

IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **R.C.REV.428/18**

Judgment reserved on : 19.09.2018

Date of decision : 4.6.2021

LATE MOHD. AHMED (DECEASED) THR LRS. Petitioners
Through: Mr.S.I.Israily, Advocate.

Versus

LATE MAIRAJ AHMAD (DECEASED) THR LRS Respondents
Through: Mr. Vikas Aggarwal, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners, the legal heirs of Late Mohd. Sharif vide the present revision petition under Section 25(B)(8) of the Delhi Rent Control Act, 1958, as amended, have assailed the judgment dated 20.3.2018 of the learned Additional Rent Controller-I, Central District, Tis Hazari Courts in Eviction Petition No. M-18/12 bearing initial No. E-222/88 whereby the eviction petition under Section 14(1)(e) read with Section 25(B) of the Delhi Rent Control Act, 1958, filed by the petitioner of that eviction petition Sh.Mairaj Ahmad, since represented by his legal representatives, now arrayed on record as the respondents to the present petition, was allowed in relation to the tenanted premises, i.e., the ground floor of property bearing No. 848, Gali Godonwali, Haveli Azamkhan, Bazar Chitli Qabar, Jama Masjid, Delhi-110006, shown in the site plan filed by the petitioner of the eviction petition Ex.1/16 with it having been directed by the learned Additional Rent Controller-1 Central District, that the landlord would not be entitled to obtain possession thereof

before the expiration of a period of six months from the date of the said order i.e., 20.3.2018.

2. The said eviction petition was filed by Sh. Miraj Ahmad on 15.9.1988 contending to the effect that he was the owner and landlord of the tenanted premises which had been purchased by him in the year 1965. It had been the contention of the petitioner of the eviction petition that he had a large joint family comprising of 18 persons and that he himself had been living in a tenanted premises bearing No.2222, Kucha Chelan, Darya Ganj, Delhi with two rooms apart from a latrine, bathroom and kitchen which premises was insufficient and not suitable for his large family and as well as for relatives who visited him for whom there was no place to stay even for a couple of days. It was the contention of the petitioner of the eviction petition that he had no other reasonably suitable accommodation and thus sought the eviction of the respondents to the eviction petition, now arrayed as petitioners to the present revision petition, i.e., R.C.Rev. no.428/2018.

3. Though the respondent to the eviction petition had sought to contend that he had become the owner of the tenanted premises by prescription and adverse possession and that the petitioner of the eviction petition had other properties available which could be used by him for residence and though the respondent had also denied that the petitioner had as many family member that he had sought to contend vide order dated 20.5.2000 of the learned Additional Rent Controller in E-222/88 filed by the petitioner thereof, since represented in the present petition as heirs as respondent, was allowed with it having been observed by the learned Additional Rent Controller that certificate of sale of the property in question by Sh. Girdhari Lal to Sh. Miraj Ahmad as issued by the Managing Officer/ Assistant Custodian, office of the Regional Settlement Commissioner, New Delhi, dated 17.2.1964 had not been controverted and remained unchallenged and was thus deemed to have been admitted as correct and in as much as that certificate Mark 'A' had been addressed to Sh. Girdhari

Lal. The said document Mark 'A' had been produced from, proper custody. Furthermore, the learned Additional Rent Controller observed to the effect that in terms of Section 90 of the Indian Evidence Act, 1872, the requisite presumption of its due execution and attestation in favour of Sh.Girdhari Lal had to be drawn especially when the respondent to the eviction petition had not led any evidence to the contrary.

4. Vide observations in para 14 of the judgment dated 20.5.2000 of the learned Additional Rent Controller, it was held that Sh. Girdhari Lal had given the highest bid of Rs.4300/- qua the property bearing No. XI/848(New), Haveli Azam Khan, Delhi of which he was declared a purchaser of the same w.e.f. 12.5.1964. The execution of the sale deed Ex.PW-1/1 by Sh. Girdhari Lal in favour of Miraj Ahmad, the petitioner of the eviction petition was also not challenged by the respondent to the eviction petition in the course of proceedings in E-222/88 and the execution of which sale deed was thus deemed to be admitted as correct by the respondent.

5. The petitioner of the eviction petition was also indicated to have paid house tax vide a receipt Ex.PW-1/15 and it was held thus that the petitioner of the eviction petition was the owner of the property in question.

6. During the course of the eviction proceedings in E-222/88 apart from a statement of RW-1 Smt. Sakina, that her husband had been telling her that husband had been telling her that he had been the owner of the premises in question, there was no evidence on the record in relation thereto and thus the contention that the respondent to the eviction petition was the owner of the property in question was rejected. The need of the petitioner of the tenanted premises and the lack of alternative tenanted accommodation was held to be correct by the learned Additional Rent Controller with it being observed that there was a need of 12 rooms by the petitioner at that stage.

7. Vide order dated 27.3.2012 in CRP No. 962/2000, the applications filed by the legal heirs of the respondent to the eviction petition in CM No.9096/2004

and the application filed on behalf of the petitioner of the eviction petition CM No. 13435/2004 to lead additional evidence were both allowed with it having been observed to the effect vide paragraph 9 thereof:

“ 9. After some arguments, it has been agreed that both the aforementioned application filed by the respective parties be allowed and the parties be permitted to adduce additional evidence before the trial court in terms of the averments made in their respective applications as aforementioned.”,

and the order dated 20.5.2000 of the learned Additional Rent Controller was thus set aside.

8. Subsequent to the directions in C.R.P. No.962/2000 dated 27.3.2012, the additional evidence was led by either side and the impugned judgment dated 20.3.2018 in eviction petition M-18/12 was passed.

9. Though it was sought to be contended on behalf of the legal representatives of the deceased respondent to the eviction petition as is sought to be submitted even now through submissions made on behalf of the petitioners of the present petition that the petitioner of the eviction petition had travelled beyond the scope of the order dated 27.3.2012 and the exhibited documents Ex.PW-2/X7 to Ex.PW-2/X15 which were not filed before the High Court and for which no permission was granted, it has been rightly observed by the learned ARC vide the impugned judgment in paragraph 7 thereof to the effect:

“ 7.....The Hon'ble High Court permitted the parties to lead evidence in terms of the "averments". Averments are the assertions made by the petitioner. The Hon'ble High Court did not specify that the parties shall only prove the 'documents' that were specified in the application. The Hon'ble High Court used the word "averments" and not documents. Therefore, the Hon'ble High Court permitted the petitioner to lead any additional evidence in support of the averment that the respondent is indeed a tenant in the premises. It is also observed that when the petitioner was leading additional evidence, the respondent never raised an objection about the petitioner leading evidence beyond the scope of order dated 27.03.2012. Infact, the respondent even cross-examined the petitioner and his witnesses on all

the additional evidence lead. The respondent cannot claim to have been prejudiced by the petitioner leading evidence allegedly beyond the scope of order dated 27.03.2012. In these circumstances, the court is of the view that the additional evidence led by the petitioner is not beyond the scope of order dated 27.03.2012 as it is in furtherance of the averment made by him in the application under O. 41 R. 27 of CPC that the respondent is occupying the tenanted premises as a tenant. Therefore, the entire additional evidence led by the petitioner including the documents relied upon, shall be considered while deciding the present case.”

10. Thus, in the circumstances, it is held that the evidence that has been led by either side pursuant to the order of the remand dated 27.3.2012 has to be read and has been rightly read by the learned Additional Rent Controller in the impugned judgment as permitting to lead additional evidence in terms of the applications allowed vide order dated 27.3.2012.

11. It is the avowed contention of the petitioners to the present R.C.Rev. 428/2018 that in as much as, the respondents had instituted CS(DJ) No. 4282/17, a suit for possession against the petitioners by issuance of a legal notice dated 24.10.2017, the respondents to the present petition, i.e., the petitioners of the eviction petition had accepted that there did not exist any landlord-tenant relationship between the parties. It was further submitted by the petitioner of the present petition that the respondents i.e., the petitioners of the eviction petition had failed to prove ownership of the suit property whereas, the petitioners of the present petition had established their ownership on the basis of their continuous, hostile and notorious possession since 1947 formulating into adverse possession in as much as PW-1 had admitted that the predecessors-in-interest of the petitioners had rejected his demands of vacating the suit property and had set up their own title in the suit property and had raised hostile construction thereupon as way back as in 1965 to 1975 whereas the eviction petition was filed in 1988 after a lapse of 12 years from 1975 and was hit by Article 65 of the Limitation Act, 1963.

12. It was also contended on behalf of the petitioners of the present petition that vide the judgment dated 1.5.1995 an application of the Slum Areas (I&C) Act, 1956 filed by Sh. Miraj Ahmad, now represented by his legal heirs as the respondents to the present R.C. Rev. 428/2018, had been disposed of with observations to the effect:

“11. Prima facie the record shows that the relationship of landlord and tenant has not been established between the parties and the conclusion which follows is that the applicant can not be granted the permission to have the property in dispute evicted from the respondent. The parties are left to bear their own costs. Ordered accordingly.”

It was thus contended on behalf of the present petitioners that there were inherent contradictions in the documents relied upon on behalf of the respondents and shifting stands of the respondent claiming that the alleged tenancy was created 25/30 years back from 1988, i.e., even seven years prior to the sale deed dated 19.4.1965, whereas in his replication he shifted his stand claiming that he had inducted the petitioners himself on a monthly rent of Rs.150/- but had not shown a single rent receipt.

13. Inter alia, it was submitted on behalf of the present petitioners that the respondents have reasonably suitable alternative accommodation which they have deliberately failed to disclose (i) bearing No. 2222, Kucha Chelan, Daryaganj, Delhi, (ii) H. No. 853, Haveli Azam Khan, Bazar Chitli Qabar, Jama Masjid, Delhi and (iii) multi storied property bearing No. 2290, Kucha Chelan, Daryaganj, Delhi, submitting to the effect that the respondents reasonably suitable accommodation as submitted as submitted in Paragraph V of the written submissions dated 19.3.2021 of the present petitioners which reads to the effect:

“V. Even otherwise, Respondents have reasonably suitable alternate accommodation which they deliberately failed to disclose before the Ld. ARC including property bearing No. 2222, Kucha Chelan, Daryaganj, Delhi, (ii) House No. 853, Haveli Azam Khan, Bazar Chitli Qabar, Jama Masjid, Delhi-110006 as admitted vide statement dated 10.01.1996 and

not discussed by Ld. ARC (iii) multi storied property bearing No. 2290, Kucha Chelan, Daryaganj, Delhi as admitted by him and further corroborated by additional documents (Annexure P29-30 & Annexure P36-38) (iv) multi storied Property bearing No. D-194, Abul Fazal Enclave, Jamia Nagar, Okhla, Delhi as admitted by PW1 vide statement dated 10.01.1996 and in view of voter ID cards annexed as Annexure P-31 and P-32, (iv) Multi storied property bearing No. 854, Gali Farsh Wali, Haveli Azam Khan, Matia Mahal, Delhi in view of voter ID cards annexed as Annexure P-33 to P35.”

14. It was also submitted by the petitioners that the said additional documents relied upon by the petitioners have been admitted by the respondents before this Court on 19.9.2018.

15. During the course of the present proceedings on 19.9.2018 it had been observed as under:

“Submissions have been made on behalf of either side.

During the course of the submissions, that were made on behalf of either side, reliance was, inter alia, placed by the petitioners on a copy of the sale deed stated to be executed by one Mr Girdhari Lal in favour of Mr. Mairaj Ahmad, stated to be predecessor-in-interest of the respondents, i.e. those, who had filed the eviction petition and it has been submitted on behalf of the petitioners that the contents of documents on the record thereof indicated that the property at 848, Gali Godon Wali, Haveli Azam Khan, Bazar Chitli Qabar, Jama Masjid, Delhi-110006, formed a two storey house whereas there is no such averment in the eviction petition that has been filed.

On behalf of the respondents, it has been submitted that the said contention had not been raised, at any stage whatsoever when the eviction petition had been filed earlier and adjudicated in favour of the respondents herein which on being assailed, the proceedings had been remanded back nor even during the course of the trial which forms the basis of the present impugned judgment had the said aspect been asserted.

During the course of the submissions, in reply to a specific Court query, however, on behalf of the petitioners and on behalf of the respondents to the present petition, it has now been submitted that

as on date the property in question is only a single storey structure with the contention on behalf of the petitioners that the portions in occupation of the petitioners is the portion shown in red and in green, in the document annexed to the petition at page-217 of the petition.

In view of the submissions that have been made on behalf of either side, the property situated qua which the eviction petition has been filed, those shall be dealt with as being the portion shown in red and the portion shown in green alleged to have been unauthorizedly constructed by the petitioners as per the documents annexed at page- 217 of the present petition.

Submissions have been made on behalf of either side.

The matter is reserved for judgment.

Operation of the impugned order is stayed till the pronouncement of judgment in this RC.REV. 428/2018.”

16. Thus the additional documents that the petitioners sought to place on record in relation to the documents mentioned at page 485 to 489 in paragraph 8 (a to k) were thus not disputed on behalf of the respondents for the sake of arguments.

a. The Electricity bill dated 16.4.2018 issued by BSES of the property bearing No. 854, Haveli Azam Khan, Jama Masjid Delhi bearing CA No. 100322807 registered in the name of Mr. Sultan Ahmed. Copy of the bill dated 16.4.2018 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-28.

b. Details of the Voter ID Card bearing No. DL/05/058/219206 issued by the Government of NCT of Delhi in favour of Mr. Rizwan Ahmed S/o Late Mr. Mairaj Ahmed at the address of property No. 2290, Kucha Chelan, Daryaganj, Delhi. Copy of the details of aforesaid voter ID bearing No. DL/05/058/219206 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-29.

c. Details of the Voter ID Card bearing No. DL/05/058/219210 of Mrs. Kahkashan W/o Mr. Rizwan Ahmed issued by the Government of NCT of Delhi at the address of property bearing No. 2290, Kucha Chelan, Daryaganj, Delhi. Copy of the details of aforesaid

voter ID bearing No. DL/05/058219210 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-30.

d. Details of the Voter ID Card bearing No. DL/02/006/312182 of Mr. Noor Ahmed S/o Late Mr. Mairaj Ahmed issued by Government of NCT of Delhi at the address of the property bearing No. D/1/194, Abul Fazal Enclave, Okhla, Delhi. Copy of the details of aforesaid voter ID bearing No. DL/02/006/312182 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-31.

e. Details of the Voter ID Card bearing No. DL/02/006/312183 of Mrs. Shehnaz Begum W/o Noor Ahmed issued by Government of NCT of Delhi at the address of the property bearing No. D/1/194, Abul Fazal Enclave, Okhla, Delhi. Copy of the details of aforesaid voter ID bearing No. DL/02/006/312183 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-32.

f. Details of Voter ID Card bearing No. XVP0056259 of Mr. Sultan Ahmed S/o Late Mairaj Ahmed issued by Government of NCT of Delhi at the address of the property bearing No. 854, Gali Frash Wall, Haveli Azam, Matia Mahal, Delhi. Copy of the details of aforesaid voter ID bearing No. XVP0056259 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-33.

g. Details of Voter ID Card bearing No. XVP0896647, of Mrs. Huma Shaheen W/o Mr. Sultan Ahmed issued by Government of NCT of Delhi at the address of the property bearing No. 854, Gali Frash Wall, Haveli Azam Khan, Matia Mahal, Delhi. Copy of the details of aforesaid voter ID bearing No. XVP0896647 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-33.

h. Details of Voter ID Card bearing No. XVP1164259 of Mr. Owais Sultan S/o Mr. Sultan Ahmed issued by Government of NCT of Delhi at the address of the property bearing No. 854, Gali Frash Wall, Haveli Azam Khan, Matia Mahal, Delhi. Copy of the details of aforesaid voter ID bearing No. XVP1164259 is annexed herein for kind perusal of this Hon'ble Court as Annexure P-34.

i. Show Cause Notice dated 18.12.2013 issued by Department of Trade and Tax, Government of NCT of Delhi to RSF Engineering Works whereby the Department of Trade and Tax demanded a reply from RSF Eng. Works firm, admittedly operated by the sons of Late. Mairaj Ahmed from property bearing No. 2290, Kucha Chelan, Daryaganj, Delhi, to show cause as to why the registration

of the said firm be not cancelled since the said firm had filed its return showing (NIL) Gross turn over for the year 2012-2013. It is stated that the aforesaid show cause notice was issued to 14,107 dealers registered under the DVAT Act 2004. The name and reference of RSF Engineering works bearing TIN No. 7570125434 is found at serial No. 470. The said show cause notice and the list has been uploaded on the website of Department of Trade and Taxes, Government of NCT of Delhi. Copy of the show cause notice dated 18.12.2013 alongwith the list of dealers to which the said show cause notice was sent is annexed herein for kind perusal of this Hon'ble Court as Annexure P-35 (Colly).

j. List of dealers, uploaded on the website of Department of Trade and Taxes, Government of NCT of Delhi, whose registration stood cancelled with effect from 1.1.2014 pursuant to the Show Cause Notice dated 18.12.2013 wherein the name and reference of RSF Eng. Works bearing TIN No. 7570125434, admittedly operated by the sons of Late. Mairaj Ahmed from property bearing No. 2290, Kucha Chelan, Daryaganj, Delhi, is at serial No. 702. The said list has been uploaded on the website of Department of Trade and Taxes, Government of NCT of Delhi. Copy of the list of dealers whose registration was cancelled is annexed herein for kind perusal of this Hon'ble Court as Annexure P-36.

k. Order of directions bearing No. B-33014/40/2016-AQM, dated 12.7.2018 issued by the Chairman, Central Pollution Control Board, Praivesh Bhawan, East Arjun Nagar, Near Karkardooma Courts, Shahdara, Delhi-110032 whereby the Chairman of CPCB has issued directions to the Chairman of Delhi Pollution Control Committee, Kashmere Gate, Delhi to immediately close the operation of the RSF Eng. Works registered at "Ground Floor" of the property bearing No. 2290, Kucha Chelan, Daryaganj, Delhi and other similarly situated units for the operation of unauthorized and polluting factories at Daryaganj, Jama Masjid, Sita Ram Bazar, Turkman Gate etc. The said order of direction along with the complaint dated 2.7.2018 having the list of unauthorized and polluting factories on which the said order was passed has been uploaded by the Government on the website of Central Pollution Control Board, Government of India. Copy of the order of directions dated 12.7.2018 alongwith the complaint dated 2.7.2018 against RSF Eng Works is annexed herein for kind perusal of this Hon'ble Court as Annexure P-37.

17. Through submissions made on behalf of the respondents to the present petition it was submitted that there was no infirmity in the impugned judgment dated 20.3.2018 of the learned Additional Rent Controller holding to the effect that the petitioner of the eviction petition had been able to establish that he was not a tenant and that vide the document Ex.PW-1/1, the sale deed executed in favour of the petitioner by the previous owner Sh.Girdhari Lal, the petitioner of the eviction petition had become the owner of the premises in question. The learned Additional Rent Controller vide observations in paragraphs 56- 61 had observed to the effect: (pages 178 to 182)

“56. The principle is very clear that once a tenant always a tenant. The tenant cannot dispute the title of his landlord or his successor-in-interest. Several documents have been proved by the petitioner which establish that the father' of respondent from who the respondent derives interest in the property, was occupying the tenanted premises as a tenant. As per the record maintained by the State, the respondent was also informed about the ownership of Sh. Girdhari Lai. The respondent therefore cannot dispute the title of his landlord Sh. Girdhari Lai or his successor-in-interest i.e. the petitioner herein.

57. From the documents proved by the petitioner and in particular the survey report Ex.PW-1/XI, it has been proved that the respondent was a tenant under the erstwhile owners Sh. Mohd. Fayaz and Mst. Raisa Khatoon. He was paying rent of Rs.10/- to Mst, Raisa Khatoon. The property was later owned by the custodian of Evacuees Properties. It is proved from the testimony of PW-1 & the documents relied upon by the petitioner that auction of the property was carried out, Sh. Girdhari Lai made the highest bid and purchased the property. It has been proved that Sh. Girdhari Lai sold the property to the petitioner Sh. Miraj Ahmed. The respondent is now denying the title of the petitioner. Section 116 of the Evidence Act is a compete answer to the plea taken by the respondent. The Hon'ble Supreme Court in the case of Bansraj

Laltaprasad Mishra v. Stanley parker Jones (2006) 3 SCC 91 held the following:'

"13. The underlying policy of section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will' give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section. 14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord situation taking undue, advantage of the possession that he got and any probable defect in the title, of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time "

58. Accordingly, in view of the provisions of section 116 of the Evidence Act, the respondent is estopped from challenging the title of the petitioner as he is successor-in-interest of the erstwhile owners. In the case of Atiyam Veerraju v. Pechetti Venkanna (1996) 1 SCR 831, the Hon'ble Supreme Court quoted with approval the judgment of the Pri'y Counsel in Bilas Kunwar v. Desraj Ranjit Singh, wherein it was observed as follows:

"A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."

59. *If the transfer of the landlord's title is valid, and even if the tenancy is not attorned in favour of the transferee, the lease continues. Thus, a transferee of the landlord's rights, steps into the shoes of the landlord with all the rights 'and liabilities of the transferor landlord in respect of the subsisting tenancy. Attornment by the tenant is unnecessary to confer validity to the transfer of the landlord's rights and there is no such statutory requirement.*

60. *Reference may be made to the case of Hajee K. Assainar vs. Chacku Joseph AIR 1984 Ker 113. In the case of Mahendra Raghunathdas Gupta vs. Vishvanath Bhikaji Mogul AIR 1997 SC 2437, it was held that attornment by tenant is not necessary though it is desirable. Mere non-payment of rent by tenant even for a considerably long period does not extinguish the landlord tenant relationship. The possession of a tenant cannot be adverse to his landlord. The petitioner is therefore, the landlord and owner of the tenanted premises.*

61. *In these circumstances, I am of the opinion that the petitioner is competent to have filed the present eviction petition as he is the owner as well as landlord and the respondent is the tenant in respect of the tenanted premises for the purpose of section 14 (1) (e) of DRC Act.*

“Requirement of premises bonafide by the petitioner for himself and for members of his family dependent upon him and non-availability of any other reasonably suitable accommodation:”

18. It was thus submitted on behalf of the respondent that in view of the verdict of this Court in **Hansraj V. Jagminder Singh & Ors.**; 2017 (8) AD (Delhi) 483, to the effect:

“ 9. Adverse possession has to be proved by clear cut evidence showing when the adverse possession commences, i.e., the date, month and year or at least the month and year and adverse possession has to be proved to be nec vi, nec clam, nec precario. Wrong possession is not automatically an adverse possession. Also for commencement of adverse possession, it should be brought to the notice of the true owner the claim of adverse possession so that the true owner can take all steps in accordance with law.”,

there was nothing to show that the petitioners had established any adverse possession in the premises in question in as much as the wrong possession is not automatically adverse possession.

19. Reliance was placed on behalf of the respondents to the present petition on the observations of the Hon'ble Supreme Court in ***Maria Margadia Sequeria V. Erasmo Jack De Sequeria(D)*** decided on 21.03.20212 in Civil Appeal No. 2968 of 2012 (Arising out of SLP(C) No. 15382 of 2009) to contend to the effect:

“ 70. It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

“(a) Who is or are the owner or owners of the property; (b) title of the property; (c) who is in possession of the title documents (d)identity of the claimant or claimants to possession;(e) the date of entry into possession; (f) how he came into possession-whether he purchased the property or inherited or got the same in gift or by any other method; (g)in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount; (h) If taken on rent license fee or lease-then insist on rent deed, license deed or lease deed; (i) who are the persons in possession/occupation or otherwise living with him in what capacity; as family member friends or servants etc; (j)subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and (k) basis of his claim that not to deliver possession but continue in possession.”

20. It has thus been submitted on behalf of the respondents that it had been rightly held by the learned Additional Rent Controller vide the impugned judgment that there was a jural relationship between the parties of the eviction petition, of the respondents to the eviction petition having been held to be the tenant in the property in question who could not prove their possession as being the adverse possession in respect of the tenanted premises. The respondents to

the present petition, i.e., the petitioners to the eviction petition thus placed reliance on the documents mentioned below:

<i>“Exh-PW-1/1-</i>	<i>Sale deed in favour of Miraj Ahmed</i>
<i>Exh-PW-1/15-</i>	<i>House Tax Receipt in favour of Miraj Ahmed</i>
<i>Exh-PW-1/1-</i>	<i>Site plan.</i>
<i>Exh-PW-1/X1-</i>	<i>Survey Report by Custodian office of Property in question</i>
<i>Exh-PW-1/X4-</i>	<i>Attornment letter dt. 24.02.1965 by Custodian office of property in question.</i>
<i>Exh-PW-2/13-</i>	<i>Auction letter dated 19.02.1965 in favour of girdhal Lal of whom Shri Miraj Ahmed Purchased the property in question</i>
<i>Exh-PW-2/14-</i>	<i>Certificate of sale in favour of girdhari Lal.</i>
<i>Exh-PW-2/15-</i>	<i>letterdt06.05.1964 of Regional Settlement Commissioner”</i>

21. It is essential to observe that the learned Additional Rent Controller vide the impugned judgment vide paragraphs 38 to 41 had observed to the effect:

“38. From the documents Ex. PW-1/1, Ex. PW-1/X4, PW-2/X13, PW-2/X14 and PW-2/X15, it is evident that Sh. Girdhari Lai had purchased the tenanted premises and became its owner. Thereafter, he executed sale deed Ex. PW-1/1 in favour of the petitioner. Execution of the sale deed and its registration has also not been challenged during cross-examination and is deemed to have been admitted as correct. The petitioner has also been paying house tax of the tenanted premises which is evident from the document Ex.PW-1/15.

39. The court is of the view that the petitioner has successfully proved that he purchased the tenanted premises from Sh. Girdhari Lai and became its owner.

40. The definition of landlord under the Delhi Rent Control Act is wide enough to include an owner. In this regard, reference is made to the decision in the case of Jagjeet Kaur Vs. Moolchand &Ors. 22(1982) DLT 154 of the the Hon'ble Delhi High Court in which the following was held:

"Moolchand is the owner as well as the landlord, and therefore he has a right to institute an application for eviction of the tenant under Section 14(l)(e) of the Act and he would be entitled to obtain such an order if other ingredients

of Section 14(l)(e) of the Act are fulfilled. In Smt. Savitri Devi Abdali and others Vs. Ram Bhaj Datta, this court held that the definition of 'landlord' as given in Section 2(e) of the Act is of the wide amplitude and would embrace within it a landlord who is also an owner of the property. In Madan Lai Narula Vs. Hazard Singh, 1977 (2) Rent Law Reporter 641 this Court has observed that the definition of the word 'landlord' covers a person who is entitled to receive rent. It has been further observed that the ordinary meaning of the word 'landlord' includes the owner. In that case premises were let out by a house agent and subsequently the owner filed an eviction petition and it was held that the owner is entitled to file the eviction petition. Thus if a property owned by a person, is let out by a third person, the owner is entitled to institute an eviction application as he is also a 'landlord' within the meaning of Section 2(e) of the Act."

41. From the above, it is evident that the petitioner ShMiraj Ahmed was the owner and therefore landlord of the tenanted premises and was competent to have filed the present eviction petition."

22. The learned Additional Rent Controller vide observations in paragraphs 42 to 46 had given findings to the effect:

"42. The petitioner has relied upon the document Ex.PW-1/X6 and has stated that this is an affidavit of the respondent Late Sh. Mohd. Sharif submitted to the electricity provider for obtaining electricity connection. It is pleaded that EX.PW-1/X5 is receipt of payment of fees deposited by the petitioner with BSES Yamuna Power Limited for obtaining the document Ex.PW-1/X6. It is stated by the petitioner that he obtained the document Ex. PW-1/X6 from BSES Yamuna Power Limited after he deposited the fees..

43. It has been argued by Ld. Counsel for the respondent that the document identified as Ex.PW-1/X6 cannot be read in evidence as primary evidence has not been produced or filed for proving the document. It is further pleaded by the respondent that documents Ex.PW-1/X5 and Ex.PW-1/X6 are forged because as per the contents of the affidavit Ex. PW-1/X6, same was accompanied with ration card of Sh. Mohd. Sharif. It is argued that had the affidavit been genuine, the petitioner would have also obtained copy of ration card of Sh. Mohd. Sharif and filed the same. It is pleaded that since the petitioner does not

have access to the ration card of Sh. Mohd. Sharif, he produced the forged affidavit without the ration card. It is further submitted that in the affidavit, the address of Sh. Mohd. Sharif is stated to be of first floor of the tenanted premises. It is pointed out that there is no first floor in the premises. Therefore, the document pertains to a property which does not exist and hence is contradictory, forged and must be discarded. It is further submitted that the four signatures on the document are different from each other.

44. For proving the documents Ex.PW-1/X5 and PW-1/X6, the petitioner had summoned record from BSES Yamuna Power Limited. However, when PW-3 Sh. C.S.Makhija from BSES Yamuna Power Limited appeared before Court, he stated that the record of the electricity connection installed at the tenanted premises is not traceable despite best efforts and it might have been misplaced.

45. In the case of Sh. Prem Chandra Jain and Others Vs Sri Ram & Ors. (2009) 113 DRJ 617, the Hon'ble Delhi High Court while relying upon the

decision in the case of Liaquan Begun- Vs. Abdul Hamid 1979 RLR 545, held that when, a document is "not traceable", it enables the invocation of Section 65 of the Indian Evidence Act. It was held that it is sufficient to prove that the document is not available at the relevant time and its whereabouts are unknown. It was held that a litigant without seeking permission from the court, if satisfies the ingredients of Section 65 of the Indian Evidence Act, is permitted to lead secondary evidence. It was held that neither the Evidence Act or the CPC or any other Rules and Regulation or statute require filing of application seeking permission of the court to adduce secondary evidence.

46. In view of the said decision of the Hon'ble Delhi High Court, in view of the testimony of PW-3, the petitioner is entitled to prove the document Ex. PW-1/X6 by leading secondary evidence since the original is not traceable.

The document Ex.PW-1/X6 bears an endorsement of BSES Yamuna Power Limited that it is a true copy The respondent has not disclosed as to in what

capacity he had obtained electricity connection from the service provider. It is common knowledge that while filing an application for electricity connection, the applicant has to disclose in what capacity he is occupying

the premises. In the absence of the record with the BSES, the respondent has exclusive knowledge of the application made by him for providing electricity connection. As per Section 106 of the Indian Evidence Act, the respondent ought to have proved how he obtained electricity connection and what documents he had furnished in this regard, if not the affidavit Ex. PW-1/X6. The respondent has withheld such evidence and now cannot refute the evidence led by the petitioner in this regard.”

23. It was thus submitted on behalf of the respondents to the present petition that the learned Additional Rent Controller had rightly observed that the petitioners herein had failed to prove in what capacity they had applied the electricity meter and had withheld the evidence in relation thereto in support of their contention of the adverse possession and that the tenant admitted that he was merely a tenant in the property in question.

24. The documents as detailed in paragraphs 50 and 51 of the impugned judgment which read to the effect:

“50. PW-2 has further proved the eviction warrants dated 13.12.1952 issued by the Deputy Custodian, as Ex.PW-2/X8. PW-2 has further proved a letter dated 08,11,1952 of the Assistant Custodian, as Ex.PW-2/X9, letter dated 01.06.1951 of the Assistant Custodian regarding allotment of the tenanted premises, as Ex.PW-2/X10 and filed noting dated 01.05.1951, as EX.PW-2/X12. 51. These documents Ex.PW-2/X7, Ex.PW-2/X8, Ex.PW-2/X9, Ex.PW-2/X10 and EX.PW-2/X12 also establish that the respondent Late Sh. Mohd. Sharif/his father Late Sh. Mohd. Nasir were occupying the tenanted premises as tenants.”,

also indicate to the effect that the petitioner was occupying the premises as a tenant. It was thus submitted on behalf of the respondents that as held by this Court in ***Rajender Kumar Sharma & Others v. Smt. Leela Wati & Ors. (155) 2008 DLT 383***, the landlord is not supposed to establish an absolute ownership as required under the Transfer of Property Act and is only required to show that he is more a tenant. *Inter alia*, the respondents submitted that the principle of a

tenant being once a tenant, always a tenant has essentially to prevail in the facts and circumstances of the instant case.

25. Reliance was also placed on behalf of the respondents on the verdict of **Atyam Veerraju V. Pechetti Venkanna**, (1996) 1 SCR 831, wherein the Hon'ble Supreme Court referred to the verdict of the Privy Council in **Bilas Kunwar v. Desraj Ranjit Singh**, wherein it was observed to the effect:

“ A tenant who has been let into possession cannot deny his landlords title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord.”

26. Reliance was also placed on behalf of the respondents on the verdict in **Hajee K. Assainar V. Chacku Joseph**: AIR 1984 Ker 113 and **Mahendra Raghunathdas Gupta v. Vishvanath Bhikaji Mogul**: AIR 1997 SC 2437 wherein it was held that:

“ attornment by tenant is not necessary though it is desirable. Mere non-payment of rent by tenant even for a considerably long period does not extinguish the landlord-tenant relationship. The possession of a tenant cannot be adverse to his landlord. The petitioner is therefore the landlord and owner of the tenanted premises.”

27. It was further submitted on behalf of the respondents that the observations of the Competent Authority (Slums) were only on a *prima facie* view and could not determine the relationship between the parties in as much as vide judgment dated 1.5.1995 the Competent Authority (Slums) had not given a conclusive finding on the relationship between the parties.

28. It was also submitted on behalf of the respondent that as laid down by this Court in **Hansraj V. Jagminder Singh & Ors** (supra), there is no legal bar to avail two remedies, i.e., the eviction petition before the Rent Controller and a suit for possession before the Civil Court. It was thus submitted on behalf of the respondents that the trial Court had to ascertain whether the case was

maintainable on the day when it was filed and that in as much as it was during the pendency of the eviction petition that the respondent to the eviction petition had denied the relationship of landlord and tenant and claimed ownership over the property as a consequence of which the petitioner of the eviction petition chose to file a civil suit for possession, as explained in the legal notice sent by the petitioner dated 24.10.2017 as mentioned in paragraph 23 of the impugned judgment, the same does not imply on the day when the eviction petition was filed, there was no relationship and that the institution thus of the civil suit could not be read in isolation and had to be considered in the context in which it was made.

29. Furthermore, it was submitted on behalf of the respondents that the jurisdiction to be exercised in terms of Section 25(B)(8) of the Delhi Rent Control Act, 1958 is wholly circumscribed with Section 25(B)(8) which reads to the effect:

“25. B Special procedure for the disposal of applications for eviction on the ground of bona fide requirement. -

(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A [or under section 14B or under section 14C or under section 14D] shall be dealt with in accordance with the procedure specified in this section.

(2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule.

(3) (a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain .

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (c) of the proviso to sub-section (1) of section 14, or under section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

(7) Notwithstanding anything contained in sub-section (2) of section 37, the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Where no application has been made to the High Court on revision, the Controller may exercise the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A, shall be the same as the procedure for the disposal of applications by Controllers.”

30. It has thus been submitted on behalf of the respondents that it is not open to this Court to come to a different fact finding as arrived by the Rent Controller unless the findings arrived at by the Rent Controller of the fact are so unreasonable and that no such conclusion could have been reached on the materials available and though it is open to this Court to scrutinize the record, it is only to ascertain if there is any illegality that had been committed by the Rent Controller while passing an order under Section 25 (8) and that the said power of the High Court is supervisory in nature and does not fall within the domain of any appellate powers in as much as Section 25(B)(8) of the Delhi Rent Control Act, 1958 categorically stipulates no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified under Section 25(B)(8) of the Delhi Rent Control Act, 1958.

31. Furthermore, it was submitted on behalf of the respondents to the present petition placing reliance on the verdict ***Carona Limited Vs. Parvathy Swaminathan & Sons***; 2007 (2) RLR 481, to submit to the effect that the basic rule is that the rights of the parties should be determined on the basis of the date of the institution of the suit and as held by the Hon'ble Supreme Court in ***Ramesh Kumar V. Kesha Ram***; AIR 1992 SC 700, the normal rule is that the issue of *bana fide* need of the landlord has to be considered on the date of the filing of the eviction petition and only a cautious cognizance should be taken of subsequent events, thus submitting to the effect that at the time when the eviction petition had been filed in 1988, the need of the petitioner for the

accommodation in the form of the tenanted premises was *bona fide* and necessary.

32. On a consideration of the submissions that have been made on behalf of either side and the entire available record, this Court is of the considered view that the findings of fact arrived at in the instant case by the learned Additional Rent Controller vide the impugned judgment cannot be interfered with by this Court in as much as there is nothing that the petitioners herein have been able to bring forth to indicate that the finding has been arrived at by a misreading of the facts or omitting relevant evidence or has resulted in any gross injustice being caused.

33. The facts and circumstances of the instant case negate the exercise of powers in terms of the Proviso to Section 25(B)(8) of the Delhi Rent Control Act, 1958 in as much as laid down in ***Praveen Jain & Ors. (Shri) Vs. Dr. Mrs. Vimla***, : 2009 IVAD(Delhi) 653, the powers of this Court under Section 25B(8) are not appellate powers and this Court has only to see that the Rent Controller had acted in accordance with law and not transgressed the limits of its jurisdiction as held by this Court in ***RameshChand vs. Uganti Devi***; 157 (2009) DLT 450.

34. The observations in ***Mohan Lal v. Ram Chopra and Anr***; : 1982 (2) RCJ 161, a verdict of the Full Bench of this Court lay down to the effect:

“In our opinion the jurisdiction of the High Court under proviso to Section 25B(8) has to be interpreted, keeping in view the legislative intent. The revision under Section 25B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid

circumstances exist the High Court would not been titled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B(8) of the Act.”

35. It was held by the Hon’ble Supreme Court in ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta***; AIR1999 SC 2507 to the effect:

“.....The revisional jurisdiction exercisable by the High Court under S. 25B(8) is not so limited as is under S. 115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-section (8) of Section 25B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law.”

36. The verdict of the Hon’ble Supreme Court in ***Sarla Ahuja v. United India Insurance Company Limited*** AIR 1999(SC) 100, vide paragraph 6 observed to the effect:

“6.....The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is "according to the law". In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25B. It is not permissible for the High Court in

that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

37. In the facts and circumstances of the instant case, it is thus held that there is no infirmity in the impugned judgment of the learned Additional Rent Controller dated 20.3.2018 holding the existence of the relationship of the landlord and tenant between the parties to the eviction petition and thus of the petitioner of the eviction petition being the owner of the premises in question.

38. As has rightly been contended on behalf of the respondents to the present petition i.e., the petitioners of the eviction petition, the needs of the landlord qua the tenanted premises have to be essentially considered on the date of institution of the petition as is instituted in 1988 as per which the learned Additional Rent Controller vide the impugned judgment has rightly held that the petitioners of the eviction petition *bona fide* require the tenanted premises for their own use and did not have reasonable adequate alternative accommodation.

39. In the circumstances, it is held that there is no infirmity in the impugned judgment dated 20.3.2018 of the learned Additional Rent Controller which has caused any miscarriage of justice nor is there any misappreciation of the facts in the impugned judgment dated 20.3.2018 on the basis of the evidence and facts brought forth in the eviction petition M-18/12. Furthermore, as has already been discussed herein above, the powers under Section 25(B)(8) of the Delhi Rent Control Act, 1958 and the proviso thereto have essentially to be exercised with caution qua which in the instant case, this Court finds that there is nothing to show any jurisdictional error nor any misappreciation of facts that has been committed by the learned Additional Rent Controller in as much as there has been no misreading of evidence nor has there been any omission of any relevant evidence nor is there any gross injustice that has been caused in the instant case.

40. The Hon'ble Supreme Court in ***Chaman Prakash Puri vs. Ishwar Dass Rajputand Another*** ; 1995 Supp (4) SCC 445 has held that if the Rent

Controller finds that the landlord is in *bona fide* need of the premises it would not be appropriate for this Court to re-appreciate the evidence and reverse the finding.

41. Thus in the facts and circumstances of the instant case R.C.Rev.428/2018 which in view of the proceedings dated 19.9.2018 is dealt with and disposed of in relation to the property shown in the eviction petition, i.e, both the portion shown in red and the portion shown in green stated to have been unauthorizedly constructed by the petitioner as per documents annexed at page 217 of the present petition. The order dated 19.9.2018 staying the operation of the impugned judgment of the learned Additional Rent Controller till pronouncement of judgment in this case is thus set aside.

42. The petition is thus dismissed.

ANU MALHOTRA, J.

JUNE 04. 2021/SV