

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 1st August, 2017**

+ **RC.REV. No.86/2017**

CHARANJEET LAL SAHNI & ANR.

..... Petitioners

Through: Mr. Amarjit Singh Chandhiok, Sr.
Adv. with Ms. Sweta Kakkad, Ms.
Shruti Sharma & Ms. Deepti
Arya, Advs.

Versus

ASHA RANI ANAND

..... Respondent

Through: Mr. Jagmohan Sabharwal, Sr.
Adv. with Ms. Seema Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B (8) of the Delhi Rent Control Act, 1958 impugns the order [30th September, 2016 in E-196/2015 (Old No.79346/2016), Unique ID No.02401C0439662015 of the Court of Additional Rent Controller (ARC)-01 (Central), Tis Hazari Courts, Delhi] of dismissal of the application filed by the two petitioners / tenants for leave to defend the petition for their eviction filed by the respondent / landlady under Section 14(1)(e) of the Act and the consequent order of eviction of the petitioners / tenants from a shop on the ground floor of property bearing No.2344, Tilak Bazar, Delhi-110006.
2. The counsel for the respondent / landlady appeared on advance notice and the trial Court record requisitioned. The senior counsel for the petitioners / tenants and the senior counsel for

the respondent / landlady have been heard and the record perused.

3. The respondent / landlady instituted the petition for eviction from which this petition arises, pleading i) that the shop in possession of the petitioners / tenants was let out to their father in the year 1980 at a rent of Rs.171.55 paise per month; ii) that the property No.2344, Tilak Bazar, Delhi-110006 was purchased by the respondent / landlady by means of a registered Power of Attorney dated 9th January, 1980 and the father of the petitioners / tenants and after his death, the petitioners / tenants had recognized the respondent / landlady as the owner of the shop in their tenancy; iii) that the elder son of the respondent / landlady viz. Chandan Anand was running his chemical business from a rented shop at C-37/2, Ground Floor, Wazirpur Industrial Area, New Delhi at a monthly rent of Rs.4,500/- since 2008; iv) that the Tilak Bazar area is a well known wholesale market of chemicals of Northern India whereas the Wazirpur Industrial Area is an industrial area and is not a chemical market; v) that Wazirpur Industrial Area is even otherwise not suitable for running the chemical business; vi) that younger son of the respondent / landlady Dinesh Anand was running his chemical business as a sole proprietary concern from the area situated in the back of property No.2344, Tilak Bazar, Delhi. being property No.2343, Tilak Bazar, Delhi; vii) that the said property No.2343, Tilak Bazar, Delhi was owned by the husband of the respondent / landlady and the said area is under

the tenancy of Dinesh Anand; viii) that property No.2343, Tilak Bazar, Delhi has only a narrow passage 4'3" wide and a *chabutra* of 3' from the main road and the rest of the area is at the back of property No.2344, Tilak Bazar, Delhi; ix) that the customers of Dinesh Anand find it difficult to approach property No.2343, Tilak Bazar, Delhi; x) that on the contrary, shop in the tenancy of the petitioners / tenants is on the main road on the ground floor, providing proper business opportunities; xi) that the whole ground floor of property No.2344, Tilak Bazar, Delhi is in the tenancy of petitioners / tenants; xii) that the first floor of property No.2344, Tilak Bazar, Delhi is in the tenancy of M/s Rama Krishna Color Co. since the year 1980; xiii) that the other shops in the property No.2343, Tilak Bazar, Delhi are let out to other tenants and there is no vacant place available therein also for Chandan Anand; the said tenants were inducted by the husband of the respondent / landlady and after whose demise the respondent / landlady along with her sons Chandan Anand and Dinesh Anand are the owners of property No.2343, Tilak Bazar, Delhi; xiv) that the mother-in-law of the respondent / landlady also owned property No.9680, Islam Ganj, Near Azad Market, Delhi-110006 and after her death the said property devolved on her heirs including the husband of the respondent / landlady and his siblings; after the demise of the husband of the respondent / landlady, the share of her husband has now devolved upon her and her two sons Chandan Anand and Dinesh Anand; that the

said property is however residential and is being used as residential; xv) that the younger son of the respondent / landlady Dinesh Anand had in the year 1995 purchased another property No.9671, Islamganj, near Azad Market, Delhi-110006 and is in possession of the upper floors thereof; the ground floor of the said property was sold by Dinesh Anand in the year 2003 to one Naresh Kumar; that the upper floors of the said property are residential and being used as such; xvi) that the elder son of the respondent / landlady Chandan Anand is also the owner of the first, second and top floors of property No.F-6/3, Model Town-II, New Delhi which is residential; the ground floor of the said property is owned by one Jitender Singh Bedi; xvii) that an alternative site, of plot No.41A, Holambi Kalan, New Delhi, measuring 50 sq. yds. was allotted by MCD to Dinesh Anand; the said plot at Narela is uninhabited and the area is under developed and even connecting roads and other basic infrastructure is not available; and, xviii) that the shop in the tenancy of the petitioners / tenants is required by the respondent / landlady for settling her elder son Chandan Anand in the main market of chemicals and no alternative accommodation is available.

4. The petitioners / tenants sought leave to defend pleading, i) that the petition for eviction had been filed not by the respondent / landlady but by her sons Chandan Anand and Dinesh Anand, in her name and on her behalf and by taking her signatures thereon; ii) that the respondent / landlady till the year 2007 was

residing at property No.9680, Islam Ganj, Azad Market, Delhi when she was thrown out from the said property by her husband and by her sons and the respondent / landlady had then taken refuge initially in her sister's house at Shalimar Bagh, Delhi and thereafter in a Red Cross Home for Aged situated at Ambala City; iii) that the relations between the respondent / landlady and her sons and daughters-in-law are strained and the occasion for the respondent / landlady to file the petition for eviction for the requirement of her son Chandan Anand does not arise; iv) that the daughters-in-law of the respondent / landlady had in the year 2008 filed criminal complaint against the respondent / landlady resulting in arrest of the respondent / landlady and which prosecution is still pending; v) that the respondent / landlady had herself filed complaint under the Protection of Women from Domestic Violence Act, 2005 against her husband and her sons; vi) that the respondent / landlady is not the owner of the shop in the tenancy of the petitioners / tenants; vii) that property No.2344, Tilak Bazar, Delhi vested in the custodian and no right, title or interest therein ever vested in the persons whom the respondent / landlady claimed had executed documents in her favour; viii) that the father of the petitioners / tenants had taken the said shop from Sansar Chand Gohal, one of the persons who the respondent / landlady claimed had executed Power of Attorney in her favour and which person was himself merely in occupation of the property without having any title thereto; ix) that the respondent / landlady under the

Power of Attorney executed by Sansar Chand in her favour could merely claim rent on behalf of Sansar Chand and not on her own behalf; x) that property No.2343, Tilak Bazar, Delhi admeasures 450 sq. yds. and the site plan filed by the respondent / landlady did not show the entire extent of property No.2343, Tilak Bazar, Delhi; xi) that a large number of commercial space was available to the respondent / landlady and her sons in properties No.2343, Tilak Bazar, Delhi and 2344, Tilak Bazar, Delhi; xii) that the respondent / landlady / her sons have available to them the entire ground floor and half of first floor of property No.2343, Tilak Bazar, Delhi; xiii) that upper floors of property No.9680, Islam Ganj, Azad Market, Delhi are also commercial and in fact are being used by the sons of the respondent / landlady for commercial purposes; xiv) that property no.9671, Islam Ganj, Azad Market, Delhi is also a commercial property and is being used by the sons of the respondent / landlady for commercial purposes; xv) that Chandan Anand son of the respondent / landlady is in occupation of C-37/2, Ground Floor, Wazirpur Industrial Area, Delhi in his own right and not as a tenant; xvi) that neither the respondent / landlady nor any of her sons required the premises in the tenancy of the petitioners / tenants; xvii) that the business of chemicals is prohibited in the Walled City and specially Tilak Bazar area and the government had thus allotted alternate space to the chemical traders at Holambi Kalan, New Delhi; the requirement of the premises in the tenancy of the petitioners /

tenants to carry on chemical trade therefrom cannot be allowed as no chemical trade can be carried on in law from the premises in the tenancy of the petitioners / tenants.

5. The learned ARC, in the impugned order, has found that the aforesaid facts did not disentitle the respondent / landlady from an order of eviction under Section 14(1)(e) of the Act and thus declined leave to defend to the petitioners / tenants, reasoning i) that in the face of the admissions of the petitioners / tenants, of their father having taken the shop in their tenancy on rent from Sansar Chand and of having paid rent to the respondent / landlady on the basis of Power of Attorney dated 9th January, 1980 executed by Sansar Chand in her favour, the respondent / landlady was the owner within the meaning of Section 14(1)(e) of the Act of the shop in the tenancy of the petitioners / tenants; ii) reliance was placed on ***Ramesh Chand Vs. Uganti Devi*** 157 (2009) DLT 450 laying down that in order to consider the concept of ownership under the Rent Act, the Controller has to only see the right of the landlord qua the tenant and if the landlord was receiving the rent for himself and not on behalf of someone else, he is to be considered the owner, howsoever imperfect his title may be; iii) that thus the ingredients of Section 14(1)(e) of the Act of ownership and existence of relationship of landlord and tenant were satisfied; iv) that it was the stand of the respondent / landlady in reply to the application for leave to defend that though at one time, her relations with her sons and daughter-in-law were strained and legal

proceedings were also initiated against each other but subsequently upon relationship being restored, the said litigations were withdrawn; v) that merely because the relationship of the respondent / landlady with her sons at an earlier stage was strained, did not preclude the respondent / landlady from, when normalcy in the relationship was restored, seeking eviction of the tenant on the ground of requirement of her sons; vi) from the factum of the respondent / landlady having affirmed the affidavit in support of the petition as well as the affidavit in support of the reply to leave to defend application and the statement in court that she had also affixed her signatures in the register of the Oath Commissioner, it could not be said that the petition for eviction was being pursued on her behalf by her sons, without her knowledge; vii) that even otherwise, the respondent / landlady has appeared in person before the Rent Controller on 16th February, 2016 along with her counsel stating that she had filed the petition for eviction and was fully aware of the same; viii) that the respondent / landlady had placed before the Controller, the “counterfoil of the rent receipt” issued by Sanjeev Anand lessor of property No. C-37/2, Ground Floor, Wazirpur Industrial Area, New Delhi in favour of Chandan Anand for an amount of Rs.4,520/- per month and which proved that Chandan Anand was a tenant in the said property; ix) that the respondent / landlady / her sons could not be made to pay a higher rent for another property for the sake of continuing with the old tenants; x) that though the

petitioners / tenants along with their application for leave to defend had filed a site plan of property No.2343, Tilak Bazar, Delhi showing a larger area thereof with the sons of the respondent than shown in the site plan filed by the respondent / landlady but perusal of both site plans showed that while the shop in the tenancy of the petitioners / tenants is situated at the main road, having great accessibility to customers and giving boom to the business carried on from the said shop, access to property No.2343, Tilak Bazar, Delhi was only from a narrow passage on the main road and the major area of property No.2343, Tilak Bazar, Delhi was situated at the backside of the shop in the tenancy of the petitioners / tenants; xi) that the documents filed by the respondent / landlady along with the petition for eviction showed that the business of her sons were separate and not joint business as pleaded by the petitioners / tenants; xii) that the space, even if any available on the upper floors of property Nos.2343 and 2344, Tilak Bazar, Delhi could not be a substitute for a shop facing the main road on the ground floor of the property and thus could not be termed as alternate suitable accommodation; xiii) that it was not disputed by the petitioners / tenants that property No. 9680, Islam Ganj, Near Azad Market, Delhi-110006 is jointly owned by the respondent / landlord and her sons with the other siblings of the husband of the respondent / landlady, they had also stated that a litigation with respect thereto was pending; for this reason alone, the same could also not be alternate suitable accommodation for the

requirement pleading which the eviction of the petitioners / tenants sought; xiv) similarly, the upper floors of property No.9671, Islamganj, near Azad Market, Delhi-110006 could not be a substitute or alternate for the shop facing the main road on the ground floor; xv) that no documents in the form of photographs or of commercial activities being carried on by the sons of the respondent / landlady from property Nos.9680 and 9671, Islam Ganj, Near Azad Market, Delhi-110006 have been filed by the petitioners / tenants; xvi) that the petitioners / tenants had also admitted that the upper floors of property No. F-6/3, Model Town-II, New Delhi were residential and that the sons of the respondent / landlady along with their families were residing therein; and, xvii) that even if storage of chemicals in the area of Tilak Bazar was not permitted, the son of the respondent / landlady could always have his office therein and sell and purchase therefrom.

6. The senior counsel for the petitioners / tenants at the outset draws attention to the Power of Attorney dated 9th January, 1980 and contends that the payment of rent by the father of the petitioners / tenants and after his death by the petitioners / tenants to the respondent / landlady on the basis thereof could not be for own self of the respondent / landlady and receiving rent on the basis of Power of Attorney would necessarily be on behalf of the persons executing the Power of Attorney and the learned ARC erred in holding the respondent / landlady to be satisfying the requirement of ownership within the meaning of

Section 14(1)(e) of the Rent Act. Attention is also drawn to Article 48 of the Schedule of the Indian Stamp Act, 1899 as applicable to Delhi, to contend that the Power of Attorney is not even for consideration and is only on a stamp paper of Rs.10/-.

7. A perusal of the Power of Attorney shows that the respondent / landlady therein is authorized to apply for and get the permission for sale of the property and to sign all documents in that regard and to sell the said property at whatever price she may deem appropriate and to execute the documents of sale and to present the same for registration and to receive consideration from the purchasers for sale and to do all other things in that regard and to let out the said property and to realize rent thereof etc.
8. The petitioners / tenants, as reasoned by the learned ARC also, admitted their father having come into possession of the shop as tenant under the persons who had executed the Power of Attorney aforesaid in favour of the respondent / landlady and also admitted having commenced paying rent to the respondent / landlady on the basis of the said Power of Attorney. It is not the plea of the petitioners / tenants that since 9th January, 1980 the persons who had executed Power of Attorney in favour of the respondent / landlady or any other person had approached the petitioners / tenants claiming ownership/landlordship or any other rights in the shop in the tenancy of the petitioners /

tenants. Thus, for 35 years prior to the institution of the petition for eviction, the respondent / landlady, to the exclusion of anyone else, had been claiming to be the absolute owner of the property without any claim or interference from any person whatsoever.

9. In the face of the aforesaid facts, I fail to see as to what purpose, the grant of leave to defend on the said ground would serve. Leave to defend under Section 25B of the Rent Act is to be granted only if the tenant, in the application therefor discloses facts and which facts if controverted by the landlady and if in trial proved by the tenant would disentitle the respondent / landlady from obtaining an order of eviction under Section 14(1)(e) of the Act. I have in judgment dated 24th July, 2017 in RC.REV. No.112/2016 titled ***Ram Saroop Vs. Viney Kumar Mahajan*** dealt in detail on the said aspect and need to repeat is not felt. Where the facts disclosed by the tenant in the application for leave to defend, even if proved, would not disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act, no case for grant of leave to defend would be made out.
10. Supreme Court in ***Shanti Sharma Vs. Ved Prabha*** (1987) 4 SCC 193 has held that the requirement in Section 14(1)(e) of the Act of ownership is not of absolute ownership within the meaning of Transfer of Property Act, 1882 but of “something more than a tenant”. This Court in ***Milk Food Ltd. Vs. Kiran***

Khanna (1993) 51 DLT 141 has held that ownership within the meaning of Section 14(1)(e) of the Act can also be by adverse possession just like in the present case. In that case also Kiran Khanna had no document of title in her favour but had been claiming herself to be the owner of the premises in the tenancy of Milk Food Ltd., for more than 12 years, without any claim or interference from any other person. It was held that she was the owner within the meaning of Section 14(1)(e) of the Act.

11. As far as the plea, of receipt of rent by the respondent / landlady under the Power of Attorney being on behalf of the executant thereof, is concerned, a perusal of the Power of Attorney to which attention was drawn by the senior counsel for the petitioners / tenants himself, shows that the powers given thereunder are absolute and not as given with an intent to retain control over the property. There is no averment in the application for leave to defend of the respondent / landlady remitting the rent received from the petitioners / tenants to the executants of the Power of Attorney or giving account of the rent to the executants of the Power of Attorney or the executants of the Power of Attorney having at any time approached the petitioners / tenants asserting any rights adversely to the respondent / landlady, in 35 years prior to the institution of the petition for eviction from which this petition arises.
12. There is absolutely nothing to show that the respondent / landlady for 35 years prior to the institution of petition for

eviction has dealt with the petitioners / tenants as attorney of somebody else.

13. In the same vein, the senior counsel for the petitioners / tenants also argued that in fact even the institution of petition for eviction by the respondent / landlady in her own name was bad as the petition for eviction could have been filed only as an attorney of the executants of the Power of Attorney.
14. What has been held above, equally applies to this argument as well.
15. The senior counsel for the petitioners / tenants next contends that in the petition for eviction, the respondent / landlady was shown as resident of property No.F-6/3, Model Town-II, New Delhi but in the reply to the application for leave to defend it was admitted that she was sometimes residing with her sister in Shalimar Bagh and sometimes at Ambala but her permanent address was of F-6/3, Model Town-II, New Delhi.
16. I fail to see as to what impact the aforesaid can have on the grant / non-grant of leave to defend. For seeking the eviction of the petitioners / tenant from the said shop, it matters not where the respondent / landlady is residing.
17. The focus of the senior counsel for the petitioners / tenants next shifted to alternate accommodations available to the respondent / landlady and her sons.

18. Firstly, it is contended that tenancy of Chandan Anand of Wazirpur Industrial Area property is not proved. It is argued that only counterfoil of a rent receipt was filed and which rather itself shows that the said Chandan Anand is not a tenant but the owner of the said property. It is stated that only an owner would be in possession of a counterfoil of the rent receipt and the tenant would be in possession of the rent receipt.
19. Per contra, the senior counsel for the respondent / landlady has stated that the learned ARC in the impugned order has wrongly described the document filed as a counterfoil when it is in fact a rent receipt.
20. The aforesaid contention is not controverted.
21. A mere vague averment in the application for leave to defend, of the landlord being owners of other properties, without any particulars or the documents to show the same or the basis of the said plea, if were to be allowed to constitute a ground for leave to defend then every tenant with the acumen of skilful drafting of his advocate would be able to take pleas in leave to defend entitling grant of leave to defend, defeating the legislative intent of introduction of the summary procedure in Section 25B of the Rent Act for petitions for eviction of tenants on the ground of self-requirement of the tenancy premises for the landlords. I have in ***Ram Saroop*** supra dealt with the said aspect also.

22. Thus the plea of the petitioners / tenants, of Chandan Anand son of the respondent / landlady being the owner of the Wazirpur Industrial Area property in which he claims to be a tenant does not entitle the petitioners / tenants to leave to defend.
23. The senior counsel for the petitioners / tenants next contended that the property No.2343, Tilak Bazar, Delhi is available for the requirement of the son of the respondent / landlady pleading which the eviction of the petitioners / tenants is sought. Attention is drawn to the site plan thereof filed by the respondent / landlady and that filed by the petitioners / tenants. It is contended that the said fact alone entitled the petitioners / tenants to leave to defend.
24. I may in this regard notice that what has prevailed with the ARC for not granting leave to defend on the said ground is the factum of property No.2343, Tilak Bazar, Delhi being situated at rear of the shop with respect to which eviction order has been passed and having a narrow access from the front and therefore being not alternate suitable accommodation. It is thus not as if the ARC has preferred the site plan filed by the respondent / landlady over the site plan filed by the petitioners/tenants and which cannot be permitted at the stage of leave to defend. Certainly, if the question had been the extent of accommodation available in property No.2343, the difference in site plan would have been relevant. What has to be considered is, whether the

reasoning given by the learned ARC requires any interference under Section 25B (8) of the Act.

25. Before proceeding to decide the same, the contention of the senior counsel for the respondent / landlady may also be noted. He has with reference to the site plan filed by the petitioners / tenants also contended that the same does not controvert the factum of the property No.2343, Tilak Bazar, Delhi being at the rear and having a narrow access thereto.
26. I do not find any error in the reasoning of the ARC. The requirement pleaded by the respondent / landlady of the shop in the tenancy of the petitioners / tenants is for commercial use by her son Chandan Anand who has no other accommodation. The accommodation available to Chandan Anand, according to the petitioners / tenants also is behind the shop in the tenancy / possession of the petitioners / tenants.
27. The reasoning of the ARC, of a shop on the main road and having a larger access thereto being more commercially viable for carrying on business is prudent and in consonance with the settled principles of law. A landlord, even when he has requirement for the premises let out long back, cannot for the sake of continuing with the tenant paying a nominal rent, carry on business from another premises not suitable therefor and to his own prejudice. Supreme Court, in *Chandrika Prasad Vs. Umesh Kumar Verma* (2002) 1 SCC 531, set aside the judgment of the High Court for not taking into consideration

that the premises from which eviction of tenant was sought were situated on the main road and thus better suitable for the requirement of the landlord to set up clinic. In ***Uday Shankar Upadhyay Vs. Naveen Maheshwari*** (2010) 1SCC 503, it was held that it is well known that shops and businesses are generally conducted on the ground floor because the customers can reach there easily and the Court cannot dictate to the landlord which floor he should use for his business. In ***Dinesh Kumar Vs. Yusuf Ali*** (2010) 12 SCC 740 it was held that the landlord cannot be forced to continue carrying on his business from a *Gumti* made on a platform on a *nalla*. In ***Anil Bajaj Vs. Vinod Ahuja*** (2014) 15 SCC 610, Supreme Court held that the fact that the landlord is carrying on business from several other premises, cannot foreclose his right to seek eviction from tenanted premises so long as he intends to use the said tenanted premises for his own business.

28. Thus no ground for interference with the reasoning given by the ARC is made out on the said ground either and the senior counsel for the petitioners / tenants has been unable to satisfy that any trial is required therefor. Again, on admitted facts, the respondent / landlady would not be disentitled from an order of eviction on the said ground.
29. The only other argument of the senior counsel for the petitioners / tenants with respect to properties No.2343, Tilak Bazar, Delhi and 2344, Tilak Bazar, Delhi is that while

according to the respondent / landlord they are residential in nature, according to the petitioners / tenants they are commercial and leave to defend should have been granted to determine the said ground.

30. The reasoning given by the learned ARC with respect to the said properties is that they are not on the ground floor and cannot be alternate suitable accommodation to the shop on the main road on the ground floor. The said reasoning is not contrary to law as aforesaid and cannot be challenged and is good for holding that irrespective of whether nature of the upper floors is residential or commercial, they are not alternate, suitable accommodation for the need pleading which the petition for eviction was filed.
31. The senior counsel for the petitioners / tenants has also urged that though the ARC has in the impugned order recorded that the respondent / landlady had appeared before her but relying only on the order dated 16th February, 2016 where only the presence of the respondent / landlady with her counsel is recorded and no question are recorded to have been asked from the respondent / landlady.
32. The senior counsel for the respondent / landlady has also drawn attention to the order dated 22nd July, 2016 of the ARC, also noting the presence of the respondent / landlady.
33. The senior counsel for the petitioners / tenants in rejoinder argued i) that the Electoral Rolls of 2016 of the colony of

Model Town-II, New Delhi do not show the name of the respondent / landlady at the address of F-6/3, Model Town-II, New Delhi; ii) that in the replies to the legal notices sent by the landlady, it was stated that no documents of ownership had been handed over; and, iii) that the first floor of one of the properties fell vacant recently and has been let out again and which also shows that the respondent / landlady or her sons have no requirement.

34. I have already dealt with the aforesaid contentions and need to add anything is not felt.
35. The senior counsel for the respondent / landlady drew attention to the legal notices dated 27th March, 2012 and 8th April, 2014 (at pages 142 & 148 of the Trial Court Record) got issued by the respondent / landlady where the respondent / landlady had claimed herself to be the owner / landlady of the shop in the tenancy of the petitioners / tenants and to the replies dated 30th April, 2012 & 12th May, 2015 (at pages 144 & 158 of the Trial Court Record) wherein the petitioners / tenants had not disputed the ownership of the respondent / landlady of the shop in their tenancy or the relationship of landlord-tenant with her and has contended that the plea in this regard in the application for leave to defend as well as before this Court is by way of an afterthought and cannot be entertained.
36. The senior counsel for the petitioners / tenants also argued that though the petitioners / tenants wanted to place on record the

documents to show that the property No.2344, Tilak Bazar, Delhi-110006 is of the custodian of evacuee properties but the said documents were not taken on record.

37. I have enquired from the senior counsel for the petitioners / tenants, whether the custodian of evacuee property, at any time before the petitioners / tenants came in possession of the shop as tenant or thereafter, asserted any rights in the property.
38. No answer is forthcoming.
39. Merely taking the plea, of the property being of the Custodian, without the Custodian of evacuee properties initiating any action, would not entitle the petitioners / tenants to leave to defend or entitle this Court to commence a roving and fishing enquiry in this Court.
40. Whether custodian of evacuee properties has any rights in the property, is not subject matter of this petition.
41. Once the need of the respondent / landlady and her dependent sons for the purpose of accommodation is of a shop, they cannot be directed to, for the sake of continuing with the petitioners / tenants, carry on their business from the first floor. In trade and commerce, the location of the premises is of vital importance and it is for this reason only that even in modern commercial projects coming up certain portions having vintage portions fetch much higher price than the other portions.

42. In view of the aforesaid facts of the present case, the reliance by the senior counsel for the petitioners / tenants on ***Kasthuri Radhakrishnan Vs. M. Chinniyan*** (2016) 3 SCC 296 is of no avail. The Supreme Court in that case held that leave to defend should have been granted, finding that the tenant had never paid rent to the person who had filed the petition for eviction. Though that was also a case of person who had filed the petition for eviction being an attorney but in the facts of that case he was found to be acting on behalf of somebody else and which is not the case here. Reference therein to ***Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana*** (2012) 1 SCC 656 is also without reference to ***Shanti Sharma*** supra qua the concept of ownership under Section 14(1)(e) of the Act.

43. There is thus no merit in the petition.

Dismissed

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 01, 2017

‘gsr’..

(Corrected & released on 23rd October, 2017)