

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RFA NO. 480/2008

%

Judgment delivered on 23.5.2011

HARISH CHANDER MALIK

..... Petitioner

Through: Mr. Anil Sapra, Sr. Adv. with Mr. Jayant
K. Mehta, Mr. Sukant Vikram, Ms. Urvi Kuthiala,
Advocates

versus

VIVEK KUMAR GUPTA & OTHERS

..... Respondent

Through: Mr. Sanjeev Sindhvani, Mr. Sanjay Dua,
Ms. Ektaa Kalra, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the Judgment should be reported in the Digest? **Yes**

G.S. SISTANI, J.

1. The present appeal is directed against the judgment and decree dated 01.09.2008 passed by the learned trial court rejecting the plaint of the appellant under order VII Rule 11 CPC as being barred by law.
2. The facts necessary to be noticed for disposal of the present appeal are that plaintiff (appellant herein) claims himself to be the owner of shop bearing no.12, Esplanade Road, Chandni Chowk, Delhi, measuring 30 sq. yards (hereinafter referred to as "*the shop*"), having purchased the same from its erstwhile owner, Sh. Preet Kumar Gupta, on 15.9.2003 by means of a Registered Sale Deed. Smt. Bimla Kumari Gupta, the mother of

respondents no. 1-3, was inducted as a tenant in the said shop. The tenancy of the mother of respondents no. 1-3 was terminated by the erstwhile owner Sh. Preet Kumar Gupta in the month of January, 2000. The mother of respondents no.1-3 died in the month of February, 2000, and thereafter respondents no.1-3 continued to remain in possession of the said shop. As per the plaint, after the death of the mother of respondents no.1-3, respondents no.1-3 sublet a portion of the shop to one Sh. Raj Kumar Singh (respondent no. 4 herein), who was carrying on the business of sale of readymade garments from the said shop at a monthly rent of Rs. 15000/-, per month. The sub-tenant was, however, forcibly evicted by respondents no.1-3 on 15.07.2003. On 17.07.2003, appellant received a notice from respondents no.1-3, stating themselves to be the lawful tenants of the shop, enclosed with a cheque in the sum of Rs. 2500/- towards rent for the period from March, 2003, to July, 2003, @ Rs. 500/-, per month. The appellant replied to the aforesaid notice disputing all the contentions raised by respondents no.1-3. It was also stated in the reply that the mother of respondents no.1-3 was in an unauthorized occupation of the shop at the time of her death and therefore, no better title can be derived by the respondents no. 1 to 3 therefrom. Subsequently, vide notice dated 8.8.2003 the respondents no. 1-3 were called upon to hand over vacant physical possession of the said shop before 30.8.2003. The cheque in the sum of Rs. 2500/- , which was enclosed with the legal notice, was also returned vide letter dated 9.8.2003. Since the respondents no.1-3 failed to hand over vacant physical possession of the said shop, the appellant filed a suit for possession and mesne profits.

3. As the respondents had not filed the written statement within the time allowed, the right to file written statement of respondents no. 1-3 was

closed by the learned Additional District Judge vide order dated 25.07.2005 against which the respondents no. 1-3 preferred Civil Misc (Main) Petition which was dismissed by this court. A Special Leave petition was also filed by respondents no. 1 -3 which was also dismissed vide order dated 25.08.2006 and the order of the trial court by which right to file written statement was closed attained finality.

4. The respondents no. 1 – 3 thereafter filed an application under Order VII Rule 11 CPC praying for rejection of plaint on the ground that the suit property is situated in a notified slum area within the meaning of Slum Areas (Improvement and Clearance) Act, 1956 (herein referred to as '*Slums Act*') and no permission has been sought by the appellant from the concerned authority to initiate proceedings under section 19 of the Slums Act. The learned trial court while allowing the application under Order VII Rule 11 CPC rejected the plaint of the appellant being barred by law. This has led to the filing of the present appeal.
5. Learned Senior counsel for appellant submits that the impugned judgment is bad in law as the learned trial court has failed to appreciate the fact that the present case is not covered by Delhi Rent Control Act since respondents no. 1 to 3 had sublet the premises to respondent no. 4 at a monthly rent of Rs. 15,000/- per month and therefore the parties would be governed by the provisions of the Transfer of Property Act simpliciter and thus the provision of the Slums would not be applicable. The counsel submits that the tenancy of the mother of respondents no. 1 to 3 was validly terminated vide legal notice in January 2000, therefore, no landlord-tenant relationship exists between the parties and the respondents

no. 1 to 3 are not tenants but are unauthorised occupants of the said shop and in view thereof Section 19 of the Slums Act is not applicable, and thus the respondents are only trying to delay the proceedings.

6. It is next submitted by learned senior counsel for appellant that the conduct of the respondents would be evident from the fact that despite service of summons, no written statement was filed by respondents no.1-3 and the right to file written statement was closed vide order dated 25.7.2005 and CM(M)No.2098-21/2005 filed in Delhi High Court, assailing the order dated 25.07.2005, by which the right to file written statement was closed, was also dismissed on 30.3.2006. The Special Leave Petition filed by respondents no.1-3 was also dismissed on 25.8.2006. It is pointed out by learned senior counsel for appellant that during the pendency of the Special Leave Petition an application was filed by one Smt. Poonam Jain under Order I Rule 10 CPC stating herself to be the daughter of late Sh. Ram Kumar Gupta and Smt. Bimla Kumari Gupta. In the said application, it was stated that the tenancy in respect of the said shop devolved upon Smt. Bimla Kumari Gupta and the respondents no. 1-3. The said application was dismissed on 12.2.2008. Respondents no.1-3 thereafter filed an application under Order VII Rule 11 CPC for rejection of the plaint stating that the shop is situated in a notified slum area within the meaning of Slums Act and no proceedings can be continued in view of Section 19 of the Slums Act and prayed that the plaint of the plaintiff/appellant be rejected. In reply to this application, the appellant stated that the application was barred under Section 21 of the CPC and further no document, including any notification, was placed on record to suggest that

the shop was within the purview of the Slums Act. In the written synopsis filed by the appellant, it was stated that the application under Order 7 Rule 11 CPC was filed after four years of service and the suit was not covered by Section 19 of the said Act, which is limited to proceedings for recovery of possession from the tenants while the present suit has been filed against the respondents, who are unauthorized occupants and there was no landlord-tenant relationship between the appellant and respondents no.1-3.

7. An argument was also sought to be raised by Mr. Sapra that as per the settled law while dealing with an application under Order VII Rule 11 CPC only the contents of the plaint have to be looked into and on perusal of the plaint would show that respondents no.1-3 had been sued as unauthorized occupants only. It is further contended that under the provision of Order VII Rule 11 since only the contents of the plaint have to be seen without any demurrer and since the provisions of Slums Act were nowhere mentioned in the plaint, same could have only constituted a defence of Respondents no. 1-3 which cannot be looked into for the purposes of Order VII Rule 11 CPC. The counsel has placed reliance on ***Saleem Bhai v. State of Maharashtra*** reported at (2003)1 SCC 557 and more particularly at para 9 which reads as under:

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a

direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

8. Elaborating his arguments further learned senior counsel for the appellant submits that what respondents no.1-3 could not achieve directly cannot be permitted to be achieved indirectly. The right to file written statement of respondents no.1-3 was closed as far back as four years prior to the filing of an application under Order VII Rule 11 CPC. This order was upheld by the Supreme Court by dismissing the Special Leave Petition filed by the respondents no. 1-3 and has attained finality. The learned senior counsel contends that the respondents no. 1-3 cannot be allowed to urge the same ground through their application under VII Rule 11 when the defence has been struck off.
9. Learned senior counsel for the appellant strongly urged before this court that Section 19 of the said Act is applicable only with regard to tenants and it was the mother of respondents no.1-3 who was the tenant of the shop. During her life time the tenancy stood terminated. Thereafter in February, 2000, the mother of respondents no.1-3 died and once the tenancy of the mother was terminated during her life time, respondents no.1-3 cannot derive a better title and thus they are merely unauthorized occupants and not tenants and thus Section 19 of the Slums Act is not applicable. It is vehemently argued by the learned senior counsel for appellant that the plaint proceeds on the premise that the tenancy of original tenant, Smt.

Bimla Kumari was terminated and that respondents no. 1-3 are unauthorised occupants of the suit property. The said issue that whether the respondents no. 1-3 are “tenants” itself requires evidence and trial and the learned trial court has erred in rejecting the plaint under Order VII Rule 11 CPC.

10. In the alternate, learned senior counsel for the appellant submits that in view of the fact that the premises were sublet by respondents no. 1-3 where the rent/amount received after subletting exceeded Rs. 3500/- the tenancy itself between the appellant and respondents no.1-3 ceased to fall within the purview and jurisdiction of Delhi Rent Control Act and would be governed by the Transfer of Property Act *simpliciter*. In view of this the tenancy could be terminated by issuance of a notice under Section 106 of Transfer of Property Act and subsequent to the receipt of notice of termination of the tenancy, respondents no.1-3 continue to occupy the said shop not in their capacity as tenants but as unauthorized occupants and an unauthorized occupant cannot take benefit of the protection under Section 19 of the Act, which fact has not been considered by the learned trial court.

11. It is submitted by learned senior counsel for the appellant that explicit averment has been made in para 18 of the plaint “*as defendants 1-3 had sublet the premises to the defendant no.4 at a monthly rent of Rs.15,000/-, per month, hence the provisions of the Delhi Rent Control Act, 1958, are not applicable to the present proceedings*”. It is further submitted by learned counsel for the appellant that the trial court has failed to consider that once the tenancy of the tenant under the Transfer of Property Act had come to an end, the tenant is liable to hand over possession to the

landlord and no relationship of landlord and tenant survives between the two. Respondents no.1-3 are, thus, mere trespassers in occupation.

12.Learned senior counsel for the appellant has further sought to contend that learned trial court has erred in not considering that it has been categorically held by a Full Bench of this Court that protection under Section 19 of the Act is available only to a tenant and not to any trespasser or any unauthorized occupant. Counsel for appellant strongly urged before this court that legal heirs of a tenant whose tenancy has been terminated cannot claim the benefit of Section 19 of the Slums Act and has placed reliance on **Sh. Krishan Kant & Others v. M/s Tulsi Bahi Gordhan Bhai** Patel reported at ILR 1987 I Delhi 478, more particularly at para 5 which reads as under:

“5. The first point to be seen is whether the respondents are liable to obtain any permission from the Competent Authority under the Slum Areas (Improvement and Clearance) Act before executing their eviction decree. This point has already been settled by this Court in a number of judgments to which I may refer. In 1971 (RLR (Notes) 1, Ram Chand Siri Ram & Anr. V. Mangol Kumar (dead) & L. Rs. (2), it is held that the legal representatives of the tenant against whom eviction order had already been passed are not covered by the definition of ‘tenant’ as given in the Slum Areas (Improvement & Clearance) Act and thus, no permission was required to be obtained from a Competent Authority under Slum Areas Act before executing a decree for eviction. This judgment has discussed the implications of the judgment of the Full Bench given in case of Bardu Ram (supra) also. 1972 RCR 428 Raj Rani v. Moolan Bai & Ors. (3); 1973 RCR 63 Nathu Khan & Ors. v. Mohd. Ismail (4) 1973 RCR 516 Jagatri Lal v. Charanji Lal (5); 1974 RCR 276 Chhotey Lal v. M.S. Shammi & Ors. (6); also lay down the same proposition of law that protection of the provisions of Slum Areas Act is not available to the legal heirs of the tenant against whom eviction order stands passed. The legal position is simple one. After all a person against whom a valid order of eviction stands passed in law is no longer a tenant, but in view of the

provisions of the Slum Areas Act he is entitled to retain the possession unless and until a permission is obtained from the Competent Authority for executing the decree against such a tenant. However, such a right to retain possession by a tenant against whom eviction order stands passed is a personal right which cannot be inherited by his heirs. Under the general law such a tenant ceases to be a tenant on passing of the eviction order or even on termination of his contractual tenancy. It is only the statutory protections which enable such a tenant to continue in the premises till the requirement of statutes are met. So, Moti Sarup did not possess any estate which could be inherited by legal heirs on his death in the shape of any tenancy rights in the premises in question. I have no reason to defer with the ratio laid down by different brother Judges of this court in the aforesaid cases. Hence, I hold that the petitioners were not entitled to have any protection of the Slum Areas Act and the respondent could execute the eviction order against the petitioners without obtaining any permission from the Competent Authority under the Slum Areas Act.”

13. Further reliance is placed on ***Sham Lal Vs. Joint Hindu***

Family Firm a Ram Chand Sri Ram and Ors., reported at ILR

1972 (2) Delhi 841, relevant portion of which reads as under:

“The question in the present case is whether the protection against eviction provided in clause (b) is available only to a tenant or whether, in case the tenant dies, the protection is also available to the legal representatives of the tenant. In **C.R. Abrol v. Administrator under the Slum Areas and Others**, 1970 R.C.R. 519 (1), it has been held by a Division Bench of this Court (Hardayal Hardy and V.S. Deshpandey JJ.) that the proceedings under section 19 can only be between a landlord and a tenant, that the exercise of his jurisdiction by the Competent Authority under section 19 depends on the fulfillment of the jurisdictional condition that the application under the section is made by a landlord for permission to evict a tenant, and that the Competent Authority is bound to make a preliminary inquiry into the existence of the relationship of landlord and tenant between the parties under section 19(1) with a view to be able to decide on the basis of such a preliminary inquiry whether the permission should be given to the landlord or not. In *Bardu Ram v. Ram Chander*, 1970 R.C.R. 982 a Full Bench of this Court (H.R.Khanna, C.J., S.N. Andley, S.N. Sharkar, V.S.Deshpande and V.D. Misra JJ.), held

that the word “tenant” in section 19 of the Slum Areas Act includes a person in occupation of a tenanted premises even though a decree or order for eviction has been obtained against him. The question, however, arises as to whether, if the tenant against whom such a decree was obtained dies, his legal representatives, who are in occupation of the tenanted premises, would be included in the expression “tenant” as contemplated by the Slum Areas Act. The term “tenant” has not been defined in the Slum Areas Act. A tenancy may be either contractual or statutory. In case of contractual tenancy, the estates of the lessor and lessee (landlord and tenant) are estates of inheritance. If the tenant dies before the tenancy is terminated, his estate or interest in the property which is the subject matter of the tenancy, in the absence of anything to the contrary in the terms of the contract of tenancy, passes to his legal representatives vide *Maharaja Tej Chund Behadur and Shri Kanth Ghose and Others* (1841-46) 3 M.T.A. 216, *Gobind Lal Roy and Hamendra Narain Roy Chowdary*, (1890) I.L.R. 17 Calcutta 686 (P.C.); and *Mulla's Transfer of Property Act* (Fifth Edition) page 641). But, in the case of statutory tenancy, i.e., where the tenancy has been terminated and the tenant, however, continues to be in occupation of the property by virtue of the provisions of a statute which prohibits his eviction vide *abdul Ghafoor v. Asa Ram*, 1971 R.C.R. 561), the statutory tenant has merely a personal right to protect his possession, and has no estate or interest in the premises or property occupied by him, as pointed out by the Supreme Court in *Calcutta Credit Corporation Ltd. and Another v. Happy Homes Private Ltd.*, A.I.R. 1968 Supreme Court 471, 477 (paragraph 15). Therefore, on the death of a statutory tenant, no estate or interest in the property passes to his legal representatives. Clause (b) of sub-section (1) of section 19 of the Slum Areas Amendment Act deals with a suit or proceeding instituted before February 28, 1965, for the eviction of a tenant. Such a tenant is no doubt a tenant for the purposes of the Slum Areas Act as held by the Bench in *Bardu Ram's case* (*supra*), but he is only a statutory tenant as he, notwithstanding the decree or order of eviction, continues to be in possession of the property by virtue of the Delhi Rent Control Act, 1958, and the Slum Areas Act. Consequently, after the death of such a tenant, his legal representatives cannot claim any estate or interest in the property which was the subject matter of the tenancy. It follows that they cannot claim the protection provided in clause (b) of sub-section (1) of section 19 of the Slum Areas Amendment Act.

We may also point out that sub-section (4) of section 19 prescribes the factors which the Competent Authority has to take into account when granting or refusing to grant the

permission under sub-section (3) of the section. Clause (a) of sub-section (4) of section 19 provides that in granting or refusing to grant permission under sub-section (3) of the section, the Competent Authority shall take into account the factor whether alternative accommodation within the means of the "tenant" would be available to him if he were evicted. The use of the word "tenant" in the said provision shows that it is the extent of the means of the tenant to acquire alternative accommodation that has to be considered by the Competent Authority under sub-section (4) of section 19 and not the means of a person who is not a tenant. Therefore, if clause (b) of sub-section (1) of section 19 were to be interpreted as applicable to persons other than the tenant, viz. his legal representatives, there would be no provision in the section providing any guide-lines to the Competent Authority to consider the means of the said legal representatives of the tenant, as sub-section (4) does not provide for any such consideration of the means of persons other than the tenant. Thus, the provision in sub-section (4) supports the view that the protection against eviction provided in clause (b) of sub-section (1) of section 19 of the Slum Areas Act is available only to the tenant and not to his legal representatives."

14. Reliance is also sought upon ***Ram Singh v. Nathi Lal & Others*** reported in ILR 1983 I Delhi 460 at paras 7,8,9 which read as under:

"7. The next question is: What are the rights of the heirs and legal representatives of a tenant whose tenancy had been determined during his life time? In *Anand Niwas Pvt. Ltd. v. Anandji Kalyanji Podhi & Ors.*, AIR 1965 SC 414 (2), it has been observed as under:

"A person remaining in occupation of the premises let to him after the determination of or expiry of the period of tenancy is commonly though in law not accurately, called "a statutory tenant". Such a person is not a tenant at all, he has no estate or interest in the premises occupied by him. He has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of tenancy. His right to remain in possession after the determination of contractual tenancy is personal: it is not capable of being transferred or assigned, and devolves on his death only in the manner provided by the statute (emphasis added).

In *J.C. Chatterjee & Ors. v. Shri Kishan Tandon & Anr.*, AIR 1972 SC 2526 (3) following the judgment in *Anand Niwas Pvt. Ltd.* (supra) it has been held that on the death of the statutory tenant pending eviction suit or appeal, his heirs and legal representatives brought on record cannot claim the status of tenant, that they could urge all

contentions which the deceased could have urged except only those which are personal to the deceased. Thus it must be held that after determination of tenancy by passing of a decree or order of eviction, the right of the tenant to remain in possession thereafter is personal to him, and not heritable by his heirs and legal representatives. Such right will devolve upon the heirs in the manner provided by the statute. In other words, the heirs and legal representatives of the statutory tenant remain in occupation of the tenancy premises without any right, title or interest and they may be called trespassers, unless the statute confers any right upon such heirs and legal representatives.

8. Under the Act of 1952, Section 2 (j) defines 'tenant' as follows.....

9. According to the definition there is no provision for devolution of tenancy rights upon any of the heirs and legal representatives of the deceased tenant. Under the Delhi Rent Control Act, 1958, the definition of 'tenant' does not include a person against whom an order or decree for eviction has been made. In the instant case a decree for eviction was passed against Sita Ram on 14 January, 1958 and as such he was not a tenant within the meaning Section 2 (l) of the Act of 1958. His heirs and legal representatives also therefore did not inherit any right. Thus respondents No.2 to 6 though heirs and legal representatives of Sita Ram deceased a statutory tenant do not inherit any right with respect to the suit premises and therefore they are held to be trespassers in possession of the suit premises. Respondent No.1, son in law of the deceased is also a trespasser as he has failed to prove his right to remain in possession of the premises."

15. Learned senior counsel for the appellant has also relied upon ***Punnu Ram and others v. Chiranji Lal Gupta and others***, reported at AIR 1982 Delhi 431, more particularly para 27, which reads as under:

"27. The question that arises for consideration is what the meaning of the term "tenant" is. As noticed earlier, this term is not defined by the Act. Mr. Narula submits that tenant contemplated by Section 19 is a person in occupation or a person likely to be evicted, if permission is granted to institute eviction proceedings or execute an order of eviction. We do not agree. The protection contemplated is for a tenant as recognized by law. A mere occupier cannot be equated to a tenant. An occupier may be a trespasser or a licensee or a tenant. The concept of welfare State cannot extend to giving protection to the trespassers or persons who have no right of occupation. Therefore, when the Legislature used the term 'tenant' in Section 19 as well as in the Preamble of the Act it means tenant-in-law."

16. Learned senior counsel for the appellant has also relied upon **Nathu**

Khan and Others v. Mohd. Ismail, reported at AIR 1973 Delhi 213

(V 60 C 60) more particularly para 6, which reads as under:

6. The word “tenant” in Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 certainly includes a tenant against whom an order for eviction has been passed. Even though the definition of a “tenant” in section 2(1) of the Delhi Rent Control Act, 1958 expressly states that it “shall not include any person against whom any order or decree for eviction has been made”, this definition is restricted to the construction of the said Act. It cannot be extended to the construction of section 19 of the Slum Areas (Improvement and Clearance) Act, 1956. The latter provision was enacted partly to protect the possession of a person against whom an order for eviction was passed. As held in Bardu Ram’s case, 1970 Ren CJ 1078: (AIR 1972 Delhi 34) (FB) therefore, a tenant whom an order for eviction is passed is also a “tenant” for the purpose of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956. The reason is that a tenant whose contractual tenancy has been terminated either by a notice to quit under Section 106 of the Transfer of Property Act or according to the principle underlying that provision or by an order for eviction having been passed against him still continues to be a statutory tenant. The Delhi Rent Control Act, 1958 is expressly enacted to protect the possession of tenants whose contractual tenancy has been so terminated. It is the protection of the said Act which makes such a tenant a statutory tenant after the termination of the contractual tenancy. But as held by the Supreme Court in Anand Niwas v. Anandji Kalyanji’s Pedhi, AIR 1965 SC 414, the statutory protection is confined personally to the tenant himself. It is not an interest in property. It is not, therefore, heritable by the legal representatives of the statutory tenant. On the death of the statutory tenant, therefore, the legal representatives of the statutory tenant are not entitled to the statutory protection afforded by the Delhi Rent Control Act, 1958. The protection ended with the death of the statutory tenant.”

17. Learned senior counsel next relied upon ***Mohal Lal Goela and Others v. Siri Krishan and Others***, reported at AIR 1978 Delhi 92, more particularly para 104, which is as under:

“104. Issue No.9

Assuming that the property is situated in a slum area, no permission of the competent authority under the Slum Areas (Improvement and Clearance) Act, 1956, is required. Under S. 19 of that Act permission of the competent authority is required for “any suit or proceedings for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area.” But this suit is not a suit for the eviction of a tenant. It is a suit based on independent title against the defendants whose possession is said to be unauthorized and unlawful. Section 19 of the Slum Act has no application to such a suit. This issue is therefore, decided against the defendants.”

18. Ld. Senior counsel for appellant next submits that the learned trial court has erred in taking judicial notice of the fact that Chandni Chowk is a notified slum area under the Slums Act. It is further submitted by the senior counsel that the question whether the suit property is situated in a notified slum area is a mixed question of law and fact which can be decided only on the basis of evidence to be led by the parties.

19. At the outset, the counsel for respondents submits that there is no infirmity in the judgment of the learned trial court as Chandni Chowk is a notified slum area and the suit was filed without obtaining the requisite permission under section 19 of the Slums Act which strikes at the very root of the matter.

20. Counsel for respondent has strongly urged before this court that the court can take judicial notice of notorious facts and a notification issued by the government is 'law' within the meaning of Article 13 of the Constitution and the courts are empowered to take judicial notice of the law of the land. The counsel has cited various judgments to show how and when the courts have taken judicial notice of day to day notorious facts.

21. The counsel for respondent further submits that admittedly, the suit premise is a shop and the tenancy in question is a commercial tenancy. It is further contended that as per the settled law, commercial tenancy is heritable and since respondents no. 1-3 are legal heirs of the original tenant, Smt. Bimla Kumari, the tenancy devolves upon them by the ordinary law of succession and therefore, they are lawful tenants of the said shop entitled to the benefit of section 19 of the Slums Act. It is further the contention of counsel for respondents that since commercial tenancy is heritable; notice of termination of tenancy is of no consequence. Reliance has been placed upon **Smt. Gian Devi v. Jeevan Kumar & Others** reported at AIR 1985 SC 796 wherein it has been categorically held that commercial tenancy is heritable. The relevant para of the judgment read as under:

"34. It may be noticed that the Legislature itself treats commercial tenancy differently from residential tenancy in the matter of eviction of the tenant in the Delhi Rent Act and also in various other Rent Acts. All the grounds for eviction of a tenant of residential premises are not made grounds for eviction of a

tenant in respect of commercial premises. Section 14(l)(d) of the Delhi Rent Act provides that non-user of the residential premises by the tenant for a period of six months immediately before the filing of the application for the recovery of possession of the premises will be a good ground for eviction, though in case of a commercial premises no such provision is made. Similarly, Section 14(l)(e) which makes bona fide requirement of the landlord of the premises let out to the tenant for residential purposes a ground for eviction of the tenant, is not made applicable to commercial premises. A tenant of any commercial premises has necessarily to use the premises for business purposes. Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises, his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing commercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages. The death of the person who happens to be the tenant of the commercial premises and who was running the business out of the income of which the family used to be maintained, is itself a great loss to the members of the family to whom the death, naturally, comes as a great blow. Usually, on the death of the person who runs the business and maintains his family out of the income of the business, the other members of the family who suffer the

bereavement have necessarily to carry on the business for the maintenance and support of the family. A running business is indeed a very valuable asset and often a great source of comfort to the family as the business keeps the family going. So long as the contractual tenancy of a tenant who carries on the business continues, there can be no question of the heirs of the deceased tenant not only inheriting the tenancy but also inheriting the business and they are entitled to run and enjoy the same. We have earlier held that mere termination of the contractual tenancy does not bring about any change in the status of the tenant and the tenant by virtue of the definition of the "tenant" in the Act and the other Rent Acts continues to enjoy the same status and position, unless there be any provisions in the Rent Acts which indicate to the contrary. The mere fact that in the Act no provision has been made with regard to the heirs of tenants in respect of commercial tenancies on the death of the tenant after termination of the tenancy, as has been done in the case of heirs of the tenants of residential premises, does not indicate that the Legislature intended that the heirs of the tenants of commercial premises will cease to enjoy the protection afforded to the tenant under the Act. The Legislature could never have possibly intended that with the death of a tenant of the commercial premises, the business carried on by the tenant, however flourishing it may be and even if the same constituted the source of livelihood of the members of the family, must necessarily come to an end on the death of the tenant, only because the tenant died after the contractual tenancy had been terminated. It could never have been the intention of the Legislature that the entire family of a tenant depending upon the business carried on by the tenant will be completely stranded and the business carried on for years in the premises which had been let out to the tenant must stop functioning at the premises which the heirs of the deceased tenant must necessarily vacate, as they are afforded no protection under the Act. We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case

of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses but it would not have been open to the Legislature to alter under the Rent Act, the law of succession regarding the business which is a valuable heritable right and which must necessarily devolve on all the heirs in accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act. There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to Companies, Corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. It can hardly be conceived that the Legislature would intend to deny to one class of tenants, namely, individuals the protection which will be enjoyed by the other class, namely, the Corporations and Companies and other bodies with juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature could never have intended is likely to be caused. Any time after the creation of the contractual tenancy, the landlord

may determine the contractual tenancy, allowing the tenant to continue to remain in possession of the premises, hoping for an early death of the tenant, so that on the death of a tenant he can immediately proceed to institute the proceeding for recovery and recover possession of the premises as a matter of course, because the heirs would not have any right to remain in occupation and would not enjoy the protection of the Act. This could never have been intended by the Legislature while framing the Rent Acts for affording protection to the tenant against eviction that the landlord would be entitled to recover possession, even if no grounds for eviction as prescribed in the Rent Acts are made out.”

22. Further, the counsel pointed out that no averment has been made in the appeal that the suit property is not situated in a notified slum area and that even during the pendency of appeal, the appellant, by moving an application seeking permission of this court for obtaining consent of the concerned authority under the Slums Act, has himself admitted the fact that the permission was necessary and that the suit property is situated in a notified slum area.

23. Mr. Sindhwani next contends that from a reading of the plaint, it becomes clear that the appellant has filed the suit against respondents no. 1-3 in their capacity as tenants. The counsel points out that it is appellant’s own case that he served a legal notice to the respondents no. 1-3 terminating their tenancy. The cause of action of the said suit is also the act of sub-letting which clearly shows that respondents no. 1-3 are tenants. Further, the counsel submits that the appellant had claimed mesne profits neither from the date on which the tenancy of Smt. Bimla Kumari was terminated

nor from the date of her death; but has claimed mesne profits from 30.08.2008 which is the date of termination of tenancy of respondents 1-3. Thus the appellant has recognized the respondents as tenants of the suit property and in view thereof the mandatory permission under Section 19 of the Slums Act was required.

24. Refuting the contention of the counsel for appellant that respondents no. 1 to 3 are merely unauthorized occupants not entitled to benefit under section 19 of the Slums Act, the counsel for respondents no. 1 to 3 contends that in view of the object of enactment of the Slums Act, the definition of 'tenant' is wider under the Slums Act and a mere service of notice to quit does not change the status of tenant to that of an unauthorized occupant. It is contended that merely because a notice under section 106 of the Transfer of Property Act has been served upon the respondents no. 1 to 3, they do not cease to be tenants and do not become unauthorized occupants. Reliance has been placed upon ***Lal Chand (dead) by his legal representatives & others v. Radha Kishen*** reported at (1977)2 SCC 88 at pars 13 to 17 which read as under:

"13. The word "tenant" has not been defined in the Slum Clearance Act but Section 2(1) of the Delhi Rent Control Act, 59 of 1958, defines it thus:

"2. (1) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or but for a special contract would be, payable and includes a subtenant and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any order or decree for eviction has been made;."

This definition has been amended by Act 18 of 1976 but the amended definition also provides by Section 2(1)(A) that the word "tenant" shall not include any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be reopened under the proviso to Section 3 of the amending Act of 1976. It is thus clear that insofar as the Delhi Rent Control Act is concerned, a person against whom an order or a decree for eviction has been passed cannot, generally, be regarded as a tenant. The question which requires consideration is whether the definition of "tenant" contained in the Delhi Rent Control Act can be extended to proceedings under the Slum Clearance Act, or, in other words, whether the word "tenant" which occurs in clause (a) of Section 19(1) of the Slum Clearance Act bears the same meaning which it has under the Delhi Rent Control Act.

14. Section 19 of the Slum Clearance Act furnishes intrinsic evidence to show that the definition of the word "tenant" as contained in the Delhi Rent Control Act cannot be extended for construing its provisions. By clause (b) of Section 19(1) no person can, except with the previous permission in writing of the competent authority, execute any decree or order obtained in any suit or proceeding instituted before the amending Act of 1964 for the eviction of a "tenant" from any building or land in a slum area. Sub-section (2) of Section 19 provides that a person desiring to obtain permission of the competent authority shall make an application in the prescribed form. By sub-section (4), the competent authority is required to take into account certain factors while granting or refusing to grant the permission asked for. The first of such factors which is mentioned in clause (a) of sub-section (4) is "whether alternative accommodation within the means of the tenant would be available to him if he were evicted". It is evident that the word "tenant" is used in Section 19(4)(a) to include a person against whom a decree or order for eviction has already been passed because, that provision applies as much to the permission sought for executing a decree or order of eviction referred to in Section 19(1)(b) as to the institution of a suit or proceeding for obtaining a decree or order for eviction referred to in Section 19(1)(a). If a person against whom a decree or order of eviction has been passed is not to be included within the meaning of the word "tenant", Section 19(4)(a) could not have used the language which it uses, namely, whether alternative accommodation within the means of the "tenant" would be available to him if he were evicted. In the absence

of compelling circumstances and in order to better effectuate the object of the Slum Clearance Act, we see no reason why the word "tenant" should not bear the same meaning in Section 19(1)(a) as in Section 19(4)(a). The Rule is well settled that where the same expression is used in the same statute at different places the same meaning ought to be given to that expression, as far as possible. In the instant case the word "tenant" has been used at more than one place in Section 19 itself and it is only reasonable to construe it in the same sense throughout.

15. The Slum Clearance Act was passed, inter alia, for the protection of tenants in slum areas from eviction. As observed by this Court in *Jyoti Pershad v. Administrator for Union Territory of Delhi*¹ the Slum Clearance Act looks at the problem of eviction of tenants from slum areas not from the point of view of the landlord and his needs but from the point of view of tenants who have no alternative accommodation and who would be stranded in the open if they were evicted. The policy of the Slum Clearance Act being that the slum dweller should not be evicted unless alternative accommodation is available to him, we are of the view that the word "tenant" which occurs in Section 19(1)(a) must for the purpose of advancing the remedy provided by the statute be construed to include a person against whom a decree or order for eviction has been passed. We might mention that a Full Bench of the Delhi High Court in *Bardu Ram Dhanna Ram v. Ram Chander Khibru*² has taken the same view, namely, that the word "tenant" in Section 19 of the Slum Clearance Act includes a person against whom a decree or order of eviction has been passed.

16. Learned counsel for the respondent relied very strongly on a decision of this Court in *Lakhmi Chand Khemani v. Kauran Devi*³ in support of his submission that the word "tenant" must bear the same meaning in the Slum Clearance Act as in the Delhi Rent Control Act. We are unable to appreciate how the judgment in that case supports the contention of the respondent. All that was decided therein was that a person against whom an order for eviction is passed cannot be a tenant within the meaning of the Delhi Rent Control Act and that the definition of the word "tenant" as contained in that Act would not be affected by anything contained in Section 19 of the Slum Clearance Act. The

¹ AIR 1961 SC 1602: (1962)2 SCR 125

² AIR 1972 Delhi 34

³ (1966)2 SCR 544 : AIR 1966 SC 1003

question which arose in that case was whether Section 50 of the Delhi Rent Control Act barred the jurisdiction of the civil court to entertain a suit in relation to any premises to which that Act applied, for eviction of a "tenant" therefrom. Not only that no question arose in that case as to whether the definition of "tenant" as contained in the Delhi Rent Control Act should be extended to the Slum Clearance Act, but the Court observed expressly that:

"No question as to what the rights of a tenant against whom a decree in ejectment has been passed in view of Section 19 of the Slum Areas Act are, arises in this appeal"

and that the Court was not concerned in the appeal before it with any question as to the protection given by the Slum Areas Act to tenants The question before us is not whether a person against whom a decree for eviction is passed is a tenant for the purposes of the Delhi Rent Control Act but whether he is a tenant for the purposes of Section 19 of the Slum Clearance Act. *Lakhmi Chand* case does not deal with this problem at all.

17. Since the respondent had not obtained permission of the competent authority for instituting the present suit for obtaining a decree for eviction of Lal Chand from a building situated in the slum area and since Lal Chand must be held to be a tenant for the purposes of Section 19(1)(a) it must follow that the suit is incompetent and cannot be entertained."

25. A further reliance is place upon a Full Bench decision of this court in ***Bardu Ram Dhanna Ram v. Ram Chander Khibree*** reported at AIR 1972 Delhi 34 (V 59 C 11) at paras 12 to 14 which read as under:

"12. Coming to the argument advanced on behalf of the landlord that the word "tenant" in Section 19 of the Slum Areas Act Should have the same meaning as is given in Section 2(1) of the Delhi Rent Control Act and that it should not include a person against whom an order or decree for eviction has been made, we find that there is something inherent in the language of Section 19 which militates against the acceptance of the above argument. According to clause (b) of sub-

section (1) of Section 19, where any decree or order is obtained in any suit or proceeding instituted before the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, for the eviction of a tenant from any building or land in a slum area, no person shall execute such decree or order, except with the previous permission in writing of the competent authority. According to sub-section (2) of that section, a person desiring to obtain permission shall have to apply in writing to the competent authority on the prescribed form, sub-section (3) provides for the procedure to be allowed by the competent authority while granting the permission. Sub-section (4) lays down the criteria which have to be kept in view by the competent authority granting or refusing to grant the permission. A criterion given in clause (a) of that sub-section is whether alternative accommodation within the means of the tenant would be available to him if he were evicted. The use of the word "tenant" in that clause, which also covers cases mentioned in clause (b) of sub-section (1) makes it manifest that the intention of the legislature was that the 'tenant' would include a person against whom a decree or order for eviction has been obtained if the word "tenant" were not to include a person against whom a decree or order for eviction had been obtained, the use of the word "tenant" in clause (a) of sub-section (4) would be inexplicable when applying that clause to cases covered by clause (b) of sub-section (1) of Section 19. It also cannot be said that the word "tenant" as used in sub-section (1) has a connotation different from that of the word "tenant" used in sub-section (4) of Section 19. It is a well-settled rule of construction, that where the legislature uses the same expression in the same statute at two places or more than the same interpretation should be given to that expression unless the context requires otherwise. (See in this connection *Raghubans Narain Singh v. Uttar Pradesh Govt.* Air 1967 Sc 465. There is nothing in the context of Section 19 that the word "tenant" as used in sub-sections (1) and (4) of Section 19 was intended to have different meanings.

13. The matter can also be looked at from another angle. The object of the Delhi Rent Control Act *inter alia* is to control evictions. The preamble of the Slum Areas Act shows that it was intended to afford further protection to the tenants living in slum areas from eviction. An essential object of the Slum Areas Act is to enable the poor, who have no other place to go to and

who, if they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere. (See in this connection *Jyoti Pershad v. Union Territory of Delhi*, [1962] 2 SCR 125). It was observed in that case:-

"The Act, no doubt, looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed. The Act itself contemplates eviction in cases where on the ground of the house being unfit for human habitation it has to be demolished either singly under Section 7 or as one of a block of buildings under Chapter IV. So long therefore as a building can, without great detriment to health or safety, permit accommodation, the policy of the enactment would seem to suggest that the slum dweller should not be evicted unless alternative accommodation could be obtained for him."

To accept the contention advanced on behalf of the landlords and to construe the word "tenant" so as not to include a person against whom a decree or order for eviction has been obtained would have the effect of setting at naught the protection afforded to such persons by clause (b) of sub-section (1) of Section 19 of the Act. The inevitable consequence of the acceptance of that contention would be that though a landlord cannot evict his tenant in execution of a decree or order for eviction without the permission of the competent authority, he may circumvent the above protection afforded to the tenant by filing a separate suit for possession after obtaining the eviction order or decree. The protection to the tenant would thus become illusory and the provision of law containing such protection would be rendered nugatory. Such a construction, which would necessarily defeat an essential object of the statute, in our opinion, should be avoided. When a question arises about the construction of a word or expression in a statute, the Court should lean in favor of the construction which subserves and effectuates the dominant purpose of the legislation rather than that which has the effect of frustrating and thwarting that

purpose. The office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private comodo, and to add force and life to the cure and remedy, according to the true intent of makers of the Act. Pro bono publico. (See in this connection Maxwell on the Interpretation of Statutes, Twelfth Edition page 40). It has been observed on page 45 of that book:

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

It is well settled that in construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute (See in this connection *Siraj-ul-Haq v. S. C. Board of Waqf*, U. P., [1959] 1 SCR 1287). In the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*, [1960] 1 SCR 890 , the Supreme Court while dealing with legislation conferring further protection on the tenants, observed:

"In interpreting provisions of such beneficial legislation the Courts always lean in favor of that interpretation which will further the beneficial purpose of that legislation."

14. Keeping in view the object and the scheme of section 19 of the Slum Areas Act, as made manifest by its provisions, we are of the opinion that the word "tenant" in that section includes a person in occupation of the tenanted premises even though a decree or order for eviction has been obtained against him."

26. Reliance is also placed upon ***Shyam Kishore & Anthr v. M/s Roop Saree Kendra & Others*** reported at 105 (2003) DLT 422

wherein a Single Judge of this Court held that possession of premises by a tenant for purposes of Section 19 of the Act cannot be turned as unlawful by incident of termination of tenancy under section 106 of the Transfer of Property Act. The relevant portion of the judgment reads as under:

“16. The definition of ‘tenant’ in respect of premises governed by Slum Clearance Act came up for consideration before the Full Bench of this Court in ***Bardu Ram Dhanna Ram v. Ram Chander Khirbu***, AIR 1972 Delhi 34 as the word ‘tenant’ was not defined in the Slum Areas Act whereas the provisions of Delhi Rent Control Act defined the ‘tenant’ as above and view of the Delhi High Court that a ‘tenant’ of a premises situated in slum area also includes even a person against whom decree or order of eviction has been passed was accepted with approval by the Supreme Court in ***Lal Chand (dead) by LRs and Others v. Radha Kishan***, AIR 1977 SC 789. Observations of the Supreme Court are like this:

“Slum Clearance Act looks at the problem of eviction of tenants from slum areas not from the point of view of the landlord and his needs but from the point of view of tenants who have no alternative accommodation and who would be stranded in the open if they were evicted. The policy of the Slum Clearance Act being that the slum dweller should not be evicted unless alternative accommodation is available to him. We are of the view that the word ‘tenant’ which occurs in Section 19(1)(1) must for the purpose of advancing the remedy provided by the statute be construed to include a person against whom a decree or order for eviction has been passed. We might mention that a Full Bench of the Delhi High Court in *Bardu Ram Dhanna Ram v. Ram Chander Khirbu*, AIR 1972 Delhi 34 (FB) has taken the same view namely, that the word ‘tenant’ in Section 19 of the Slum Clearance Act includes a person against whom decree or order of eviction has been passed.”

17. At the same time the Supreme Court also held that the definition of the word tenant as contained in Delhi Rent Control Act which does not include a person against whom decree or order of eviction has been passed would not be affected by anything contained in Section 19 of the Slum Clearance Act.

18. As is apparent from the aforesaid decisions, the definition of a tenant for the purposes of Delhi Rent Control Act is less wider than the definition of a tenant for the purposes of Slum Clearance Act. For the purpose of Delhi Rent Control Act the tenant does not include a person against whom decree of eviction has been passed whereas for the purpose of Slum Clearance Act tenant is inclusive of a person against whom ejectment decree has been passed. It is rightly so as the object of Slum Clearance Act was not to evict the tenant from the premises without the permission from the Competent Authority.

19. There is no gainsaying the fact that suit for *mesne* profits or for that purposes for damages emanates from the wrongful possession of a tenant. Section 2(12) of the CPC defines the '*mesne profits*' as under:

“*Mesne profits*” of the property means those profits which the person in wrongful possession of such property actually receives or might with ordinary diligence have received therefrom.....by the person in wrongful possession.”

20. Thus unless and until the possession of a tenant is wrongful or unlawful the suit for *mesne profits* does not lie. Termination of a tenancy of a tenant by way of notice under Section 106 of the TP Act does not render the possession of a tenant either unlawful or wrongful for the purpose of the Slum Clearance Act as it affords additional protection to the tenant that unless and until the permission is obtained under Section 19 of the Act suit or petition for eviction would not lie.

21. A tenant cannot have two split personalities, one for the purpose of suit for recovery of possession and other for the purpose of recovery of *mesne profits*. That is for the purpose of recovery of possession he will continue to be a 'tenant' and not termed as an unauthorised or unlawful occupant but for the purpose of recovery of *mesne profits* he is unauthorised or unlawful occupant

by virtue of termination of his tenancy under Section 106 TP Act. Had the termination of tenancy of a tenant by way of a notice under Section 106 of the TP Act had the effect of the rendering the possession as unlawful or wrongful, remedy by way of suit for possession would have been readily available as is available in respect of tenants who are not governed by the Slum Clearance Act. Once a protection is afforded by a statute to a tenant the only effect of termination of tenancy by virtue of notice under Section 106 of the TP Act would be that his tenancy would be treated as a statutory tenancy, if not a regular tenancy.

22. This is even otherwise manifestly clear from the provisions of Section 19 of the Slum Clearance Act itself which is in the form of *non-obstante* clause i.e. notwithstanding anything contained in any other law for the time being in force no person shall except with the previous permission in writing of the Competent Authority institute any suit or proceeding for obtaining any time or order for the eviction of a tenant from the building or land in a slum area. It was in view of this statutory protection that the Supreme Court as well as the Delhi High Court and other Courts in cases after cases held that for the purpose of Section 19 of the Slum Clearance Act the definition of 'tenant' would include even a person against whom an order of eviction has been passed.

23. Once a person carries the status of a tenant even after the eviction order is passed his possession can by no stretch of imagination be held to be unlawful or wrongful. Since the wrongful possession of the tenant of a property is the *sine qua non* for claim for *mesne* profits, the suit for *mesne* profits or for that purpose damages at the market rate and not at the agreed rent would be maintainable only if the possession of that tenant is held to be wrongful or unlawful. The fact that the permission under Section 19 is a condition precedent to the suit for possession or eviction does not mean that a landlord is entitled to file a suit for *mesne* profits because the permission under Section 19 of the Act is not a condition precedent for the suit for recovery of arrears of rent. One cannot be unmindful of the fact that prior permission is not necessary for recovery of rent only and 'rent' does not include '*mesne* profits'. Remedy to recovery of *mesne* profits is available against those persons whose possession is wrongful or

unlawful and possession of a premises by a tenant for the purposes of Section 19 of the Act cannot be termed as unlawful by incidence of termination of tenancy under Section 106 TP Act.

24. The object of Slum Clearance Act was to provide a protection to those persons who are occupying premises in slum area. If a person cannot be evicted solely on the basis of the notice under Section 106 of the TP Act he cannot be sued for *mesne* profits also. A tenant will continue to be a tenant both for the purposes of eviction proceedings as well as recovery of rent. Had the possession of a tenant whose tenancy is terminated under Section 106 of the TP Act be deemed as wrongful or unlawful it was meaningless to extend the definition of tenant to a person for the purpose of Slum Clearance Act against whom even an order of eviction is passed.

25. Without tarrying further on this aspect I hold that the notice under Section 106 of the TP Act does not convert the possession of tenant in respect of premises situated in slum area into a wrongful or unlawful possession entitling the landlord to a claim for *mesne* profits. The reason for such a conclusion is simple and short. Wherever there is a statutory protection against dispossession by any operation of law the possession of a person even in spite of termination of his lease is deemed as a lawful possession and under the authority of law. Almost similar view was taken by the Supreme Court in ***Firm Dewan Kirpa Ram Radha Kishan and Others v. Hari Kishan Dass***, AIR 1977ALL. 22 by holding that when the statute protected the possession of the defendants conferring immunity on them from being dispossessed by operation of law, they would be deemed to be in possession in the authority of law and even after the lease had expired or the tenancy has been terminated and the legal disability of the landlord to evict or dispossess a tenant continuing the continuous possession of a tenant in such conditions will be termed as conferring upon him a right as a statutory tenant."

27. I have heard the counsel for the parties and given my thoughtful consideration to the matter have also perused the entire

material on record. The arguments of counsel for appellant may be summarized as under:

- Since the defence of the respondents no. 1-3 has been struck off, application filed by them under Order VII Rule 11 is not maintainable.
- While dealing with an application under Order VII Rule 11 CPC, only the averments in the plaint are to be considered and considering the notification would amount to leading of evidence
- Respondents no. 1 to 3 are unauthorized occupants and not tenants of the said shop and therefore cannot avail the protection under section 19 of the Slums Act
- The question whether Chandni Chowk is a notified slum area or not is a question of fact that requires evidence and that the trial court erred in taking judicial notice of the above disputed fact.
- Question whether respondents are “tenants” or ‘unauthorized occupants’ require evidence and trial and the trial court has erred in rejecting the plaint.

28. The arguments of counsel for respondent may be summarized as under:

- There is no infirmity in the judgment of the trial court as the suit is barred by law as per section 19 of the Slums Act
- The said shop lies in a notified slum area and the court has rightly taken judicial notice of the said fact.

- Appellant has not argued that the shop is not situated in a slum area.
- The tenancy in question is a commercial tenancy and commercial tenancy being heritable in law, respondents no. 1-3 are lawful tenants and notice of termination of tenancy is of no consequence.
- Notice relied upon by appellant describes the respondents as tenants.
- A bare reading of the plaint makes it evident that the suit has been filed by the appellant against the respondents in their capacity as tenants and not unauthorized occupants.
- Court is fully competent to take judicial notice of notorious facts.

29. The law with regard to Order VII Rule 11 CPC is well settled. While dealing with an application for rejection of plaint under Order VII Rule 11 CPC, the court has to consider only the averment in the plaint and not the defence of the defendant or the contents of the application under Order VII Rule 11 CPC. In **C. Natrajan v. Ashim Bai** reported at (2007) 14 SCC 183, the Apex Court has observed:

"8. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the

defence. (See *Popat and Kotecha Property v. SBI Staff Assn.*⁴)”

30. A similar view was expressed in ***Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*** reported in (2006) 3 SCC 100 wherein the Apex Court observed as under:

“**11.** Under Order 7 Rule 11 of the Code, the court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order 7 Rule 11 of the Code would be on consideration of the principles laid down by this Court. In *T. Arivandandam v. T.V. Satyapa*⁵ this Court has held that if on a meaningful, not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In *Roop Lal Sathi v. Nachhattar Singh Gill*⁶ this Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order 7 Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court therein could not act under Order 7 Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order 6 Rule 16 to strike out the paragraphs in the absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court. In *ITC Ltd. v. Debts Recovery Appellate Tribunal*⁷ it was held that the basic question to be decided while dealing with an application filed by the defendant under Order 7 Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said provision. In *Saleem*

⁴ (2005)7 SCC 510

⁵ (1977)4 SCC 467

⁶ (1982)3 SCC 487

⁷ (1998)2 SCC 70

*Bhai v. State of Maharashtra*⁸ this Court has held that the trial court can exercise its powers under Order 7 Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In *Popat and Kotecha Property v. State Bank of India Staff Assn*⁹ this Court has culled out the legal ambit of Rule 11 of Order 7 of the Code in these words: (SCC p.516, para 19)

“19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of

⁸ (2003)1 SCC 557

⁹ (2005)7 SCC 510

the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

31. Further in ***Popat and Kotecha Property v. State Bank of India Staff Assn.*** reported at (2005) 7 SCC 510, the Apex Court elaborately dealt with the law under Order VII Rule 11. The relevant portion of the judgment is extracted as under:

“12. In the present case the respondent has relied upon clause (d) of Rule 11.

13. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted.

14. In *Saleem Bhai v. State of Maharashtra*¹⁰ it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

15. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal*¹¹ it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of

¹⁰ (2003)1 SCC 557

¹¹ (1998)2 SCC 70

action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal*¹².)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill*¹³ only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property*¹⁴ it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.

19. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities."

32. I have carefully gone through the plaint filed by the appellant before the trial court. It is the case of the appellant that the notice was sent to the respondents 1-3 only as a matter of abundant caution, though the original tenant was the mother of respondents no.1-3 and her tenancy was terminated during her life time vide a legal notice in January, 2000. It is further contended by learned counsel for the appellant that after a notice had been served upon mother of respondents no.1-3, the mother had seized to be a tenant

¹² (1977)4 SCC 467

¹³ (1982)3 SCC 487

¹⁴ (1998)7 SCC 184

and was occupying the premises only as an unauthorized occupant and, consequently, respondents no.1-3 are unauthorized occupants over the suit premises and, thus, are not entitled to protection under Section 19 of the Slums Act. It is further contended by learned counsel for the appellant that since the shop has been sublet by respondents no.1-3 at a monthly rent of Rs.15000/-, the provisions of Delhi Rent Control Act have ceased to apply and, therefore, the Slums Act is also not applicable to the facts of the present case.

33. I find no force in the submission of the counsel for the appellant that merely because a notice under Section 106 of the Transfer of Property Act has been served upon the tenant, he ceases to be a tenant and occupies the premises only as an unauthorized occupant. Various judgments have been cited by counsel for respondents no.1-3 before this court to the effect that a service of notice under Section 106 of Transfer of Property Act does not change the status of tenant to that of an unauthorized occupant. In *Lal Chand (supra)* and *Bardu Ram (supra)*, the Supreme Court and the High Court of Delhi have construed the term “tenant” in the light of the object of the enactment of the Slums Act and held that even after a decree for eviction is passed against a tenant, he continues to be termed as a “tenant” for the purposes of the Slums Act. Following, the law laid down by the Apex Court and reiterated by a Full Bench of this Court, a Single Judge of this Court in *Shyam Kishore (supra)* held that a notice under section 106 of the Transfer

of Property Act does not convert the possession of tenant in respect of premises in slum area into a wrongful possession or unlawful possession for the reason that wherever there is a statutory protection against dispossession by operation of law, the possession of a person even inspite of termination of his lease is deemed as a lawful possession and under authority of law. I concur with the view of the Single Judge as it lays down the correct position of law. It is a well known principle of interpretation that the courts should lean in favour of construction which subserves and effectuates the dominant purpose of the legislature. The Preamble to the Slums Act states that the purpose of the Act is to provide for the improvement and clearance of slum areas in certain Union Territories and for the protection of tenants in such areas from eviction. Looking at the scheme of the Act read with the Preamble, the Slums Act provides for additional protection to tenants in slum areas from eviction. If the argument of the counsel for appellant that after service of notice under section 106 of the Transfer of Property Act, the respondents no. 1 to 3 have ceased to be tenants and are merely unauthorized occupants not entitled to the benefit of section 19 of the Slums Act is accepted, it would defeat the object and spirit of the Act and would render section 19 nugatory and void. The above judgments clearly uphold the spirit of the Slums Act and have gone to the extent of protecting the possession of a tenant against whom an eviction decree has been obtained by the landlord from a competent

court. Accordingly, the submission of the counsel for appellant is without any force.

34. In *Gauri Shankar Gupta v. the Financial Commissioner & Anthr* reported at 1975 RLR 413, a Full bench of this Court has very categorically held that section 19 of the Slums Act is applicable to residential as well as commercial premises. It was held as under:

“5. It is in the context of these provisions of the Act that we have to read section 19 of the Act. Clauses (a) and (b) of section 19(1) expressly apply to a building or land may be put to use. A building or land may be used for a residential or for a non-residential purpose. The absence of a mention of the purpose indicates that section 19 does not exclude non-residential purpose. Section 19(4)(a) uses the neutral word ‘accommodation’ which may include residential as well as non-residential buildings. Section 19(4)(b) refers to improvement as well as clearance of the slum areas. We have already seen that while improvement under Chapter III of the Act is confined to premises unfit for human habitation, slum clearance under Chapter IV can include buildings used for residential as well as non-residential purposes”.

35. A careful reading of the plaint makes it evident that though the appellant contends that respondents no.1-3 are unauthorized occupants of the said shop and the tenancy of the original tenant, Smt. Bimla Kumari, (mother of respondents no.1-3) vide notice dated January, 2000 was terminated, yet the appellant has based his plaint upon the second notice dated 08.08.2003 sent by the appellant to respondents no.1-3, terminating their tenancy over the said shop. The above finding is further corroborated by the fact that the appellant has not filed a copy of the first notice sent by the appellant to Smt. Bimla Kumari in January, 2000. Further it has been pointed out by learned counsel for respondents and also taken note of by the

trial court that the appellant has claimed mesne profits neither from the date of termination of tenancy of Smt. Bimla Kumari nor from the date of her death but has claimed mesne profits from the date of termination of tenancy of respondents no.1-3. It is also not disputed that the suit premises is a commercial premises being a shop and applying the law laid down in *Gian Devi (Supra)*, the respondent nos. 1 to 3 have inherited the tenancy from their mother, Smt. Bimla Kumari and a mere service of notice under section 106 of the TP Act does not change their status to unauthorized occupants. In view of the law laid down in *Gauri Shankar (supra)*, I find no force in the submission of the counsel for appellant that the respondents no. 1 to 3 are not entitled to protection under section 19 of the Slums Act.

36. An objection has also been raised by counsel for appellant that the respondents no. 1 to 3 have failed to file their written statement despite various opportunities being granted to them and that trial court was pleased to close their right to file written statement which order has been upheld until the Supreme court wherein the SLP filed by respondents no. 1 to 3 was dismissed and the order has attained finality. The counsel for appellant has sought to contend that since the defence of respondents no. 1 to 3 was struck off and application under order VII Rule 11 CPC was at a belated stage of four years after the initiation of the suit, the said application is not maintainable. The aforesaid submission of the counsel for appellant is without any merit since it is well settled that an application

under order VII Rule 11 CPC can be made at any stage of the proceedings and also in view of the fact that plea raised by respondent landlord is a legal plea which can be raised at any stage. In *Saleem Bhai v. State of Maharashtra* reported in (2003)1 SCC 557 wherein the Apex Court has held that “*the trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.*”

37. Further in *Sopan Sukhdeo Sable v. Asst. Charity Commissioner* reported at (2004)3 SCC 517, the Apex Court held as under:

“20..... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.”

38. A faint argument has also been made by learned counsel for the appellant that since the rent of the premises is above Rs.3500/-, the provisions of Delhi Rent Control Act are not applicable and consequently the Slums Act would also not apply to the said shop. I find no merit in the aforesaid contention of learned counsel for the appellant since the Slums Act makes no distinction between the

premises fetching rent above Rs.3500/- and those fetching rent below Rs.3500/-. Had it been the intention of the legislature to make any such distinction, the legislature would have in its wisdom made an amendment to the Slums Act to that effect. The absence of any such distinction in the Slums Act makes it clear that the Slums Act does not exclude premises fetching a rent of Rs 3500/- and above from within its purview.

39. Lastly it is contended by counsel for the appellant that trial court has erred in taking judicial notice of the fact that the said shop lies in a notified slums area and that the question whether the shop lies in a notified slum area or not is a question of fact, which requires leading of evidence. There is no force in the aforesaid contention of the counsel for the appellant in view of the fact that under Section 57 of the Evidence Act, the Courts are empowered to take judicial notice of certain notorious facts and various judgment have been cited before this Court by the counsel for respondent. It is contended by counsel for respondent that looking upon the notification declaring Chandni Chowk to be a noted slum area would amount to considering evidence. I find the aforesaid contention to be without any merit since taking judicial notice means that the Court is itself duty bound to hunt up the fact and apply it even though the parties or their counsel fail to produce it. Further while taking judicial notice of a fact, a judge may resort to any such means of reference as may be at hand and are deemed to be worthy of confidence. I further find

that during the course of arguments of the appeal, the appellant has till date not denied the fact that the said shop is situated in a notified slum area and, thus, I am fortified with the view of the trial court that the trial court has correctly taken judicial notice of the fact that Chandni Chowk is a notified slum area.

40. In view of the observations made above, I find that there is no infirmity in the judgment passed by the learned trial court. Accordingly, appeal is dismissed.

G.S. SISTANI, J.

May 23, 2011
'ssn/msr'