
(1971) 11 DEL CK 0008

In the Delhi High Court

Case No : Second Appeal No. 83D of 1965

Ram Rattan Bhanot

APPELLANT

Vs

Faqir Chand

RESPONDENT

Date of Decision : 22-11-1971

Acts Referred:

Citation : (1972) ILR Delhi 408

Hon'ble Judges : V.S. Deshpande, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : A.N. Monga, S.S. Shukla and A.P. Gupta, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The question of law of growing public importance which made this reference of these two appeals (S.A.0.83-D and 239-D of 1965) to the Division Bench necessary is whether a landlord and tenant governed by the Delhi Rent Control Act, 1958 (hereinafter called the Rent Control Act) can contract out of the provisions of proviso (k) to sub-section (1) of section 14 thereof which runs as follows:

"14. Protection of Tenant against eviction.-

(1) Notwithstanding anything to the contrary contained in any other law or contract no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant :

PROVIDED that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of the premises on one or more of the following grounds only, namely:-

* * *

(K) that the tenant has, notwithstanding previous notice used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the

Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate."

(2) TOWN-PLANNING of Delhi started many years ago when the United Provinces Town Improvement Act, 1919 was extended to Delhi and the Delhi Improvement Trust started functioning there under. In 1940, two leases of plots in Karolbagh were given to the predecessors in title of the appellants who built houses on them subject to the terms and conditions of the leases. Many of the terms of these leases were imposed with a view to town-planning. One such term was embodied in paragraph I(vi) of the lease deed which was as follows :-

"Not to use the said land and building that may be erected thereon during the said term for any other purpose than for the purpose of residential house without the consent in writing of the said landlord: provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the Lesser."

(3) The Delhi Improvement Trust was later succeeded by the Delhi Development Authority established under the Delhi Development Act, 1957 (hereinafter called the Development Act) which repeated the United Provinces Town Improvement Act, 1919, insofar as it had applied to Delhi. u/s 7 thereof a master plan for

DELHI was prepared which came into force on 1st September 1962. The master plan divided into use zones and laid down the manner in which the land in each such zone was to be used. A description of those use zones in which the land can be used for only residential purposes is given in the master plan from page 54 onwards. At pages 56-57 is a list of the built-up residential areas. Item 29 of the list includes Karolbagh (area bounded by New Rohtak Road on the North, Anand Parbat on the West, Pusa Road on the South and Faiz Road on the East) in which the premises in these appeals are situated. At page 48 of the master plan, the uses permitted in these zones are :-

" RESIDENCES, hostels and boarding houses with density limitations; nurseries, kindergartens and schools; clinics, social and cultural institutions with adequate parking facilities; public utilities and buildings except service and storage yards; noncommercial farms, agricultural gardens, nurseries and green houses; any neighborhood recreational uses including clubs and other semi-public recreational uses; accessory uses clearly incidental to residential use (except retail shops and service uses) which will not create a nuisance or hazard."

(4) Section 14 of the Development Act prohibits the user in a residential zone for any other purpose not authorised by the plan.

(5) The appellant-landlords have let out the garages of their houses to the respondent-tenants for shops contrary to the conditions of the lease and also to the user of a residential zone permitted by the master plan. The Delhi Development Authority thereupon sent notices to the landlords pointing out that the user of parts of the premises by their tenants was contrary to the condition

of the lease and asking them to stop the said user. If the landlords failed to do so, the Authority threatened to cancel the leases and re-enter on the land. The landlords thereupon sent notices to the tenants asking them to stop their user for non-residential purposes. The tenants, however, refused to comply with the request of the landlord on the ground that the premises were let to them for non-residential purposes. The landlords, Therefore, filed petitions for eviction against the tenants mainly invoking proviso (k) of section 14(1) of the Rent Control Act. The petitions of the landlords were dismissed both by the Controller and the Rent Control Tribunal on the sole ground that the landlords, having let out the premises to the tenants for non-residential purposes, were estopped from evicting the tenants u/s 14(l)(k). In arriving at this decision, the Rent Control Tribunal followed two Single Bench decisions of this Court and of the Punjab High Court, namely, *S. P. Arora v. Ajit Singh*, 1970 Rcr 628,(l) and *Uma Kumari v. Jaswant Rai*, 1960 Plr 460.(2) Hence these second appeals by the landlords.

(6) The question whether the landlords are estopped from evicting the tenants u/s 14(l)(k) may be examined from two aspects, namely, (1) the leases by the landlords in favor of the tenants and (2) the estoppels of landlords vis-a-vis the tenants. Firstly, the landlords and tenants have agreed that the premises be let by the landlords to the tenants for non-residential user. The question is if these leases are valid and whether the tenants can resist the claims of the landlords for eviction as being contrary to these leases. Secondly, the landlords rely on the provisions of section 14(l)(k) to evict the tenants. It has to be seen whether the agreements of leases between the landlords and the tenants estopped the landlords from invoking the provisions of section 14(l)(k) against the tenants.

(7) Let us consider the agreement aspect first. The agreements of leases between the landlords and the tenants would be valid unless they are opposed to any law or are against public policy. The statutes in question are two, namely, (1) section 14(1) of the Rent Control Act and (2) section 23 of the Contract Act. The opening words of section 14(1) of the Rent Control Act are :

"NOTWITHSTANDING anything to the contrary contained in any other law or contract".

(8) These words primarily govern the principal part of section 14(1) and prohibit the passing of an order for recovery of possession in favor of the landlord against a tenant. It would appear, however, that these words would also apply to the various provisos which follow the principal part of section 14(1). Just as a tenant cannot be evicted by the landlord merely after terminating his tenancy u/s 106 of the Transfer of Property Act, in view of the prohibition contained in the principal part of section 14(1), so also the provisos to section 14(1) limit the power of the Controller in making the orders for possession. It would appear, Therefore, that a contract between the landlord and tenant to ignore the provisions of section 14(1) including the provisos thereto would be void as being "forbidden by law" within the meaning of section 23 of the Contract Act. At any rate, such a contract would be "of such a nature that, if permitted, it would defeat the provisions of

any law", namely, section 14 of the Rent Control Act and it would again be hit by section 23 of the Contract Act. The Rent Control Act was enacted in pursuance of a public policy to regulate the relations of landlords and tenants by statute and to deprive the landlords and tenants of their freedom of contract in this respect. The leases by the landlords to the tenants would, Therefore, be "opposed to public policy" within the meaning of section 23 of the Contract Act. Lastly, the land in question belongs to the Delhi Development Authority. The condition of the lease is for the benefit of the Authority. The agreement between the landlords and tenants contrary to the said condition "involves or implies injury to the property of another". namely, the Delhi Development Authority, within the meaning of section 23 of the Contract Act. For all these reasons, the agreements would be contrary to section 23 of the Contract Act.

(9) Public policy means either public good or public interest which is not embodied in any statute or legislative policy embodied in a statute. Condition I(vi) in the leases granted to the predecessors in title of the landlords by the Delhi Improvement Trust in 1940 ensured that the houses in a residential zone were not used for non-residential purposes. This was a condition imposed for the public good and in public interest. It was, Therefore, public policy though not embodied in a statute. Later the same public policy was embodied in section 14 of the Delhi Development Act read with the master plan which prohibited non-residential use of premises in residential use zones.

(10) The leases for non-residential purposes by the landlords to the tenants were thus opposed to the public policy of town-planning ensuring that premises in the residential parts of Delhi are not to be allowed to be used for non-residential purposes, It is true that public policy, not based on a statute, is not to be extended. As stated by Lord Davey in *Janson v. Driefontein Consolidated Mines Ltd.*, (1902) A.C. 484, it is a "treacherous ground for legal decision" and "a very unstable and dangerous foundation on which to build until made safe by decision". But public policy is not entirely unchangeable. As recognized in more recent decisions, "the law relating to public policy cannot remain immutable. It must change with the passage of time. The wind of change blows upon it". [*Nagle v. Feilden* (1966) 2 Q.B. 633. The public policy underlying Condition I(vi) in the leases by the Improvement Trust to the landlords was in pursuance of the legislative policy which established Improvement Trusts expressly for the purposes of improvement of town planning. It was thus executive act based on a legislative policy. Later the policy was expressly codified in section 14 of the Delhi Development Act. The leases by the landlords to the tenants were, Therefore, void in this respect, namely, they could not be valid insofar as they permitted the tenants to use the premises for non-residential purposes.

(11) The support sought by the tenants in the alleged estoppels of the landlords is even more precarious. It is often said that there can be no estoppels against a statute. But this statement is too widely worded and has to be properly understood. Statutes may, on the one hand, impose duties or prohibitions and,

on the other hand, confer rights and benefits. It is only when a right of a privilege or a benefit is conferred on a person by a statute that the question whether he can waive them can arise. As pointed out by us in *Battoo Mal v. Rameshwar Nath*, 2nd (1970) I Delhi 748, rights conferred by statutes are of two kinds, namely, (a) those which are for the exclusive and private benefit of certain persons as individuals involving no public aspect and (b) those which are based on a public policy so that the enforcement of these rights is not merely for the individual benefit of a person for the carrying out of a public policy through such persons. This distinction is strikingly brought out by two Supreme Court decisions. In *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.*, the question was whether the prohibition of sub-letting continued in section 15 of the Bombay Hotel and Lodging Houses Rates Control Act, 1947 could be waived by the landlord who expressly agreed with his tenant that the latter may keep sub-tenants in the premises. The landlord was held to be entitled to sue the tenant for eviction on the ground of sub-letting even though he had agreed that the tenant may sub-let the premises. For, the suit was not for the enforcement of the agreement of lease between the landlord and the tenant but to enforce the right of eviction based on section 13(l)(e) and section 15 of the statute. The plea of waiver could not be sustained as the Court would thereby be enforcing an illegal agreement contrary to provisions of section 15 of the said Act. The agreement of waiver was void on the grounds of public policy also. This was because the law that a tenant should not sub-let the premises and the landlord should be able to evict the tenant if he does so was based on public policy. The right given to the landlord was not for his private benefit but was to enforce the public policy. On the other hand is the decision in *Shri Lachoo Mal Vs. Shri Radhey Shyam*, Section I-A of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 exempted premises built after 1-1-1951 from the application of the said Act. The landlord in that case, however, expressly agreed with the tenant that such premises would be governed by the said. The exemption was purely for the benefit of the landlord and was not based on any public policy. The landlord could, Therefore, waive it.

(12) As distinguished from the Delhi and Bombay Acts, the U.P. Act did not contain a non-abstained clause, namely, "notwithstanding anything to the contrary contained in any other law or contract". Therefore, the parties could contract out of U.P. statute but they could not contract out of Delhi and Bombay statutes. This is why the eviction of a tenant can be secured only after compliance with the relevant provisos to section 14(1) of the Rent Control Act. A landlord and tenant are not at liberty to enter into a compromise out of these provisos and secure the eviction of a tenant thereby. Such compromises which did not show that the requirements of the provisos were satisfied by the landlords were held to be void as contrary to the statutory provisions of the provisos to section 13 of the Delhi and Ajmer Rent Control Act, 1952 which corresponded to section 14 of the Delhi Rent Control Act, 1958. by the Supreme Court in three consecutive decisions, namely :-

(1) Bahadur Singh and Another Vs. Muni Subrat Dass and Another, ,

(2) Kaushalya Devi and Others Vs. Shri K.L. Bansal, ,

and

(3) Ferozi Lal Jain Vs. Man Mal and Another, , followed by this Court in Jagdish Chander Bhalla v. Lakshman Swarup, 2nd (1971) I Delhi 504(10).

(13) In cases under such rent control legislation the Courts or the Controller have only a limited power to order eviction of the tenants. In considering the limitations of these powers, they observe a statutory duty. The provisions of the statute have to be taken into account by them even though the parties do not raise them. In this respect, these cases are similar to those in divorce courts where a petitioner cannot get a relief simply by alleging that the respondent is estopped from denying the charges. This is because the courts and the tribunals have a statutory duty to enquire whether the requirements of the statute have been satisfied. [Vide similar observations by Lord Parker in Commissioners of Inland Revenue v. Brooks, (1915) A C 478 (ii).

(14) It is well-known that not even the plainest and most express contract or consent of a party to litigation can confer jurisdiction on a court or authority if it is not so vested with it by law. Nor can such agreement add to the jurisdiction lawfully exercised by any judicial tribunal. It should be equally plain, Therefore, that the same result cannot be achieved by conduct or inaction or acquiescence by the parties. The converse of these propositions must also be true and, Therefore, the jurisdiction vested by law in a court or authority cannot be taken away either by the agreement of parties or by the acquiescence or estoppels urged by one party against the other if the effect of such agreement or estoppels would be to deprive the court or tribunal of its jurisdiction. This legal position is summed up in Spencer Bower and Turner "Estoppels by Representation" Second Edition by Turner at the end of paragraph 142 as follows :-

"IN some branches of the law the terms of the relevant statute preclude the parties from contracting out of the jurisdiction of the prescribed tribunal: and. in such cases, just as no agreement between the parties can oust the jurisdiction of the tribunal, neither can it be ousted by the invocation of an estoppels".

(15) In this sense it would be true to say that there can be no estoppels against a statute which precludes contracting out of it.

(16) It is true that these Supreme Court decisions emphasised that under the proviso to section 13(1) of the Delhi and Ajmer Rent Control Act, 1952, it is only "if the court is satisfied" that the requirements of any of the provisos to section 13 were fulfilled that the court could order the eviction of the tenant. But the words "if the court is satisfied" signify only one method of showing that the court must apply its mind and arrive at a decision and that the court could not be deprived of this function by any compromise between the parties which did not take into account the necessity to comply with the requirements of the provisos.

it is also true that in section 14 of Rent Control Act these words are absent. This does not mean, however, that u/s 14 the controller can order the eviction of a tenant without being satisfied that the ground of eviction has been proved. It would appear. Therefore, that a compromise between the parties by which a tenant agrees to be evicted by the landlord would be equally void if it does not state that the conditions of the relevant proviso to section 14(1) of the Rent Control Act have been fulfilled. Such compromises as were held to be void as being contrary to section 13 of the Delhi and Ajmer Rent Control Act, 1952 would be also void as being contrary to section 14 of the Delhi Rent Control Act, 1958.

(17) The provisos to section 14(1) of the Rent Control Act may be divided into three classes:-

(1) Provisos (a) to (d) and (h) to (j) relate to such conduct of the tenant which would entitle the landlord to evict him.

(2) Provisos (e) to (g) and (1) relate to the need of the landlord for the premises which would be sufficient for the eviction of the tenant though the conduct of the tenant may be blameless. and

(3) Proviso (k) stands in a class by itself. It does not relate either to the conduct of the tenant or to the need of the landlord. For, this special nature of proviso (k) is well brought out by contrasting it with proviso (c) which is as follows:-

"(C) that the tenant has used the premises for a purpose other than that for which they were let

(I) if the premises have been let on or after the 9th day of June 1952, without obtaining the consent in writing of the landlord ; or

(II) If the premises have been let before the said date without obtaining his consent."

(18) If the landlord were to lease the premises to a tenant for a particular user and the tenant acts contrary to the lease and uses the premises for a different purpose, then a right arises in favor of the landlord as such in view of the contract of lease between the landlord and the tenant. The cause of action is the breach of the condition of the lease by the tenant. If the tenant were to allege that the landlord has agreed to the change of the user then the question will have to be considered whether proviso (c) is for the private benefit of the landlord alone or whether it is in the public interest. If the change of user would be contrary to section 14 of the Development Act read with the master plan, then the right of the landlord would be based on public policy and the landlord would not be able to waive it. But if the change of user is not contrary to a statute or public policy then it would have to be considered whether the parties could contract out of proviso (c) in spite of the non-abstained clause at the beginning of section 14(1).

(19) On the other hand, proviso (k) does not concern with any conduct of the

tenant or the need of the landlord or anything which has to do with the terms of the lease with them. It is concerned with the right of a third party, namely, the public authority when it is the Lesser of the landlord. Such a right is given only to the public authority and not to any private person. Therefore, if the land were obtained by the landlord on lease from anyone other than the public authorities mentioned in proviso (k), then proviso (k) would not apply. The only reason why proviso (k) is inserted among the provisos to section 14(1) is that there is no privity between a public authority which is the Lesser of the landlord and the tenant of the landlord. The public authority itself would not, Therefore, be able to file a petition for the eviction of the tenant, it has necessarily to act through the landlord. The landlord, Therefore, acts only as an instrument to enforce the right of the public authority. The landlord himself has no right that the premises should be used in a particular manner by the tenant. For, his rights could arise only from the lease which has allowed the tenant to use the premises for non-residential purposes. This is why the cause of action under proviso (k), unlike under proviso (c), is not the misuse of the premises by the tenant. The Legislature has already contemplated that the landlord and the tenant may both agree to such misuser. it has, Therefore, provided a totally different cause of action in proviso (k). It is the user of the premises by the tenant which is contrary to the condition in the lease given by the public authority to the landlord plus the giving of the notice by the landlord to the tenant to stop such misuse and the failure of the tenant to stop the misuse even after such notice.

(20) Due to these differences, the question of waiver of the right to evict the tenant by any conduct of the landlord cannot arise under proviso (k) even though it may conceivably arise under proviso (c). For, proviso (k) is not meant for the benefit of the landlord at all. It is for the benefit of a third party, namely, the public authority. One can waive a right or a benefit or a privilege which belongs to oneself. But one cannot waive a right, privilege or benefit which belongs to some one else. It is not, Therefore, for the landlord to say that he agrees to the misuse by the tenant. For, a duty has been imposed on the landlord by the lease given to him by the public authority not to use the premises on the land for a non-residential purpose. A person may surrender or waive a right. But he cannot run away from the performance of a duty. The duty is imposed on the landlord whether he likes it or not. His refusal to obey the duty cannot amount to the destruction of the duty. This is specially so when the duty is owed to the public or to a public authority. In the well-known decision in *Maritime Electric Co. Ltd. v. General Dairies Ltd.*, (1937) A.C. 610, the Maritime Electric Company had agreed under a mistake to levy less than statutory charges for electricity supplied to the General Dairies Limited. On the faith of this agreement, the General Dairies Limited had paid more price to the farmers for their cream than they would have paid had the electricity been properly charged from them. Ordinarily a person is not allowed to retract from his representation made to another if the latter has acted on it. But the Maritime Electric Company was allowed to correct its mistake and to recover the higher electric charges from the General Dairies Limited

without being estopped from doing so. The reason was expressed by Lord Maugham in the following words at page 620 of the report :-

" WHERE, as here, the statute imposes a duty of a positive kind, not avoidable by the performance of any formality, for the doing of the very act which the plaintiff seeks to do, it is not open to the defendant to set, up an estoppels to prevent it. This conclusion must follow from the circumstances that an estoppels is only a rule of evidence which under certain special circumstances can be invoked by a party to an action; it cannot, Therefore, avail in such a case to release the plaintiff From an obligation to obey such a statute, nor can it enable the defendant to escape from a statutory obligation of such a kind on his part."

(21) The fact that the right, if any, under proviso (k) is vested in the public authority and only the duty in the landlord is re-inforced by sub-section (II) of section 14 which is as follows :-

"NO order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct."

(22) A further opportunity to stop the user which is contrary to the condition in the lease given by the authority to the landlord is to be given by the Controller to the tenant before ordering recovery of possession of the premises From the tenant. If the tenant complies with the condition imposed on the landlord by the authority within the time given to him by the Controller, then he is not to be evicted. Alternatively, the Controller may order the tenant to pay compensation to the authority and thereby avoid his eviction It is to be noted that the compensation which the Controller may direct to be paid by the tenant is to be paid to the authority and not to the landlord. This conclusively shows that it is the interest of the authority which is protected by proviso (k) and not that of the landlord.

(23) The alternatives of eviction and compensation mentioned in subsection (II) to section 14 are comparable to the same alternatives mentioned in sub-section (3) to section 50. In the latter it is for the Controller to resort to one or the other alternative. Who can choose the alternative under sub-section (II) of section 14? Can it be said that the tenant has a right to ask the Controller to fix compensation on payment of which the tenant can avoid his eviction? We do not think so. The words "as the Controller may direct" seem to give a discretion to the Controller. While the Controller is bound to order the eviction of the tenant on non-compliance with the condition imposed by the authority on the landlord, the Controller is not bound to fix compensation on payment of which the tenant may avoid being evicted. Our reasons for this view. are as follows : Firstly, sub-section (II) of section 14 has to be read with proviso (k) to section 14(1). Proviso

(k) exists entirely for the benefit of public authority. Sub-section (II) also, Therefore, is enacted to serve the interest of the authority and not of the landlord. Secondly, the interest of the Delhi Development Authority has to be gathered from the provisions of the Development Act. Section 14 of the Development Act prohibits any user of the land contrary to the master plan. The formation of the use zones in the master plan was preceded by the policy of the Delhi Improvement Trust to insert such conditions of user in the leases of land granted by the Trust for house-building purposes. If, Therefore, the Delhi Development Authority is under a statutory duty not to permit user contrary to the master plan, the question of the said authority accepting any compensation to permit misuse does not arise. As distinguished from development, the areas of which are shared between the municipal authorities on the one hand and the Delhi Development Authority on the other hand, the user is the exclusive concern of the Delhi Development Authority. Since the Authority has no power to legalize the misuse of land contrary to the plans by acceptance of compensation under the Development Act, the Controller cannot order the payment of compensation by the tenant to the Delhi Development Authority. It is not necessary to consider if this option of fixing compensation instead of evicting the tenant can be exercised by the Controller if the lease to the landlord had been given by the Government or the Municipal Corporation of Delhi. But it is clear that such option cannot be exercised by the Controller in case of a misuse contrary to the plans if the lease had been given to the landlord by the Delhi Development Authority.

(24) It was argued for the tenant-respondents that proviso (k) is for the benefit of the landlord inasmuch as by taking action there under he avoids the forfeiture of his lease and the re-entry on the land by; the Delhi Development Authority. The landlord could, Therefore, waive this benefit by entering into an agreement with the tenant. We are not impressed with this contention. Firstly, condition No. 1 (vi) in the lease between the authority and the landlord can be said to be, for the benefit of the authority only. It cannot be said to be for the benefit of the landlord. For, the landlord would rather benefit if the condition were not there so that he may use the land for commercial purposes more profitably than he could use them for residential purposes. Secondly, the landlord actually benefits by the misuse of the premises by the tenant who pays him more rent for commercial user than the landlord would have obtained for a residential user. Thirdly, the interests of the landlord and the tenant are united against the interest of the authority. authority, it would be a very indirect way of claiming the benefit of Condition No. 1 (vi) for the landlord to say that he now wants the tenant to stop the misuse so that the landlord may avoid the forfeiture of the lease by the authority. Finally, can it at any rate be said that proviso (k) is for the benefit of both the authority and the landlord? Even if it is so assumed the landlord cannot alone waive its benefit unless the authority were to join with him. But the authority cannot join with him because of section 14 of the Delhi Development Act. But we are of the view that proviso (k) is not for the joint benefit of the authority and the landlord at all. it is for the exclusive benefit of the authority as

is shown by the provision for the payment of compensation in sub-section (I I) of section 14 to the authority alone completely excluding the landlord.

(25) We have to see the importance of the Condition No. 1 (vi) in the lease in a proper perspective. It was the start of a policy of prohibiting non-permitted user of the land-a policy which is now statutorily enforced by section 14 of the Development Act. Further, the master plan which governs the development of the whole of Delhi is based on the restriction of the use of land in a particular zone to the specified purpose, misuse is punishable as an offence u/s 29(2) of the Development Act. Even the authority has not been given any power to condone the misuse by accepting compensation or other- wise. It is true that the authority may u/s 34(1) of the Development Act compound any offence made punishable under the Act and after such compounding no further proceedings could be taken against the offender. But this certainly does not mean that the misuse of the land and prosecution of the offenders and the compounding of the offences by the authority is the rule. Rather, it is an exception. The rule is that the user must be according to the use zones specified in the master plan. Even if the compounding of the offence is to be taken to amount to the condensation of the misuse by the tenant, still the compounding has to be done by the tenant directly with the authority and not with the landlord. Therefore, the landlord does not derive any benefit from it. However viewed, Therefore, the enforcement of the Condition No. 1 (vi) in the lease through proviso (k) to section 14(1) cannot be regarded as being for the benefit of the landlord. It can be regarded as being only for the benefit of the authority.

(26) Further, the development of whole of the land in Delhi is being made under the Development Act. The Government through the Delhi Development Authority is giving on lease thousands of plots to co-operative societies and through them to their members who build houses on them. The conditions in the leases and the sub-leases require the premises to be used in conformity with the use zones formed by the master plan. Thus all these premises would be occupied by the tenant of the members of the co-operative societies who build houses on these plots. If all these societies are to collude with their members and to allow them to use the premises contrary to the master plan and if by the very collusion the landlords are to be regarded as estopped from evicting tenants under proviso (k) to section 14(1) then the whole of the use zones policy of the master plan backed by section 14 of the Development Act would be defeated. The consequences would be disastrous. The whole town-planning scheme of Delhi would be thrown out of gear. In this perspective, it is impossible to regard proviso (k) to be for the benefit of the landlord. It must be regarded as being for the benefit of the Delhi Development Authority. With great respect, the weighty considerations of the public policy underlying Condition No. 1 (vi) of the lease and the statutory provisions considered above were apparently not urged before their Lordships who gave the decisions in *Vina Kumari* and *S. P. Arora* cases and this explains why we have arrived at a different conclusion.

(27) In passing it may be mentioned that the decision in *Municipal Corporation of Delhi Vs. Kishan Das and Another*, also recognised that user of land contrary to the master plan or zonal plan was prohibited by the Delhi Development Act, 1957. It is true that, as in that particular case, if the user is not so prohibited then such user would not violate any law. But that decision was concerned mainly with the functioning of the Delhi Development Act in the absence of the issue of the zonal plans in the localities concerned. In the present appeals, on the other hand, we are not concerned with the zonal plans but only with public policy enacted in section 14 of the Development Act read with the use zones formed by the master plan.

(28) For the above reasons, we hold that the landlords in both the appeals were not estopped from taking action under proviso (k) to section 14(1) against the tenants.

(29) We may also point out that in the prescribed forms in which the petitions for eviction were filed by the landlords against the tenants, the only notices mentioned as being given to the tenants by the landlords were those which were given under proviso (k) to section 14(1). The receipt of these notices by the tenants was not disputed. The landlord did not allege giving of notices to the tenants to terminate their contractual tenancies. For, in those days the landlords were not well-aware of the necessity to terminate the contractual tenancies by notices to quit before launching proceedings under the Rent Control Act. The tenants were also not aware of the necessity to take the defense that without the termination of the contractual tenancy, the proceedings could not be taken before the Controller. As pointed out by us in *Battoo Mal V. Rameshwar Nath*, (4) referred to above, this awareness came to the landlords and tenants after the decision of the Supreme Court in *Manujendra Dutt v. Purmendu Prasad Roy Chowdhury* (1967) 1 S.C.R. 47 (14). As the tenants did not take up this plea either before the Controller or before the Rent Control Tribunal, they cannot raise it for the first time in the second appeal as was held by us in *Battoo Mal's* case.

(30) The appeals are, Therefore, allowed. The decisions of the Controller confirmed by the Rent Control Tribunal are set aside. The respondent-tenants in both the appeals (namely, SAOs 83-D and 239-D of 1965) are given time for three months to bring their user in conformity with Condition No. 1 (vi) of the lease given by the Improvement Trust to the predecessors in title of the present landlords. On their failure to do so, an order for their eviction shall be passed by the Controller on being moved to do so by the landlords after notice to the tenants. It would be open to the tenants at that time to show to the Controller that they have complied with the condition. If they failed to do so, then the order for recovery of possession of premises shall be made by the Controller in favor of the landlords and against the tenants under proviso (k) to section 14(1) of the Rent Control Act. In the circumstances, we make no order as to costs.