Alterations and Changes in the Building

By: S.U.Khan, J.*

Clauses (b) and (c) of Section 20 (2) of **U.P. R.C. Act** are quoted blow:

> "S. 20(2) *a suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the grounds:*
>
> *(b) that the tenant has willfully caused or permitted to be causes substantial damage to the building;*
>
> *(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alternation in the building as is likely to diminish its value or utility or to disfigure it;"*

A Full Bench authority of Allahabad High Court reported in *Sita Ram Sharan v. Johri Mal AIR 1972 All 317* interpreting section 3(1)(c) of old U.P.R.C. Act 1947 which was almost pari materia with section 14(c) of U.P. Cantt. R.C. Act infra, (except that permission of landlord was to be in writing) held that even **temporary construction** might fall within the mischief of clause (c). The Supreme Court in *Om Prakash v. Amar Singh AIR 1987 SC 617,* overruled this view in the following manner:

> *"The High Court observed that the fact that a construction is permanent or temporary in nature does not affect the question as to whether the constructions materially alter the accommodation or not. We do not agree with this*

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view. The nature of constructions, whether they are permanent or temporary, is a relevant consideration in determining the question of 'material alteration'. A permanent construction tends to make changes in the accommodation on a permanent basis, while a temporary construction is on temporary basis which does not ordinarily affects the form or structure of the building, as it can easily be removed without causing any damage to the building." (para 9) (underlining supplied)

It was further held by the Supreme Court that '*The question whether disputed constructions constitute material alterations is a* ***mixed question of fact and law****.'* (para 10) And *'The findings of the court regarding constructions would be finding of fact, but the question whether the constructions materially alter the accommodation is a mixed question of fact and law, which should be determined on the application of the correct principles.'* (para 6)

In *Damodar Lal v. Sohan Devi AIR 2016 SC 262* under Rajasthan R.C. Act 1950 it was held that what constructions had been made by the tenant was a pure question of fact and High Court in Second Appeal could not reverse the findings of the Court below in that regard.

In *Om Pal (1988)* infra the legal finding of all the three courts below that the constructions made by the tenant impaired the value and utility of the tenanted building was reversed.Same thing was done in *Hari Rao (2005)* and *G. Reghunathan (2005)* infra. It was held in para 9 of *Hari Rao* as follows*:*

"9.....There is hardly any material in the present case on the basis of which the Court could come to the conclusion that the act of the tenant here has amounted to commission of such acts of waste as are likely to impair materially the value and utility of the building. The Rent Controller and the High Court have not properly applied their minds to the relevant aspects in the context of the statute and have acted without jurisdiction in passing an order of eviction under Section 10(2)(iii) of the Act....."

Part of para 13 of *G. Reghunathan* is quoted below:

"13. We find that the Authorities below have not approached the question from the proper perspective. They have not given sufficient emphasis to the statutory requirement of the effect being material and permanent. It is "material and permanent". The words are not disjunctive, like in some other Acts....."

After recording the finding regarding the constructions made by the tenant it is necessary to decide whether such **constructions are covered by the relevant provision** or not. This aspect was ignored by the Allahabad High court in a case under Section 20(2)(c) of U.P. R.C. Act hence Supreme Court in *Pratap Narain v. D.J. Azamgarh AIR 1996 SC 111* remanded the matter by observing as follows in para 4:

"4. ..... Therefore, even if it is held that the structural changes were made by the appellant without the consent of the landlord, the suit could not be decreed unless it was further found that the changes resulted in diminishing the value of the building. The High Court has not adverted to this

aspect at all. Since the High Court omitted to record the finding on a vital aspect, the order passed by it cannot be maintained."

Section 14(c) of U.P. Cantonments (Control of Rent and Eviction) Act 1952, infra, is by and large like Section 20(2) (c) of U.P. R.C. Act.

"S.14 (c) that the tenant has without the permission of the landlord, made or permitted to be made any such construction as in the opinion of the court has materially altered the accommodation or is likely substantially to diminish its value ;"

Supreme Court in *Om Prakash v. Amar Singh AIR 1987 SC 617* supra while interpreting aforesaid Section 14(c) of U.P. Cant. R.C. Act has held in para 5 as follows:

"5. ***The Act does not define*** *either the word 'materially' or the word 'altered'. In the absence of any legislative definition of the aforesaid words it would be useful to refer to the meaning given to these words in dictionaries. Concise Oxford Dictionary defines the word 'alter' as change in character, position' "Materially" as an adverb means 'important' essentially concerned with matter not with form. In Words and Phrases (Permanent Edition) one of the meanings of the word 'alter' is 'to make change, to modify, to change, change of a thing from one form and set to another. The expression "alteration" with reference to building means 'substantial' change, varying, change the form or the nature of the building without destroying its identity". The meaning given to these two words show that the expression 'materially altered' means "a substantial change in the character, form and the structure of the building without destroying its identity." It means that the nature and*

character of change or alteration of the building must be of essential and important nature. In Babu Manmohan Das Shah & Ors. v. Bishun Das, 1967(1) SCR 836 : AIR 1967 Supreme Court 643 this Court considering the expression 'material alterations' occurring in Section 3(1)(c) of U.P. (Temporary) Control of Rent and Eviction Act, 1947 observed:

"Without attempting to lay down any general definition as to what material alterations mean, as such, the question would depend on the facts and circumstances of each case, the alterations in the present case must mean material alterations as the construction carried out by the respondent had the effect of altering the front and structure of the premises."

In para 6 it was observed as follows:

"In ***determining the question the Court must*** *address itself to the nature, character of the constructions and the extent to which they make changes in the front and structure of the accommodation, having regard to the purpose for which the accommodation may have been let out to the tenant.....Construction of a Chabutra, Almirah, opening a window or closing a verandah by temporary structure or replacing of a damaged roof which may be leaking or placing partition in a room or making similar minor alterations for the convenient use of the accommodation do not materially alter 'the building as in spite of such constructions the front and structure of the building may remain unaffected. The essential element which needs consideration is as to whether the constructions are substantial in nature and they alter, the form, front and structure of the accommodation....."* (underlining supplied)

In the aforesaid case of *Om Prakash* the Allahabad High Court, placing reliance upon the Full Bench of *Sita Ram*, supra, had held that construction of **tin shed and partition** wall constituted

material alteration. The Supreme Court after overruling the Full Bench set aside the order of the High Court and held that tin shed and partition wall did not amount to material alternation. '*The partition wall was made without digging any foundation of the floor of the room nor it touched the ceiling, instead; it was a temporary wall of 6 feet height converting the big hall into two portions for its convenient use, it could be removed at any time without causing any damage to the building."* (para 7)

This authority has been followed in almost all the subsequent authorities of the Supreme Court on the point.

Clause (c) of Section 20(2) of U.P.R.C. Act uses the words **'permission in writing'**. Accordingly oral permission of landlord even if proved is of no consequence. Written permission for sub letting is also required under various R.C. Acts which has been held to be mandatory making oral permission meaningless. In *Gurdial Singh v. Raj Kumar Aneja AIR 2002 SC 1003* under Punjab R.C. Act it was held that as written permission of landlord for subletting and inconsistent user was required under the Act hence oral permission even if proved could not save the tenant from eviction. (See also synopsis 4 of the chapter ' Sub-Letting').

In the following five authorities relevant provision of **East Punjab R.C. Act 1949** [Section 13(2)(iii)] has been considered:

1. Om Pal v. Anand Swarup 1988 (4) SCC 545
2. Vipin Kumar V. Roshan Lal Anand 1993 (2) SCC 614

3. Gurbachan Singh v. Shivalak rabber Industries AIR 1996 (SC) 3057
4. Waryam Singh v. Baldev Singh 2003 (1) SCC 59
5. M/s British Motor Car Co. v. Madan Lal Saggi AIR 2005 (SC) 240

Section 13 of the Act provides various grounds of eviction of tenant. Clause (iii) of sub section (2) is as follows:

> *" **13(2)(iii).** The tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land."*

In *Om Pal* (1) the tenant of a shop in which he was running a dry cleaning laundry had put up a *parchhati* therein for storing the clothes before and after dry-cleaning. The *parchhati* had been made to rest on the walls by means of balls inserted in the wall through holes made therein. All the three courts below including High Court had held that the construction had impaired materially value / utility of the building. Supreme Court reversed the findings and after observing that the courts below obviously failed to construe Section 13 (2)(iii) in its proper perspective and had failed to apply the correct legal tests, ultimately held that the constructions were of temporary nature and did not impair value / utility of the tenanted shop. Reliance was placed inter alia on *Om Prakash (1987)* supra.

In *Vipin Kumar* (2) tenant had constructed a wall in the veranda and put up a door which stopped the flow of light and air and he had also removed fixtures. It was held that these constructions impaired the value and utility of the building. It was further held that the impairment is from the point of the landlord and not of the tenant. *Om Prakash (1987)* was distinguished.

In *Gurbachan Singh* (3) the tenants who had been let out 5 shops made several alterations and constructions as mentioned in para 13, infra.

> *"13. In the instant case before us as discussed in the foregoing paragraphs it is distinctly clear that the tenant-respondents have constructed a lintel roof over all the 5 shops No. 2 to 6 by removing their original roof and they not only removed the intervening or partition walls of the shops but also removed the doors of the 5 shops and converted them into sheds, store and kothries. They also converted the verandah in front of the shops into sheds by closing it from the front by masonry work. The door of shop No. 2 has been removed altogether and instead a small window with iron grills has been affixed in the front. The full size door of shops No. 3 has also been removed and a door measuring 3 x 7" has been installed in front of the verandah by merging the shop No. 3 into that part of the verandah. Similarly shop No. 4 has also been merged with the verandah by removing the door of the shop and fitting door in the verandah itself in*

order to make it a godown. Shops No. 5 and 6 have also been merged with the part of the verandah in front of those shops with masonry work. The 17 ft long and 5 ft 9 inches high boundary wall existing on the western side of the demised land touching the kothri of Chander Muni respondent No. 1-A has been demolished so as to facilitate a passage from the Kothi of respondent No. 1-A to the demised premises by fixing one big wooden door and another steel door in place of the demolished boundary wall. A small triangular shaped kothri has also been constructed and a brick stair case has been raised in order to facilitate an access from the courtyard of the Kothi of respondent No. 1-A to the roof of the shed made over the demised land as a direct approach."

It was held that these constructions gave a totally new and different shape and complexion to the building and impaired its value, utility, intrinsic worth and fitness for the use for desirable practical purposes. Following *Vipin Kumar* , supra it was held that impairment of value and utility had to be judged from the point of view of the landlord and not either of the tenant or anyone else. It was further held the word 'impairment' could not be said to have a fixed meaning and it had to be interpreted differently in different contexts and situations.

In *Waryam Singh* (4) tenanted accommodation consisted of a shop and a veranda. Tenant covered the veranda by constructing two side walls and put rolling shutter in front. However he did not

remove any fixture. The Supreme Court held that such construction instead of impairing the value and utility increased the same. It further held that impairment of value or utility has to be proved and cannot be presumed or inferred from the construction made. *Om Prakash (1987)* supra was followed. *Vipin Kumar* supra was distinguished on the ground that in *Vipin Kumar* finding had been recorded that the constructions affected the flow of light and air and fixtures had also been removed by the tenant which was not the position in the case in question. It was also observed that the shutter would be locked only in the night hence during day time there would be more light and air in the shop.

In *M/s British Motor Car Company* (5) it was held that construction of three sheds of permanent nature covering almost whole of the courtyard which also obstructed ventilation in the courtyard amounted to material impairment of value and utility of the premises. It had been found by the courts below that the constructions could not be dismantled without substantial damage to the structure.

After referring to *Om Prakash (1987)* supra and the above authorities at serial no. 1 to 4 it was held in para 12 as follows:

> *"....When the construction is alleged to have materially impaired the value and utility of the premises, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial*

and monetary point of view or from the utilitarian aspect of the building. [See Om Pal (supra)]"

Relevant provision under **Rajasthan R.C. Act 1950** is as follows:

"Section 13(1)(c) that the tenant has without the permission of the landlord made or permitted to be made any such construction as, in the opinion of the court has materially altered the premises or is likely to diminish the value thereof."

Supreme Court in *Brijendra Nath Bhargava v. Harsh Warthan 1988 (1) SCC 454* held that construction of balcony or *dochhatti* which was a wooden structure did not amount to material alteration. *Om Prakash (1987)* supra was followed and quoted extensively.

Section 10(2) (iii) of **T.N. R.C. Act 1960** is as follows:

"that the tenant has committed or caused to be committed such acts of waste as are likely to impair materially the value or utility of the building."

In *G. Arunachalam v. Thondarperienambi AIR 1992 SC 977* it was held that fixing of rolling shutters in place of wooden plank of the front door was not covered by the above clause.

In *Hari Rao v. N. Govindachari AIR 2005 SC 3389* (para 9) it has been held that if the tenant who has taken the shop for

leather goods and shoes business drills holes for fixing racks, three phase electric connection and signboards, it does not amount to material changes and the changes will not impair value and utility of the building hence will not be a ground for eviction under Section 10(2) (iii) of Tamil Nadu R.C. Act 1960. Almost all the earlier authorities of the Supreme Court on the point under different R.C. Acts have been considered in this authority.

Under Section 11(4) (ii) of ***Kerala R.C. Act 1965*** it is provided as follows:

> *"If the tenant uses the building in such a manner as to destroy or reduce its value or utility materially and permanently."*

In a case where tenant had taken a shop on rent for jewelry trade, he removed a door, three windows and closed the space with bricks. He also lowered the floor, tampered with roof, cut the rafters, erected two concrete pillars and fixed rolling shutter. Supreme Court in *G. Raghunathan v. K. V. Varghese AIR 2005 SC 3680* held that bricked up portion could be removed, door and windows could be restored without weakening the structure. Regarding other changes the Supreme Court held that it enhanced the value and utility of the building and if the shop was freshly let-out it could fetch higher rent. Accordingly it was held that eviction under the aforesaid clause could not be

directed. The judgments and orders passed by all the three Courts below were set aside.

Under **West Bengal R.C. Act 1956** one of the grounds of eviction is provided under Section 13(1) (b) as follows:

> *"13(1)(b) where the tenant or any person residing in the premises let to the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act, 1882 (IV of 1882);*

Interpreting the above provision it has been held in *Ranju @ Gautam Ghosh v. Rekha Ghosh 2007 (14) SCC 81 : AIR 2008 (Sup) SC 1398* (para 18 (b) of SCC) as follows*:*

> *"18. In view of the above, we agree with the following conclusions of the First Appellate Court as affirmed by the High Court in Second Appeal :*
>
> *a) Not relevant*
> *b) That causing damage to the collapsible gate of the tenanted portion and putting up a concrete elevation of the floor, would amount to doing acts contrary to the provisions of clauses (m), (o) and (p) of section 108 of the Transfer of Property Act, 1882, thereby furnishing a ground of eviction under clause (b) of section 13(1) of the West Bengal Premises Tenancy Act, 1956."*