landlord, after making structural alterations or reconstruction, is duty bound to re-induct his evicted tenant. The language used in the provision, as explained earlier, does not permit such an interpretation. It is plainly given in the sub-clause that only in two situations (given above) the evicted tenant can seek restoration of the premises to him.

If the interpretation given by the Apex Court is to be accepted as correct, it would only mean that a landlord will firstly involve himself in a prolonged litigation with the tenant, and secondly, if he is fortunate enough to succeed therein, then, after spending substantial money for reconstruction or major repairs, invite the tenant back to the premises on the terms of the original lease including the rent payable by tenant. As such, no landlord shall find it wise to spend a huge sum on reconstructing the building only to have the same tenant back with the same old rent, and that too, after going through the ordeal of prolonged litigation. The landlord, in such a case, would rather let the building fall and the tenant be buried in the debris or save himself by leaving the building on his own.

In view of the above, it is submitted that the view taken by the Apex Court in the present case is not sound.
either on facts or in law or by precedent. It is hoped that this decision will be reviewed and corrected at the first opportunity coming the way of the Apex Court.

In the course of discussions with the advocates in the High Court handling rent matters, I learnt that the High Court, while ordering eviction of a tenant on the ground of the building having become unfit or unsafe for human habitation, does not pass an order that the evicted tenant would have to be re-induced after reconstruction. If the tenant's Advocate presses for it, in view of the decision in Shadi Singh's case, he is politely told to press this argument before the execution Court. All the judges and lawyers, whom I met in the course of the field survey, shared my view that the decision of the Apex Court calls for an immediate review and correction of the law laid down therein.