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

Pronounced on: 25.09.2023

+ **RC.REV. 458/2019 & CM APPL. 34698/2019**

AMRIT MOHINI & ANR Petitioners

Through: Mr. Arun Bhardwaj, Sr. Adv. and
Mr. I.S. Alag, Sr. Adv. with
Mr.Kushagra Pandit Adv.

Versus

BRIJ MOHAN GUPTA & ORS Respondents

Through: Mr. G. P. Thareja and Mr. Sagar
Kumar Lal, Advs. for R-1, 3, 4, 5 &
6.

+ **CM(M)1829/2019 and CM APPLs. 55664/2019**

AMRIT MOHINI & ANR. Petitioners

Through: Mr. Arun Bhardwaj, Sr. Adv. and Mr.
I.S. Alag, Sr. Adv. with Mr. Kushagra
Pandit and Mr. Ghanshyam Jha,
Advs.

Versus

SUNITA STRUCK & ORS. Respondents

Through: Mr. G.P. Thareja and Mr. Sagar
Kumar Lal, Advs. for R-2, 4, 5, 6, 7.

+ **RC.REV. 705/2019 and CM APPLs. 55182/2019, 55184/2019**

AMRIT MOHINI & ANR. Petitioners

Through: Mr. Arun Bhardwaj, Sr. Adv. and Mr.
I.S. Alag, Sr. Adv. with Mr. Kushagra
Pandit and Mr. Ghanshyam Jha,
Advs.

Versus



SUNITA STRUCK & ORS.

..... Respondents

Through:

Mr. G.P. Thareja and Mr. Sagar
Kumar Lal, Advs. for R-2, 4, 5, 6, 7.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

FACTUAL BACKGROUND

1. The present petitions arise out of eviction proceedings in respect of commercial premises bearing Shop No.20, Defence Colony Market, New Delhi, 110024 (*hereinafter referred to as "the property"*).
2. The said property was initially purchased by Smt. Parvati Bai in an auction held by L&DO. The said Parvati Bai is stated to have inducted a tenant, namely, Shri Sevti Lal Gupta (predecessor in interest of the current tenants) at a monthly rent of Rs.190/- sometime around 1958. A certificate of sale and lease deed with respect of the said property was executed by the L&DO in favour of Smt. Parvati Bai. Copies of the said documents have been placed on record by the petitioners in RC. Rev.458/2019.
3. Upon the death of Smt. Parvati Bai, the property was mutated/substituted by the L&DO in the name of Smt. Gul R. Shivdasani being her successor by virtue of a Will dated 10.03.1976 of Smt. Parvati Bai and that of her husband dated 15.05.1985. A copy of the Will dated 10.03.1976 of Smt. Parvati Bai as also the Will dated 15.05.1985 of husband of Smt. Gul R. Shivdasani have been placed on record. Prior to mutation/substitution by L&DO in favour of Smt. Gul R. Shivdasani, her children i.e. Smt. Sunita Struck and Mr. Pratap R. Shivdasani are stated to



have given their respective no objection certificates dated 06.04.1988.

4. Smt. Gul R. Shivdasani is stated to have entered into a registered agreement to sell dated 24.04.1989 with the petitioner no.2 in RC. Rev.458/2019 for sale of the property. In terms of the said registered agreement to sell, a sum of Rs.4,50,000/- is stated to have been paid by the said purchaser to Smt.Gul R. Shivdasani. It has been recorded in the agreement to sell as under:-

“1. That out of total sale consideration of Rs.4,50,000/- (Rupees Four Lakhs fifty thousand only), the purchaser has paid to the seller a sum of Rs.4,40,000/- vide Bank draft No.284690/400019001 dated 25.04.1989 drawn on Indian Bank, Bombay, the receipt whereof the seller hereby admits and acknowledges and the balance sum of Rs.10,000/- (Rupees Ten thousand only) shall be paid by the purchaser to the Seller on or before the execution and registration of regular sale deed. “

5. Simultaneously, with the execution of the agreement to sell, a General Power of Attorney dated 24.04.1989 was executed by Smt. Gul R. Shivdasani, constituting “Shri Gurinder Singh Suri” as her attorney. Pursuant thereto, a conveyance deed dated 19.07.1994 was stated to have been executed in respect of the property by Smt. Gul R. Shivdasani through her attorney in favour of the petitioners.

6. It may be noted that the case of the petitioners is that the said power of attorney contains a typographical error inasmuch as the name of the attorney has been wrongly spelt as “Gurinder Singh Suri” instead of “Gurvinder Singh Suri”.

7. Pertinently, the conveyance deed executed in respect of the property contains an endorsement which refers to sale permission having been granted by L&DO prior to the execution of the said conveyance deed.

8. Almost immediately after execution of the agreement to sell dated



24.04.1989 and registered power of attorney, a notice dated 28.04.1989 is stated to have been sent by Smt. Gul R. Shivdasani (through her General Power of Attorney) to the tenants calling upon the tenants to pay rent to the new owners. This notice was referred to in Suit No. 501/1989 filed by the tenants, which also came to be filed in the aftermath of the aforesaid transaction. The prayer sought by the tenants in the said suit are as under:-

“21. It is, therefore, prayed that the Hon’ble Court be pleased to pass a declaratory decree in favour of the Plaintiff and against the Defendants No.1 and 2 declaring:

- (i) The Plaintiff to be a tenant and in possession of first floor, that is, the entire open roof of Shop No.20, Defence Colony Market New Delhi AND*
- (ii) The Defendants No.1 and 2 to be not the landlord of suit property bearing No.20, Defence Colony Market, New Delhi.*

It is, further prayed that a decree for permanent injunction restraining Defendants No.1 and 2 or their agents, employees or labourers from raising any construction on the roof of Shop No.20, Defence Colony Market, New Delhi AND

For mandatory injunction directing the Defendants No.1 and 2 for demolishing the structure/construction which may be raised on the roof of Shop No.20, Defence Colony Market, New Delhi be passed in favour of Plaintiff & against the Defendants with costs.”

9. The defendant No. 1 in the said suit was ‘Gurinder Singh Suri’, the person in whose favour power of attorney was executed at the time of entering of the agreement to sell dated 24.04.1989. The suit refers to legal notices exchanged in the aftermath of the aforesaid transaction. This suit filed on behalf of the tenants was ultimately dismissed (as having been abated) vide order dated 19.11.2011.

10. It was during the pendency of the aforesaid suit, that a conveyance deed dated 19.07.1994 in the respect of the property was executed in favour of the petitioners. Earlier, Smt. Gul R., Shivdasani, vide communication



dated 06.10.1992, is alleged to have revoked the registered power of attorney dated 24.04.1989. However, much prior to execution of the conveyance deed, Smt. Gul R. Shivdasani retracted/ withdrew the said revocation letter sent by her and issued a letter dated 12.11.1992 addressed to the petitioner no.2 stating as under:-

*“FROM: Smt. Gul. R. Shivadasani,
23, Shanti Kutir,
Marine Drive,
BOMBAY – 400 020*

*November 12, 1992
REGISTERED A.D.*

*Shri. Pradeep Kumar Bakshi,
A – 283 – Defence Colony,
NEW DELHI: 110001.*

Dear Sir,

I have your letter dated 31.10.92 in reply to my letter dated 06.10.92.

I have to inform you that the letter written 06.10.92 was written by me under some misunderstanding created by legal advise.

However, as presently advised and on mature consideration of the matter I hereby withdraw my letter dated 06.10.92.

The agreement of Sale dated 05.04.89 as well as power of attorney executed by me in your favour and in favour of Gurinder Singh Suri are valid, operative and subsisting I hope this satisfied you fully.

I am sending copy of this letter to the following:-

- 1. Land & Development Officer,
Minister of Urban Development,
Land & Development Office,
NRMAN BHAVAN, NEW DELHI – 110001.*
- 2. Shri. Gurinder Singh Surie,
B – 125, East of Kailash,
NEW DELHI.*
- 3. Shri. Sevatilal Gupta,
20, Defence Colony,
NEW DELHI.*
- 4. H.L. Tiku,
606, Rohit House,*

*Dated : 06.10.92
09.10.92*



*3 Tolstoy Mans.
NEW DELHI – 110001.*

I am ready & willing to execute sale deed & conveyance deed & perform my part in registration of the same as provided in the agreement dated 25.04.89 i.e. after necessary permission & etc. are obtained against the balance amount of Rs.10,000/- payable to me

C.C. to:

1. *Land & Development Officer,
NEW DELHI.*
2. *Shri Gurinder Singh Suri,
NEW DELHI.*
3. *Shri. Sevati Lal Gupta,
NEW DELHI.*
4. *H.L. Tiku,
NEW DELHI.*

For information & record with a request to treat my earlier letter dated 06.10.92 & 09.10.92 as cancelled & withdrawn.

Yours faithfully,

(SMT. GUL R. SHIVDASANI)”

11. Smt. Gul R. Shivdasani is also stated to have obtained an NOC under Section 230 of the Income Tax Act, 1961 prior to the execution of the conveyance deed dated 19.07.1994 in favour of the petitioners.

12. Importantly, no legal proceedings have been initiated by the erstwhile owner/s of the property, or their legal heirs challenging the aforesaid conveyance deed.

13. It is in the above backdrop that the eviction petition [number 6249/2016 (old no. 51/2011)] under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as “DRC Act”*) came to be filed by the petitioners in RC. Rev. No. 458/2019 in respect of the property seeking eviction of the tenants i.e. the respondents in the said RC. Rev. No.



458/2019, being legal heirs of late Sh. Sevti Lal Gupta. In the eviction petition, it has been specifically averred as under:-

“19. Any other relevant information?”

The Property No.20, Defence Colony Market, New Delhi-110024, originally belonged to one Smt. Parbati Devi. Upon her death, the said Property stood bequeathed to and devolved upon her son, Sh. Ramchand Tharumal, under and by virtue of a Will dated 10.03.1976, and upon his death, it stood devolved upon his wife, Smt. Gul R. Shivdasani. The same was accordingly mutated in the name of Smt. Gul R. Shivdasani in the records of the L&DO, the Principal Lessor of the Property. Petitioners have purchased the said Property, vide a registered Conveyance Deed dated 19.7.1994, after receipt of clearance from the Income Tax Department under Section 230 A of the Income Tax Act, 1961. Prior to that, the said Smt. Gul R. Shivdasani had entered into an Agreement to Sell dated 25.4.1989 with Petitioner No.2, which was also duly registered with Registrar of Assurances, New Delhi as Document No.3697, Book No.1, Volume No.6397 at Pages 152 to 156 dated 26.04.1989, along with an irrevocable Power of Attorney for consideration dated 25.4.1989, duly registered with the Registrar of Assurances, New Delhi as Document No.2814, Book No.4, Volume No.1593 at Pages 128 to 130 dated 26.4.1989, executed in favour of husband of Petitioner No.1. It is clarified that the name of Petitioner No.1's husband is Sh. Gurvinder Singh Suri, son of S. Jaswant Singh Suri, which however, inadvertently and due to typographical error, was wrongly typed as Gurinder Singh Suri At the relevant time, the entire sale consideration in respect of the said Property was paid to Smt. Gul R. Shivdasani. All the original documents in respect of the said Property were handed over to the Petitioner No.2 at that time. Petitioners, as such, became the owners and landlords of the suit Property.

That late Shri Sevati Lal Gupta was inducted as a tenant by the said Smt. Parbati Devi, originally at a monthly rent of Rs.190/- per month with respect to tenanted Premises being Shop No.20, Defence Colony Market, (ground floor), New Delhi-110024. However, later the tenant falsely claimed to be also in occupation and/or tenant with respect to terrace over the ground floor of the tenanted Premises, as is evident from Shri Sevati Lal Gupta's Advocate's Reply dated 12.5.1989. It is submitted that though the Petitioners deny that terrace is part of the tenanted Premises, however, assuming though not admitting, it to be part of tenanted Premises, the Petitioners seek Respondents eviction also from the said terrace of Shop No.20, Defence Colony Market, New Delhi-110024, apart from the tenanted Premises.”

14. In the application seeking leave to defend filed on behalf of the



tenants, apart from questioning the *bona fide* necessity of the petitioners, a plea was taken that the petitioners are not the owners of the property in question. It was alleged that the agreement to sell dated 25.04.1989 is bogus, sham and a forged document. Further, the power of attorney dated 25.04.1989 and also the conveyance deed dated 19.07.1994 were alleged to be “false, bogus, sham and forged”. It was alleged that Mr. Gurinder Singh Suri and Mr. Gurvinder Singh Suri are not the same persons.

15. During the pendency of the aforesaid eviction petition, an impleadment application under Order 1 Rule 10 of CPC came to be filed by Mr. Pratap R. Shivdsani, the son of Smt. Gul. R. Shivdasani seeking his impleadment as a necessary party. The said impleadment application came to be filed on 07.08.2013, and was disposed of vide order dated 02.07.2016, wherein it was held as under:-

“.....

It is further noted that the applicant has specifically pleaded that the documents on the basis of which the petitioners are claiming their ownership qua the tenanted suit premises were cancelled by his mother i.e. Late Smt. Gul R. Shivdasani during her lifetime, however, it is a matter of record that no such document(s) in this regard has been filed by the applicant. The instant application was moved on behalf of applicant in the Court on 07.08.2013 and we are now in the midst of year 2016, i.e. almost 2 ½ years have elapsed, however, till date no such documents which could even prima facie show that the said documents of ownership of the petitioners were cancelled by her deceased mother during her lifetime has been filed by the applicant. The averments of applicant in this regard are merely oral without being substantiated by any documentary proof. Furthermore, the least the applicant could have done was to have filed some rent receipts, which could have reflected that the respondents have been paying rent to him qua the tenanted suit premises. What to talk of the rent receipts, the applicant has not even uttered a single word in the application under disposal about the factum of rent being paid by the respondents herein to him or his sister Smt. Sunita. Admittedly, neither the respondents have filed any reply to the instant application nor the learned counsel for the respondents have advanced any arguments thereupon, thereby strengthening the submissions of learned counsel for the petitioners



that the instant application has been filed by the application at the behest of the respondents with the sole objective to protract the trial.”

16. It was further held in the said order dated 02.07.2016 as under:-

*“11. Be that as it may from the perusal of the application in question and the reply filed by the petitioners thereof, it is apparent that there are two parties claiming to be owners/landlords of the tenanted suit premises. Admittedly, this Court has no jurisdiction to settle title or interest dispute between the parties. It would be for the petitioners to establish that they continue to be the landlord(s) of the respondents and the respondents would be fully entitled to disprove this claim as per law. **This Court cannot allow a petition filed U/s 14(1)(e) of DRC Act to be converted into a regular title suit.**”*

17. Even after the aforesaid order, no title suit came to be filed by the any of the legal heirs of Gul R. Shivdasani seeking to challenge the title asserted by the petitioners, based on the aforesaid agreement to sell dated 24.04.1989 and the conveyance deed dated 19.07.1994.

18. After dismissal of the aforesaid impleadment application, another impleadment application came to be filed by Smt. Sunita Struck, the daughter of Smt. Gul. R. Shivdasani, seeking her impleadment in the eviction petition filed by the petitioners. It was averred in the said application as under:-

“7. That the petitioners, in connivance with the respondents, present the false facts before this Hon’ble Court that Smt. Gul R. Shivdasani, the mother of the applicant, had sold the suit property to petitioners. On the contrary it is submitted that the Applicant’s grandmother Smt. Parbati Bai was the actual and exclusive owner/lessee of the suit property i.e. Shop No.20, Defence Colony Market, New Delhi vide the lease deed dated 07.03.1962 executed by the President of India and she was survived by father of the applicant Shri Ram Chand Tharumal Shivdasani who inherited the leasehold rights of the same as sole legal heir of Smt. Parbati Devi.

8. That the Applicant’s father was survived by Smt. Gul R. Shivdasani(wife), Late Pratap R. Shivdasani (son), and the applicant herein as his legal heirs. After the demise of her mother and brother the applicant herein has become the sole and absolute owner of the suit premises.



9. That the documents relied upon by the Petitioners herein to claim ownership are false and bogus as the applicant's mother Late Smt. Gul R. Shivadasani did not even know Petitioner No.1 Amrit Mohini. Furthermore, the suit property never fall under the absolute ownership of Late Gul R. Shivadasani and therefore, she had not right to sell the suit property at any point of time."

19. The aforesaid impleadment application filed by Ms. Sunita Struck was also came to be dismissed vide order dated 27.03.2017, wherein, it was categorically held as under:-

"7. On factual premise, although the applicant has stated herself to be the owner/landlord of the suit premises but she has failed to place on record any valid documents to show his ownership or status of landlord in respect of the suit premises. On the contrary the petitioners are claiming themselves to be the owner of the suit property by virtue of as conveyance deed."

xxx

xxx

xxx

12.However, in the present case the petitioner has claim herself to be the owner and has come in the Court on the basis of the title of her predecessors, which has been sold to the petitioners. Therefore, till the conveyance deed/sale in favour of petitioners remains valid, the applicant cannot claim herself to be the owner of the property and therefore will not be a necessary or proper party in this case.

For the aforesaid reasons, this application is no merits and therefore dismissed."

20. Again, despite the observations/findings rendered in the aforesaid order, no suit or legal proceedings were filed by Smt. Sunita Struck, assailing the title of the petitioners.

21. A review petition filed on behalf of the Smt. Sunita Struck seeking review of the aforesaid order also came to be dismissed vide order dated 11.07.2017.

22. At the time of filing of her impleadment application, Smt. Sunita Struck also simultaneously filed an independent eviction petition under



Section 14 (1) (e) of the DRC Act seeking eviction of the tenants on the premise that she was the owner of the property. It is noticed that the affidavit(s) in support of the eviction petition and the impleadment application, came to be sworn in on the same day. The petitioners herein were not made a party in the said eviction petition. Crucially, the said eviction petition filed by Smt. Sunita Struck made no disclosure about the pending eviction petition filed by the petitioners nor was there any reference to the dismissal of her impleadment application and findings rendered therein. It was averred in the said eviction petition as under:-

“That the suit property was allotted by Ministry of Rehabilitation to the grand mother of petitioner Smt. Parapati Devi on 28.03.1958, and later Smt. Parabati Devi inducted one Sh. Sevati Lal Gupta as tenant in the suit premises. Smt. Parabati Devi had died intestate and thereafter the suit property devolved on her legal heir (son) namely Sh. Ram Chand Shivadasani, father of the petitioner. Further, Sh. Ram Chand Shivadasani had allowed Sh. Sevati Lal Gupta to continue with the tenancy of the suit premises. That the father of the applicant Sh. Ram Chand Shivadasani was survived by the applicant, her mother and brother namely Sh. Pratap R. Shivadasani and thereafter, the suit property came under the joint ownership of these three persons and tenancy of Sh. Sevati Lal Gupta was continued. Sh. Sevati Lal Gupta expired in the year 1996 and his legal heirs continued in the tenancy of the suit property and started paying rent to the applicant thereafter. That presently petitioner is sole owner of the suit premises after demise of her mother and the brother of the applicant died on 30.09.2016. That mother of petitioner had filed earlier an eviction petition under section 14(1)(g) of DRC act against the respondents herein and the was withdrawn.”

It was further averred as under:-

“19. Any other relevant information

The property No. 20, Defence Colony Market, New Delhi – 110024, was allotted in the name of grandmother of petitioner, Smt. Parabati Devi, by Ministry of Rehabilitation. That petitioner alongwith her grandmother were displaced person of Pakistan and filed their claim compensation petition and thereafter the ministry of rehabilitation allotted the suit premises to the grand mother of petitioner. Upon her death, the said



property stood bequeathed to and devolved upon her son, Sh. Ramchand Tharumal, and upon his death, it stood devolved upon his wife Smt. Gul. R. Shivdasani, his son and petitioner herein equally. That after demise of mother and brother of the petitioner the petitioner become the sole owner of the suit premises. That late Sh. Sevati Lal Gupta was inducted as a tenant by the said Smt. Parabati Devi, originally at a monthly rent of Rs. 190/- per month with respect to tenanted Premises being shop No. 20, Defence Colony Market, (ground floor), New Delhi – 110024. However, later the tenant falsely claimed to be also in occupation and /or tenant with respect to terrace over the ground floor of the tenanted Premises, as is evident from Shri Sevati Lal Gupta's Advocate's Reply dated 12.05.1989. It is submitted that though the Petitioners deny that terrace is part of the tenanted premises, however, assuming though not admitting, it to be part of tenanted premises, the petitioners seek respondents eviction also from the said terrace of Shop No. 20, Defence Colony Market, New Delhi – 110024 apart from the tenanted premises.

23. As such, there was complete omission in the said eviction petition filed by Sunita Struck to refer to the transaction(s) between the present petitioners and her late mother, and the pending legal proceedings/eviction petition filed by the present petitioners.

24. It can be seen that in the eviction petition filed by Smt. Sunita Struck, the averments regarding her alleged ownership of the property were virtually a repetition of the averments made in her impleadment application in the eviction petition filed by the petitioners, wherein a categorical finding was given that ***“till the conveyance deed/sale in favour of petitioners remains valid, the applicant cannot claim herself to be the owner of the property”***. In the eviction petition filed by Smt. Sunita Struck, there was also no disclosure about the Will executed by Smt. Parvati Bai and also the Will executed by Mr. Ram Chand Shivdasani (husband of Smt. Gul. R. Shivdasani) in respect of the property, the substitution/mutation of the said property in favour of the Smt. Gul. R. Shivdsani, the agreement to sell/power of attorney executed by Smt. Gul. R. Shivdsani in respect of the said property, the permission



sought by Smt. Gul. R. Shivdsani from L&DO and the Income Tax Authorities for sale of the aforesaid property, the conveyance deed dated 19.07.1994, with respect of the property in favour of the petitioners. Even the factum of the pending eviction petition being eviction petition No. 6249/2016 (old no. 51/2011) filed as far back as 2011 was not disclosed in the eviction petition filed by Smt. Sunita Struck.

RC REV. NO. 458/2019

25. In the above background, RC Rev. No. 458/2019 has been filed by the petitioners assailing the impugned order dated 04.07.2019 whereby, in the eviction petition filed by the present petitioners, despite a finding that no triable issue arises in respect of “*bona fide* requirement” and “availability of alternative accommodation”, leave to defend has been granted on the issue of landlord-tenant relationship between the parties. As regards the landlord-tenant relationship, the impugned order in RC Rev. No. 458/2019 holds as under:-

“Though respondents have denied almost each and every document connecting the petitioners to the title of original owner/landlord, however, most of denials are bare denials but some contentions do have substance. The claim of petitioners to the landlordship/ownership of the premises is based on the conveyance deed stated to be executed in favour of petitioners by the GPA holder of Gul R. Shivdasani. However, respondents have claimed that GPA had been revoked by Gul R. Shivdasani in writing and further alleged GPA holder had not executed the conveyance deed in question. As far as revocation of GPA is concerned, petitioner have raised two fold argument, firstly that said revocation letter had been withdrawn; secondly, GPA being for consideration, could not be withdrawn unilaterally by the Principal i.e. Gul R. Shivdasani. However, alleged letters of Gul R. Shivdasani re-affirming the GPA after revoking it are neither admitted nor proved at this stage. Further, GPA does not mention any consideration in its entire body, therefore, the argument that GPA is for consideration cannot be accepted on its face. Moreover, it is also doubtful as to whether the GPA holder had in fact executed the conveyance deed. Name of GPA holder is mentioned as Gurinder Singh in GPA as well as conveyance deed.



As per petitioner, the actual name of GPA holder is Gurvinder Singh and there has been typographical mistake. However, prima facie, it does not appear that such mistake would have occurred repeatedly in different documents prepared at different point of time. More importantly, the explanation of petitioner that same is only a typographical mistake cannot be accepted on its face because the signatures of the alleged GPA holder on the conveyance deed are complete mis-match with signatures of said GPA holder in the pleadings/affidavits/applications filed on his behalf in the suit filed by Sevati Lal Gupta (Predecessor in interest of the respondent) against him. Accordingly, the objections of the respondents to the title of petitioners cannot be disposed off summarily. The Counsel for petitioners has further argued that the rent controller can neither go into nor adjudicate the title of petitioner to the suit property and is concerned with the landlordship only. I have considered said argument. However, in present case the landlordship is a consequence of acquisition of title by the petitioner and thus to determine the landlordship the acquisition of title of earlier landlord by petitioner has to be looked into. The Counsel for petitioner has further argued that a tenant cannot question even the derivative title of the subsequent purchaser of the landlord/owner. I have considered said argument but I am not swayed by the same. Section 116 of Indian Evidence Act provides for estoppel against tenant. However, same provides that tenant cannot deny the title of landlord "at the beginning of tenancy" but the transferee from such landlord can claim such benefit upto a limited extent i.e. the question of title of original landlord at the time when tenant was let in cannot be disputed. However, tenant is entitled to show that plaintiff has not secured transfer from original landlord or that alleged transfer is ineffective for some other valid reasons. It has been held by Hon'ble Supreme Court of India also in D. Satyanarayana v. P. Jagdish (1987) 4 Supreme Court Cases 424 that a tenant is not precluded from denying the derivative title of the persons claiming through the landlord. The Counsel for petitioner has further argued that dispute about signatures of Gurvinder Singh in the alleged previous suit have been put to rest as Gurvinder Singh was specifically summoned by the court and examined. I have considered the said argument. The petitioner has filed the typed copies of court order and the alleged statement of Gurvinder Singh Suri. Firstly, the pleadings/affidavits have been filed by "Gurinder Singh" i.e. the person of same name as mentioned in GPA/conveyance deed but the person examined is "Gurvinder Singh". Secondly, there is nothing mentioned in his statement regarding his signatures in the pleadings of the aforesaid case and he was not cross examined by the opposite party as the court asked that Counsel shall summon the original documents if he wants to confront the same to Gurvinder Singh. Accordingly, the controversy is far from settled. Accordingly, triable issues have appeared regarding the acquisition of title by petitioners and consequently the landlordship of the premises. Accordingly, triable issues have appeared in regard to first requirement of



section 14(1)(e) of DRC Act.”

26. The petitioners in RC Rev. No. 458/2019, being the landlords, are aggrieved with the grant of leave of defend on the issue of landlord-tenant relationship, despite the petitioners having a registered agreement to sell/conveyance deed in their favour in respect of the tenanted premises.

RC REV. 705/2019

27. RC Rev. 705/2019 has been filed assailing the impugned order dated 16.11.2019 passed in the eviction petition filed by Smt. Sunita Struck (Eviction Petition No 1/2019; old no 25/2017). Vide the impugned order, it has been held that no triable issue arises in respect of the issue of “landlord-tenant relationship” and “availability of suitable alternative accommodation with the petitioners”. However, leave to defend has been granted on the issue of *bona fide* requirement asserted by Smt. Sunita Struck. With regard to the issue of landlord-tenant relationship between the parties and the ownership of the petitioners, it has been held in the said impugned order as under:-

“The respondents have denied the existence of said relationship between the parties claiming that there was no agreement between petitioner and respondents or their predecessors. Even the ownership of petitioner is disputed and it is submitted that one Amrit Mohini have claimed to have purchased the property from the earlier owner Gul R. Shivdasani vide conveyance deed dt. 19.07.1994. However, interestingly, the respondents have not explained as to who is their landlord in the property and have not even claimed any independent right in the property. It is to be noted that the initial ownership of Parbati Devi is admitted and even the tenancy of Sevati Lai has not been disputed. Thus, the initial landlord-tenant relationship between Sevati Lai and Parbati Devi is deemed to be admitted. Furthermore, regarding the alleged purchase by Amrit Mohini they have only claimed that said lady have claimed to have purchase it through said conveyance deed. Interestingly, the eviction petition filed by Amrit Mohini is also pending in the present court (RC/ARC No.6249/2016) and therein the respondents have disputed the ownership/landlordship of Amrit Mohini also



on the basis of various defects/forges in the conveyance deed/power of attorney executing the same. Thus, the respondents are behaving like a monkey between two cats warring over a piece of bread. Most importantly, along with the petition the petitioner has filed copy of rent deposit application filed by respondents in 2010. In the entire leave to defend application, the said application or its contents have not been disputed. The scrutiny of said application shows that it is for the demised premises only and in para 4 thereof it is mentioned "Smt. Parbati Bai was landlady who in 1958 or thereabout let out shop premises to Sh. Sevati Lai Gupta for business purposes. She died in 1980 and after death her sons (S/S Ram Chand and Moti Ram) and her daughters (Smt Kishni Jawar Singh and Smt Padma) became landlords, who gave authority to collect rent to Sh. Ram Chand, hence, rent used to be paid to him by cheques upto 20.03.1989 whereafter Sh. Ram Chand died and after his death his wife Smt. Gul R. Shivdasani claimed to have inherited property and claimed herself as sole landlady but without showing any document of title to the applicants/tenant. Hence, rent is being deposited continuously in courts since 21.03.1969 (date not properly legible) onwards upto date. Hence, there is bonafide doubt as to who is the person entitled to receive the rent one or all. Moreover, a suit for declaration of title amongst the parties is also still pending in the civil court and date fixed is 04.12.2010. Hence, this deposit. Smt. Gul R. Shivdasani and Smt. Padma have died so their LRs are made parties." In continuation of said para (on next page) it is also mentioned "it is submitted here that there is no power of attorney in favour of alleged Gurinder Singh Suri or Pradeep Bakshi Adv. or in favour of any other person or respondent no.1 to 4 nor is in existence in law. Pradeep Bakshi and Amrit Mohini are not owners/landlords and not entitled to any rent nor they are otherwise authorized or entitled to collect rent." Therefore, it had been admitted by the respondents that after death of Parbati Devi her son Ram Chand also succeeded as co-landlord. The relationship of petitioner as daughter of said Ram Chand is not disputed throughout the leave to defend application. It is not the case of respondents that said Ram Chand left any Will or executed other documents in favour of other legal heirs/third party, to the exclusion of petitioner. Thus, admittedly she is also one of the co-owners/co-landlords by way of succession. As far as the alleged title of Amrit Mohini is concerned, the respondents themselves have categorically denied her ownership/landlordship in their own application and hence they cannot take a contrary stand for the sake of denial only and that too without adverting to the earlier application and its contents. In the given circumstances, no triable issue could be raised regarding the first requirement of section 14(1) (e) of DRC Act. As far as objection of respondents about non joining of other legal heirs of Smt. Parbati Bai is concerned, it has been held by Hon'ble Supreme Court of India in (M/s. India Umbrella Manufacturing Co. v. Bhajabandei Aggarwalla 2004(3) SCC 178) that even a co-owner can file an eviction petition against the tenant and all the co-owners are not



required to be joined as a party. Likewise, the objection of respondents regarding non joining of all the LRs of Laxmi Narayan Gupta is vague and not legally sustainable as neither the name of the LRs omitted by the petitioner have been mentioned nor the petition is bad if same is filed against some of the joint tenants.”

28. The above order has been passed in respect of the same property and the same tenants qua which the petitioners have filed their earlier eviction petition, in which Smt. Sunita Struck unsuccessfully sought to be impleaded. The said order proceeds on the basis that Smt. Sunita Struck is a co-owner of the property. Leave to defend has been granted in this petition only qua the issue of *bona fide* requirement and not on the issue of landlord-tenant relationship. As already noticed, the eviction petition filed by Sunita Struck contains no mention of the petitioners’ pre-existing eviction petition in which Sunita Struck herself sought to be impleaded, nor is there any disclosure about the title documents/ conveyance deed in favour of the petitioners herein.

29. CM(M) 1829/2019 has been filed assailing the order dated 24.04.2019 passed in the eviction petition filed by Smt. Sunita Struck, whereby, the impleadment application of the petitioners has been dismissed. It has been held in the impugned order as under:-

“Accordingly, this court being a court of Rent controller, cannot go into aspect of title over the tenanted property. The jurisdiction of the rent controller is on the basis of existence of landlord and tenant relationship between the petitioner and respondent. The petitioner/landlord has to merely show that he is something more than the tenant to get relief. Any dispute inter-se between the co-owners over a tenanted property or that between a landlord and a third person claiming ownership over the tenanted property, has no bearing in an eviction petition. Further, such dispute cannot be decided by the court of Rent Controller in view of the said proposition of law. Moreover, after impleadment of applicants herein, the nature of the eviction petition will completely change from being an eviction petition to a suit to declaration of title or respective claimants. Lastly, it is



admitted fact that the applicants have already filed an eviction petition against the respondent under section 14(1)(e) of the DRC Act and the same is pending before this court only. Moreover, even otherwise, even if the petitioners herein, succeed in their eviction petition, still the rights, title and interest, if any, of the applicants, shall not be affected in any manner, as the applicants can still claim the possession of suit property from the petitioner through a separate suit for possession.

The applicants have relied on various judgments in support of their arguments.

1) Devi Dayal Dixit Vs. Rastriya Electrical and Engineering Company, 23 (1983) Delhi Law Times 119. However, the said case is regarding the determination of the original tenant and is not applicable to the facts of the present case.

2) H S Bhankati Vs Poornima Devi & Ans, 46 (1992) Delhi Law Times 70. However, said case is regarding a proper party and not a necessary party.

3) Renu Vij Vs Daljeet Singh Bhatia, 113 (2004) Delhi Law Times 880. However, in said case, the tenant had already vacated and the applicant was in the possession of the suit property and therefore, the facts are difference from the present case.

4) Richard Lee Vs. Girish Soni &Anr, 2017 AIR SC 921. However, said judgment is also regarding proper party and not a necessary party.

In view of aforesaid discussions, the applicants herein, are not a necessary party to decide the matter in controversy herein. Accordingly, the application under Order 1 Rule 10 CPC stands dismissed.

It is however clarified that nothing mentioned herein, tantamount to an expression of opinion on the merits of the case.

SUBMISSIONS ON BEHALF OF THE PARTIES

30. In the above background, learned counsel for the petitioners has contended that this is a classic case of a tenant litigating with the landlord for over a period of 30 years and holding on to a commercial prime property on rent @ Rs.190/- per month. It is further contended that the title of the petitioners have been challenged before Civil Court both by the tenants and Smt. Sunita Struck, which suits came to be dismissed.

31. It is further contended that a court of Rent Controller has no jurisdiction to settle the title disputes and that in the light of the conveyance deed, it could not be said that any triable issue arises in the context of



landlord-tenant relationship. The inconsistency in the various orders passed by the concerned Rent Controller in eviction petition No. 6249/2016 [filed by the present petitioners] and in eviction petition No. 1/2019 [filed by Sunita Struck] was also sought to be highlighted. It was strenuously emphasized that the impugned orders in all the three petitions are unsustainable being contrary to the settled law as regards the scope of the proceedings before the Rent Controller, particularly as regards the onus of proof for establishing landlord-tenant relationship. It was further contented that the eviction petition filed by Smt. Sunita Struck be rejected/dismissed under Order 7 Rule 11 of Code of Civil Procedure, 1908.

32. *Per-contra*, learned counsel for the respondents/tenants has contended that the present revision petitions are not maintainable since the impugned orders are outside the scope of Section 25B (8) of the DRC Act. It is contended that neither the Ld. Rent Controller assumed jurisdiction which did not vest in him nor acted in excess of his jurisdiction.

33. It was further contended that the eviction petition itself was not maintainable in the light of the previous petitions filed under Section 14 (1) (g) of the DRC Act by Smt. Gul R. Shivdasani through her alleged attorney holder Sh.Gurinder Singh. It is emphasized that in the context of the petition under Section 14(1)(g), this court passed an order dated 21.05.2007 in CM(M)1201-1206/2006, holding as under:-

“12. Considering the facts and circumstances, I do not find any infirmity or any patent or flagrant errors in the order passed by the Rent Control Tribunal dismissing the appeal of the petitioners except clarifying for the above noted reasons that respondent Nos.3 and 4 who have been impleaded as petitioner Nos.3 and 4 to the petition pursuant to their application under Order XXII Rule 10 alongwith respondent nos. 1 & 2 original landlords, who have not been deleted, shall be liable to establish the conveyance deed in their favour in accordance with law and the petitioners/respondents shall



be entitled to challenge the same in accordance with the plea already taken by the petitioners in their written statement. With these directions, the petition is disposed of. All the pending applications are disposed off. Parties to bear their own costs. Parties to appear before the Additional Rent Controller on 30th May, 2007. The lower court record be sent back forthwith.

34. It is contended that the petitioners instead of establishing the conveyance deed, got the said proceedings abated and thereafter filed the eviction petition under Section 14(1)(e) of the DRC Act. It is contended that the said eviction petition itself was not maintainable on the basis of Order 22 Rule 9 CPC which bars a fresh petition before the same forum involving the same question i.e. existence of landlord-tenant relationship on the basis of the alleged conveyance deed with respect to the same property.

35. Detailed arguments were also addressed with regard to alleged infirmity/discrepancy/genuineness of the power of attorney executed by Smt. Gul R. Shivdasani. It was contended that in previous proceedings under Section 14 (1) (g) of DRC Act, there had been an abject failure on the part of the petitioners in proving the power of attorney in favour of the alleged attorney. It was further contended that the power of attorney in favour of Sh. Gurinder Singh Suri was cancelled by Smt. Gul R. Shivdasani.

36. It has been further contended that the petitioners have no *locus standi* to file the eviction petition under Section 14 (1) (e) of the DRC Act nor the present petition under Section 25B (8) of the DRC Act, since the petitioners never acquired the status of the landlord qua the property in terms of the Government Grant Act, 1895.

37. It was contended that mere execution of alleged conveyance deed on behalf of Smt. Gul R. Shivdasani by her alleged attorney could not confer



any title in the petitioners nor the petitioners can become landlord of the respondents/tenants. It is further contended that the alleged clearance from the Income Tax Department does not entitle the petitioners to be the landlord of the respondents simply by registration of the alleged sale deed. It was contended that forgery as well as fraud has been committed by the petitioners.

38. It was also contended that the special procedure prescribed under Chapter III(A) of the DRC Act could not have been availed in respect of the premises in question since the premises in question was not in nature of residential premises but commercial premises. In this regard, reliance is placed on the judgment of the Supreme Court in the case of *Vinod Kumar vs. Ashok Kumar Gandhi*, (2019) 17 SCC 237.

39. It is further contended that the concerned Rent Controller is still to determine the jurisdictional facts and that therefore, it would be inappropriate to interfere with the impugned orders at this stage.

40. It is further contended that approval of mutation/substitution permitted by L&DO office in favour of Smt. Gul R. Shivdasani is of no consequence since the petitioners have failed to prove the conveyance deed in previous proceeding under Section 14 (1)(g) of the Act. Further, it is contended that any observation made by Ld. Rent Controller while deciding the impugned application under Order 1 Rule 10 CPC preferred by Mr. Pratap R. Shivdasani and Smt. Sunita Struck could not be considered while deciding the application for leave to defend.

ANALYSIS AND FINDINGS

Maintainability of RC. Rev.458/2019 and RC Rev.705/2019



41. It has been strenuously contended by learned counsel for the respondents that the revision petitions are not maintainable, since the Rent Controller has neither assumed jurisdiction which does not vest in him nor acted in excess of jurisdiction. It is, therefore, contended that the present petitions are not maintainable and the underlying issues are yet to be decided by the Rent Controller pursuant to grant of leave to defend.

42. The above contentions of learned counsel for the respondents are without merit. It is now well-settled that a revision petition is maintainable if leave to defend has been granted in contravention of settled principles laid down in the context of the statutory provisions, as interpreted by judgments of this Court as well as the Supreme Court.

43. This court has held in numerous judgments that a revision petition is maintainable under Section 25B (8) of the DRC Act at the instance of a landlord who is aggrieved by grant of leave to defend to the tenant in a petition under Section 14 (1) (e) of the Act.

44. In *R.S. Bakshi vs. H.K. Malhari*, (2002) 62 DRJ 272 (DB), a Division Bench of this court, in a reference made by a learned Single Judge, dealt with the question whether a landlord can file a petition challenging the order of the Rent Controller by which leave is granted to a tenant to contest an eviction petition under Section 14(1)(e) of the DRC Act. The reference was a consequence of the learned Single Judge (in that case) finding divergence in the views expressed in two judgments of the Supreme Court titled *Vinod Kumar Chaudhary vs. Smt. Narain Devi Taneja*, (1980) 2 SCC 720 and *Major D.N. Sood and Another vs. Shanti Devi*, (1997) 10 SCC 428. The Division Bench answered the reference as under:-

“We, therefore, are of the opinion that the judgment of the Apex Court



in Vinod Kumar Chaudhary v. Smt. Narain Devi (supra) having not been brought to the notice of the Apex Court in the later judgment in D.N. Sood v. Shanti Devi (supra) that the former judgment shall prevail on D.N. Sood's case wherein the legal question was neither noticed nor considered. No arguments on merit were advanced. The binding precedent in Vinod Chaudhary's case was not brought to its notice. The said decision was, therefore, rendered per incuriam."

45. In **Vinod Kumar Chaudhary** (supra), the Supreme Court has held as under:-

"12. It is in the above background that the question as to whether an appeal to the Tribunal or a revision to the High Court was competent against the order passed in the instant case by the Controller has to be decided, and that brings us directly to the meaning of sub-section (8) of Section 25-B. The proviso to that sub-section gives power to the High Court to revise "an order made by the Controller under this section" which expression is no doubt capable of being construed as any order of whatsoever nature passed by the Controller while acting in accordance with the procedure laid down in Section 25-B. The proviso, however, has to be read as a legislative measure carved out of the sub-section to which it is appended and the order mentioned therein has to be regarded as an order of the type which the sub-section speaks of. i.e., "an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section". Thus, the order covered by sub-section (8) (and therefore, by the proviso also) would be a final order disposing of an application on a conclusion of the proceedings under sub-section (4) or sub-section (7) of Section 25-B. This line of reasoning does not present any difficulty.

13. Learned counsel for the tenant however argued that for an order to be covered by sub-section (8) of Section 25-B it must be an order for the recovery of possession of any premises made by the Controller. According to him, if an order does not direct recovery of possession by the landlord from the tenant, it is not an order which sub-section (8) would embrace. This contention, though not wholly implausible, runs counter to the decision in Devi Singh v. Chaman Lal [(1977) Rajdhani LR 566] which was followed in Bhagwati Pershad v. Om Perakash [(1979) Rajdhani LR 26] and Mahavir Singh v. Kamal-Narain [(1979) Rajdhani LR 159] and does not find favour with us. Sub-section (8) no doubt in terms speaks only of an order "for the recovery of possession of any premises" and does not mention one which refuses the relief of eviction to the landlord: but then it appears to us that the expression "order for the recovery of possession of any premises" has to be construed, in the context in which it appears, as an order deciding an



application for the recovery of the possession of any premises. Our reasons in this behalf are two-fold. Firstly, if an order in favour of the landlord alone was meant to be covered by sub-section (8), an order refusing such relief would be liable to be called in question by way of an appeal or second appeal under Section 38 so that there would be two procedures for the end-product of the Controller's proceedings being called in question; one when the same is in favour of the landlord, and another when it goes against him, which would obviously entail discrimination and make the sub-section suffer from a constitutional invalidity. It is an accepted rule of interpretation that if a provision can be construed in a manner which upholds its legal or constitutional validity it should if possible be so construed rather than the other way round. We do feel that the language used is not happy but then it would not be doing violence to it if it is construed as just above stated.

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16. As a result of the above discussion, we hold that the remedy of the landlady against the order of the Controller in the present case was by way of revision (and revision only) of that order by the High Court as laid down in the proviso to sub-section (8) of Section 25-B, even though it was an order not directing, but refusing, recovery of possession of the premises in dispute."

46. The judgments cited by the learned counsel for the respondents i.e. **Sarla Agarwal vs. Day Night Couriers**, 109 (2004) DLT 602 and **R.L. Kapoor vs. R.P. Mehta**, 21 (1982) DLT 119 are not only distinguishable on facts, they also have to be construed in the light of the judgment of the Division Bench of this Court in **R. S. Bakshi** (supra).

47. It is notable that both **Sarla Aggarwal** (supra) and **R. L. Kapoor** (supra) rely upon the judgment of the Supreme Court in **Vinod Kumar Chaudhary** (supra). The scope and ambit of the said judgment of the Supreme Court in **Vinod Kumar Chaudhary** (supra) has been clarified by a Division Bench of this Court in **R. S. Bakshi** (supra). The judgment rendered by the Division Bench in **R. S. Bakshi** (supra) was in the context of a revision petition filed before this Court against an order granting leave to



defend to the tenant. The Division Bench clarified the scope of jurisdiction of this Court while entertaining a revision petition against an order granting leave to defend to the tenant, and clearly held that a revision petition was maintainable in such a situation.

48. In fact, in the aftermath of the judgment of the Division Bench, the learned Single Judge in **R.S. Bakshi vs. H.K. Malhari**, (2003) 67 DRJ 410, while disposing of the revision petition, additionally relied upon the judgment of the Supreme Court in **Shiv Sarup Gupta vs. Mahesh Chand Gupta (Dr)**, (1999) 6 SCC 222 to hold that *“the powers of this Court under sub-section (8) of Section 25B of the Act have already been analysed by the Supreme Court in the judgment of Shiv Sarup Gupta (supra). If the order of the Rent Controller allowing or disallowing the application for leave preferred by a tenant is based on no evidence or misreading an evidence or a wrong decision on question of law or reasons are not given for arriving at the conclusion such an order would be not according to law and may call for interference by this Court under proviso to sub-section (8) of Section 25B of the Act since it resulted in miscarriage of justice. The Rent Controller's decision has to be appraised on the touchstone of the proposition of law enunciated in the judgment of the Supreme Court in Shiv Sarup Gupta (supra).”*

49. In **Sanjay Mehra vs. Sunil Malhotra**, (2010) 117 DRJ 654, a revision petition was filed by the landlord assailing an order granting leave to defend to the tenant. This Court after taking note of the judgment of the Supreme Court in **Vinod Kumar Chaudhary** (supra) and the Division Bench of this Court in **R. S. Bakshi** (supra) proceeded to examine the matter in the light of the legal position enunciated in these cases and went on to pass an eviction



order in favour of the landlord.

50. In ***Prem Lata vs. Pawan Kumar Khurana***, (2012) 187 DLT 340, this Court again taking note of the judgment of the Supreme Court in ***Vinod Kumar Chaudhary*** (supra) and the Division Bench of this Court in ***R. S. Bakshi*** (supra) set aside the order passed by the Rent Controller granting leave to defend to a tenant having found that the tenant had not raised any triable issues.

51. In ***Pravesh Jain vs. Oswal Woollen Mills Ltd.***, 2017 SCC OnLine Del 10882, this Court, relying upon the judgment of ***Vinod Kumar Chaudhary*** (supra) and ***R. S. Bakshi*** (supra), held that a petition under Section 25(B)(8) of the DRC Act lies against the order granting leave to defend.

52. The issue as to whether this court has power to exercise revisional jurisdiction in the context of leave to defend being granted on specious and untenable grounds also came to be considered by this Court in the case of ***Lt. Col. Kul Parkash Tejpal vs. S.P. Bhandari***, (1997) 41 DRJ 693, wherein it was held by this Court as under:-

“8. From the analysis of the provisions of Sections 25-B(1) to (8) of the Act it can be said that if the Rent Controller grants leave to the tenant to contest the eviction petition the proceedings will take long time to be concluded. In that eventuality the landlord who has been given benefit of summary trial would be deprived of his right of immediate possession. In that view of the matter, if what Ms. Urmila Khanna wants this Court to hold is accepted it would amount to discrimination against one set of parties under the Act. This argument of Ms. Khanna goes counter to the intention of the legislature. When the Legislature in its wisdom provided expeditious disposal of cases under the Act and took away the right of appeal under Sections 38 & 39 of the Act it gave only right of revision. To deprive the landlord of even this right particularly when his right of immediate possession is taken away by the Controller by granting leave to defend and above that telling him he has no right of revision even if the order of the Controller is bad. It would be too harsh and would work injustice. The right to challenge such an order by way of revision is the only remedy left with him. If that right is also taken away it would leave the landlord high and dry



and without remedy. For not granting leave to defend the tenant has a right to file the revision, but for granting leave the landlord has to face the rigour of long drawn trial. That could not have been the intention of the legislature. Nor the Legislature gave unbridled power to the Controller in the matter of grant of leave to defend. For the reasons discussed above, I find no substance in the legal objection raised by the respondent.”

53. Also, in the case of **K.K. Sarin vs. Pigott Champman**, (1992) 22 DRJ 471, it was held by this Court as under:-

“.....If the Rent Controller grants leave to the tenant to contest the eviction petition the proceeding will take time for its conclusion and naturally the landlord, who has been given the benefit of summary trial will be deprived of his right of immediate possession. If we accept the contention of the counsel for the tenant that no right of revision is available to the landlord under Section 25B(8) of the Act against the order for grant of leave to defend the petition that will go counter to the intention of the legislature. The legislature is so keen in the expeditious disposal of such cases that it has even taken away the right of appeal provided under Section 38 and 39 of the Act and has given only a right for revision. It has been held by this Court in S.K. Sehgal v. Prithvi Raj Gupta 1979 R.L.R. 306 that the Rent Controller is not amenable to jurisdiction of Section 115 CPC or under Article 227 of the Constitution of India. If we interpret the provision of section 25B(8) of the Act in the way that no revision or appeal lies against the order granting leave to defend to the tenant then the position would be that the order of the Controller in that regard would be final. It cannot be the intention of the legislature to give unbridled power to the Controller in the matter of grant of leave to defend to the tenant.

Following the reasoning and the decision of the Hon'ble Judge of the Supreme Court in Vinod Kumar Chowdhry v. Narain Devi (supra), I am unable to accept the contention raised by the counsel for the tenant. It is now well settled that the High Court has power to interfere where an order of the Controller is without jurisdiction or contrary to law or does not express an opinion of fact or where he has arrived at finding wholly perverse or passed an order which results in miscarriage of justice.”

54. As such, there is no merit in the submissions of learned counsel for the respondents regarding maintainability of the present petitions.

55. It has further been contended by learned counsel for the respondents that the eviction petition filed by the petitioners was itself barred in view of



previous proceedings filed under Section 14 (1) (g) of the DRC Act by Ms. Gul R. Shivdasani acting through her attorney. It is stated that in proceedings emanating from the said eviction petition, this court in CM(M) 1201-1206/2006, passed an order dated 21.05.2007 wherein it was inter alia observed as under:-

“.... that respondents no.3&4 (petitioners herein) who have been impleaded as petitioners no.3&4 in the petition pursuant to their application under Order 22 Rule 10 CPC along with respondents no.1&2 (respondent no.1 Ms. Gul R. Shivdasani and respondent no.2 Shri Gurinder Singh Suri) original landlord to have not been deleted, shall be liable to establish the Conveyance Deed in his favour in accordance with law and the petitioner (respondents in this petition) shall be entitled to challenge the same in accordance with the plea already taken by the petitioners (Late Sevati Lal Gupta through LRs) in their written statement....”

56. It is submitted that the aforesaid petition under Section 14 (1) (g) was ultimately abated and thereafter the present petition under Section 14 (1) (e) came to be filed by the petitioners. It is submitted that since the present eviction petition involves the same question of relationship of landlord and tenant with respect to the same property, the fresh petition under Section 14 (1) (e) was barred in view of Order 22 Rule 9 CPC.

57. The above contention of learned counsel for the respondents is also misconceived. It is well settled that a petition under Section 14 (1) (e) stands on its own footing and is based on an independent cause of action. The abatement of the previous petition under Section 14 (1) (g) does not debar or prevent a subsequent petition under Section 14 (1) (e) of the DRC Act based on the valid cause of action.

58. The cause of action envisaged by Section 14 (1) (e) of the DRC Act is that premises are required *bona fide* by the landlord for himself or for any member of his family dependent on him while the cause of action envisaged



by Section 14 (1) (g) of the DRC Act is that premises are required *bona fide* by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations. Mere identity of some of the issues in two eviction petitions would not bring about identity of the cause of action.

59. It has been further contented by learned counsel for the respondents that the special procedure prescribed under Chapter III(A) of the DRC Act is not available in respect of commercial premises. The said contention of the respondents is also misconceived. This court in ***Rajbir Pal vs. Kanwar Partap Singh***, 2023 SCC OnLine Del 2320, after taking note of various judgments on the said issue and in particular the judgments of ***Satyawati Sharma vs. Union of India***, (2008) 5 SCC 287 and ***Vinod Kumar vs. Ashok Kumar Gandhi*** (supra) [relied upon by the respondents], has held as under:-

“24. Section 14(1)(e) as framed was applicable only to residential premises. However, the Apex Court in the case of Satyawati Sharma v. Union of India, (2008) 5 SCC 287, held that Section 14(1)(e) cannot be restricted only to residential premises, and thus, extended the application of Section 14(1)(e) to commercial premises as well. The Apex Court felt that striking down the entire Section would be discriminative and violative of Article 14 of the Constitution of India. It was observed that it would be better to remove discrimination by holding that a landlord could seek eviction of his tenant or his bonafide requirement for commercial premises as well. Once Section 14(1)(e) was made applicable to commercial premises as well, then the purpose for which Section 25B was enacted, which was to ensure a speedy procedure to the landlord to get his tenant evicted for his requirement, could not be made applicable solely to residential premises and it, therefore, had to be extended to commercial premises as well.

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31. What can be observed from the foregoing is that the validity of Satyawati Sharma v. Union of India (supra) and its reference to a larger Bench has already been settled by the Supreme Court in Vinod Kumar v. Ashok Kumar Gandhi (supra). Further, it would be unconscionable to assume that Section 25B, which clearly notes that it is



applicable to Section 14(1)(e), would only be applicable to Section 14(1)(e) to the extent of the need pertaining to residential properties. Had that been the intention of the Supreme Court, there would have been a distinct reference to Section 25B in Satyawati Sharma v. Union of India, (supra) and its scope would have been confined to residential properties. In absence of such a distinction, it is evident that that was not the intention and that Section 25B of the DRC Act is applicable to Section 14(1)(e) as a whole, be it residential properties or commercial properties.”

60. As such, there is no impediment for this court in entertaining the present revision petitions in the light of the legal position as noticed hereinabove.

Inconsistent orders passed by the same Rent Controller

61. The factual matrix in the context of which these petitions have been filed, has been noticed hereinabove. Essentially, eviction petition No. 6249/2016 (old no. 51/2011) was filed by the present petitioners, based upon their acquisition of title in respect of the property vide conveyance deed in their favour. In the said eviction petition, the legal heir of the erstwhile owner i.e. Smt. Sunita Struck sought to implead herself. The said impleadment application came to be rejected with the observation that “*till the conveyance deed/sale in favour of petitioners remains valid, the applicant cannot claim herself to be the owner of the property and therefore will not be a necessary or proper party in this case*”. It is notable that the same learned Rent Controller was seized of the subsequent eviction petition filed by Sunita Struck, which came to be filed almost simultaneously alongwith her impleadment application in the petitioners’ eviction petition. Despite being fully aware of the eviction petition filed by the present petitioners (which was also listed before the same Rent Controller), and the fate of Sunita Struck’s impleadment application therein, the same Rent Controller, surprisingly, found nothing amiss in Smt. Sunita Struck’s



assertion in her eviction petition that she was the landlord of the premises in question. Consequently, in the said eviction petition, leave to defend was granted to the tenants only on the existence of *bona fide* requirement.

62. There is, thus, a glaring inconsistency in the order/s passed by the same Rent Controller while entertaining the leave to defend applications in (a) the eviction petition filed by the present petitioners and (b) the eviction petition filed by Smt. Sunita Struck. The inconsistency is quite glaring and compels this Court to express its dismay and disapproval at the manner in which the matter has been dealt with by the concerned Rent Controller.

63. The inconsistency is evident from the following aspects:-

- (i) Even though the petitioners, in their eviction petition asserted their rights as landlord based on a conveyance deed in their favour, and in which proceedings Sunita Struck's impleadment application was disallowed for want of any cogent material to establish her title, the concerned Rent Controller entertained Sunita Struck's subsequent eviction petition and found nothing amiss in her assertion of being the landlord of the same tenanted property. The glaring omission on the part of Sunita Struck to disclose the pending eviction petition filed by the present petitioners, and her attempt to get impleaded therein, was also overlooked, despite the same learned rent controller being seized of the petitioners' earlier eviction petition. This despite the fact that vide order dated 31.01.2019, passed in CM(M)75/2019, this Court had specifically directed that both the eviction petitions i.e. eviction petition No.6249/2016 (old no.51/2011) filed by the petitioners, and eviction petition No.



1/2019 (old no.25/2017) filed by Sunita Struck, be taken up on the same date w.e.f. 14.02.2019.

- (ii) The present petitioners' impleadment application in Sunita Struck's eviction petition was dismissed by the same Rent Controller (*vide* order dated 24.04.2019) on the basis that "*the petitioner/landlord has to merely show that he is something more than the tenant to get relief*". However, while considering the issue of landlord-tenant relationship in the eviction petition filed by the petitioners a completely different yardstick has been applied.
- (iii) In the petitioners' eviction petition, leave to defend was granted on the issue of landlord-tenant relationship vide order dated 04.07.2019. This was done despite the title documents/ conveyance deed placed on record by the petitioners and despite the observations/findings rendered while rejecting impleadment applications filed on behalf of Pratap Shivdasani and Sunita Struck. Yet, while subsequently entertaining the eviction petition filed by Sunita Struck, the Rent Controller chose to completely overlook/ disregard the said orders.
- (iv) In addition to the above, the learned Rent Controller, also disregarded the order dated 27.03.2017 passed in Sunita Struck's impleadment application in the petitioners' eviction petition, while entertaining the eviction petition filed by Sunita Struck, and proceeded to adopt a completely contradictory approach.



64. In the above manner, a needless conundrum has been created, which warrants exercise of revisional jurisdiction by this Court.

Findings rendered in the order/s passed while disposing of impleadment applications by Pratap R. Shivdasani and Sunita Struck, are unexceptionable

65. In the eviction petition filed by the petitioners i.e. eviction petition No.51/2011 (later numbered as eviction petition No.6249/16), an impleadment application came to be filed by Mr. Ptatap R. Shivdasani (the son of the erstwhile landlord Smt. Gul. R. Shivdasani), which was dismissed while holding that:-

- (i) There is no document which could even prima facie show that the documents of ownership asserted by the petitioners were cancelled by Smt. Gul R. Shivdasani during her lifetime.
- (ii) Although it is specifically pleaded that the ownership documents executed in favour of the petitioners by Smt. Gul R. Shivdasani were cancelled by the latter, no such documents have been filed.
- (iii) It was observed that the impleadment application filed by Pratap R. Shivdasani was filed at the behest of the tenants with the objective to protract the trial.
- (iv) The eviction proceedings initiated by the petitioners could not be “converted into a regular title suit” and in the eviction proceedings the concerned court had no jurisdiction to settle title disputed between the parties.

66. The relevant observations of the concerned Rent Controller, as contained in the order dated 02.07.2016, while dismissing the impleadment



application filed on behalf of Pratap R. Shivdasani have already been reproduced hereinabove.

67. Despite the aforesaid order, another impleadment application came to be filed by Smt. Sunita Struck i.e. the sister of Pratap R. Shivdasani. As noticed hereinabove, this impleadment application filed by Smt. Sunita Struck also came to be dismissed vide order dated 27.03.2017, in which again it was observed that she had failed to place on record any valid document to show her ownership / status of landlord in respect of the property in question. It was also categorically held in the said order dated 27.03.2017 that till the conveyance deed/sale in favour of the petitioners remain valid, the applicant could not claim herself to be the owner of the property and therefore will not be a necessary or proper party in the eviction petition.

68. The aforesaid conclusions drawn in the aforesaid orders dated 02.07.2016 and 27.03.2017 are unexceptional and cannot be faulted on any ground whatsoever. The review filed by Smt. Sunita Struck against the order dated 27.03.2017 was dismissed by the concerned Rent Controller; the appeal filed thereto was also dismissed, the said orders therefore acquired finality. Yet, while dealing with the issue of existence of landlord-tenant relationship (in the petitioners' eviction petition), the aforesaid findings have been wholly disregarded.

Concealment of material facts in the eviction petition filed by Sunita Struck

69. As noticed in the factual narration hereinabove, the eviction petition filed by Smt. Sunita Struck contains no mention of the pre-existing eviction petition filed by the petitioners and the assertions therein. The factum of the impleadment application having been filed by Smt. Sunita Struck in the pre-



existing proceedings was also not disclosed even though Smt. Sunita Struck filed her own eviction petition simultaneously with the filing of the said impleadment application in the petitioners' eviction petition.

70. In the above circumstances, the eviction petition filed by Smt. Sunita Struck was precluded not only on account of order dated 27.03.2017 passed in the pre-existing eviction petition filed by the petitioners herein, but also on account of concealment of material facts. The law is well settled that where a petition omits to disclose the relevant material facts, the same is liable to be dismissed on that ground alone. In this regard reference may be made to the following judgments.

71. In ***S.P. Chengalvaraya Naidu vs. Jagannath***, (1994) 1 SCC it has been held as under:-

“The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

72. In ***K.D. Sharma vs. SAIL***, (2008) 12 SCC 481, it has been held as under:-

“34. ... If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.”

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36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse



to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.”

73. In **Ramjas Foundation vs. Union of India**, (2010) 14 SCC 38, it has been held as under:-

“21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.

74. In **Dalip Singh vs. State of U.P.**, (2010) 2 SCC 114 it has been held as under:-

“1. For many centuries Indian society cherished two basic values of life i.e. ‘satya’ (truth) and ‘ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”



75. In the circumstances, the eviction petition filed by Smt. Sunita Struck, is liable to be dismissed at the very threshold. This court strongly disapproves the conduct of Smt. Sunita Struck in not disclosing all the material facts in her eviction petition, particularly facts relating to the earlier eviction petition filed by the petitioners, the title documents/ conveyance deed in favour of the petitioners and her unsuccessful attempt at getting herself impleaded in the said earlier eviction petition. Moreover, the findings rendered in the order dated 27.03.2017 while dismissing her impleadment application (which have acquired finality, as discussed hereinabove) completely disentitle her to file any independent eviction petition as landlord. As such, the said eviction petition is required to be dismissed.

Non-impleadment of the Petitioners in the eviction petition filed by Sunita Struck was wholly illegal and unjustified

76. As noticed hereinabove, the petitioners filed their eviction petition No. 6249/2016 (old no. E-51/2011) in July, 2011. The said eviction petition is based on a registered agreement to sell dated 24.04.1989 followed by a Conveyance Deed dated 19.07.1994 executed on behalf of Smt. Gul R. Shivdasani in favour of the petitioners.

77. Mr. Pratap R. Shivdasani and Smt. Sunita Struck are the children of Smt. Gul R. Shivdasani. As noticed hereinabove, prior to the eviction petition filed by Smt. Sunita Struck, an impleadment application came to be filed by Mr. Pratap R. Shivdasani in the eviction petition filed by the petitioners herein; the said impleadment application came to be dismissed with the findings that it could not even be prima facie said that the documents of ownership executed in favour of the petitioners by the mother



of Pratap R. Shivdasani and Sunita Struck were cancelled during the lifetime of the said deceased mother. Thereafter, a fresh impleadment application on the same lines came to be filed by Smt. Sunita Struck, which also came to be dismissed with similar observations/findings. Simultaneously, while filing an impleadment application, Smt. Sunita Struck also filed her own independent eviction petition.

78. In the aforesaid background, the petitioners herein, were legitimately entitled to implead themselves in the said eviction petition filed by Sunita Struck and bring to the attention of the Court (i) their pre-existing eviction petition in respect of the same premises and the same tenants, and the title documents in their favour, (ii) the findings rendered therein while dismissing the impleadment applications filed by Smt. Sunita Struck and her brother Pratap R. Shivdasani. These have a direct bearing on the issues that fell for consideration in Smt. Sunita Struck's eviction petition. The concerned Court could not have been possibly unmindful of the said issues because the same learned Rent Controller was dealing with both the eviction petitions filed qua the same tenanted property i.e. eviction petition filed by the petitioners herein and the eviction petition filed on behalf of Smt. Sunita Struck. Moreover, these issues were duly highlighted in the impleadment applications itself, yet, the Court dismissed the impleadment application. The non-impleadment of the petitioners was therefore clearly perverse in the facts and circumstances of the case. The same also led to the Rent Controller adopting diametrically conflicting approaches in the eviction petitions qua the same tenanted property. On the one hand, in the eviction petitions filed by the petitioners, the learned Rent Controller sought to go into the intricate questions as to the validity of the title in favour of the petitioners whereas



while dismissing the impleadment application of the petitioners in Sunita Struck's petition, the same Rent Controller made the observation that "the petitioner/landlord has to merely show that he is something more than a tenant to get relief".

Legal infirmities in the impugned order dated 04.07.2019

79. As noticed hereinabove, the order dated 04.07.2019, finds in favour of the petitioners as regards issues of *bona fide* requirement and availability of alternative accommodation. No fault can be found with that part of the order. However, the said order dated 04.07.2019 grievously errs while dealing with the issue of "landlord-tenant relationship".

80. The legal position as regards the right of tenant to dispute/question, the derivative title asserted by landlord is well settled and has been reiterated in a series of judgments. In this regard, reference may be made to a judgment of the Supreme Court in the case of **Vinay Eknath Lad vs. Chiu Mao Chen**, (2019) 20 SCC 182 wherein the Supreme Court after taking note of the legal position enunciated in the case of *Bismillah Be vs. Majeed Shah*, (2017) 2 SCC 274, *Apollo Zipper (India) Ltd. vs. W. Newman & Co. Ltd.*, (2018) 6 SCC 744, *Sheela vs. Firm Prahlad Rai Prem Prakash*, (2002) 3 SCC 375 and *Boorugu Mahadev & Sons vs. Sirigiri Narasing Rao*, (2016) 3 SCC 343, has held as under:-

"16. The plaintiffs' argument on law is that in an eviction suit, title need not be proved in a manner required in a suit for declaration of title. On this count, the following passage from Apollo Zipper has been cited : (SCC p. 754, para 40)

"40. ... It is a settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit."

Two earlier authorities, Sheela v. Firm Prahlad Rai Prem



*Prakashand Boorugu Mahadev & Sons v. Sirigiri Narasing Rao broadly lay down the same principle of law. **It is not the law that in a landlord-tenant suit the landlord cannot be called upon at all to prove his ownership of a premises, but onus is not on him to establish perfect title of the suit property.***”

81. As such, in a situation where the landlord asserts derivative title, he can be called upon to prove his ownership, but the onus is not to the extent of requiring the landlord to establish perfect title, akin to the onus of proof in a title suit.

82. Thus, even in a situation where derivative title is asserted by the landlord, the same does not detract from the well settled legal position that the concept of ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from one in a title suit. All that the landlord needs to establish is that he has better title than the tenant. He has no burden to show that he has best of all titles. This position has been reiterated in a catena of judgments which have been wholly disregarded in the impugned order, and which are enumerated below. Interestingly, the legal position has been correctly noted by the same learned Rent Controller while deciding the petitioners’ impleadment application in the eviction petition filed by Smt. Sunita Sruck, wherein it has been observed that “the petitioner/landlord has to merely show that he is something more than a tenant to get relief”.

83. In ***Boorugu Mahadev & Sons vs. Sirigiri Narasing Rao***, (supra) it has been held as under:-

“18. It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled



in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (Vide Sheela v. Firm Prahlad Rai Prem Prakash)”

84. In **Swadesh Ranjan Sinha vs. Haradeb Banerjee**, (1991) 4 SCC 572, it has been held as under:-

“9. All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it.”

85. In **Shanti Sharma vs. Ved Prabha**, (1987) 4 SCC 193, it has been held as under:-

“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing



necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term “owner” as is contemplated under this section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in T.C. Rekhi v. Smt Usha Gujral [1971 RCJ 322, 326 (Del HC)] as under:

“The word ‘owner’ as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word ‘owner’ in this clause seems to me to have been inspired by the definition of the word ‘landlord’ as contained in Section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word “owner” is used in clause (e), it seems to me to include all persons in the position of Smt Usha Gujral who have taken a long lease of sites from the government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of clause (e) and would render all such landlords remediless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by the legislature and I repel the appellant's contention. I consider it proper before passing on to the next challenge to point out that the word ‘owner’ as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe someone as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject matter and object and the occasion on which the circumstances with reference to which they are used. They call for



construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from the context (see Halsbury's Laws of England, Third Edn., Vol. 36 para 893 p. 394). The meaning of the word "owner" in clause (e) is influenced and controlled by its context and the appellant's construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision."

86. In **Puran Chand Aggarwal vs. Lekh Raj**, 2014 SCC OnLine Del 1506, it has been held as under:-

"34. It is settled law that in the context of the Act what appears to be the meaning of the term "owner" is that vis-à-vis the tenant the owner should be something more than the tenant. The position in law is that the "ownership" of the landlord for the purpose of maintaining a petition under Section 14(1)(e) of the Act is not required to be an absolute ownership of the property, and that it is sufficient if the landlord is a person who is collecting the rent on his own behalf. The imperfectness of the title of the premises can neither stand in the way of an eviction petition under Section 14(1)(e) of the Act, nor can the tenant be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying the rent to the landlord. The tenant inducted by landlord is estopped and cannot dispute the title of his landlord in view of the provisions of Section 116 of the Indian Evidence Act without there being any subsequent change in the situation."

87. The denial of derivative title of the landlord has to be a *bona fide* denial by the tenant. In **Meenakshi vs. Ramesh Khanna**, 1995 SCC OnLine Del 373, this court has held as under:-

"7. In these circumstances, I do not consider that this was a case for grant of leave to contest to the tenant. Mere denial of ownership of the landlord does not mean that every case must be sent for trial involving years. The Controller has to assess the strength of the case of the tenant regarding denial of ownership of the petitioner. For this, guidelines have already been laid down in various decisions. Mere denial of ownership is no denial at all. It has to be something more. For this, first and foremost thing which has always been considered as a good guide is does the tenant say who else is the owner of the premises if not the petitioner? In the present case, the tenant does not say anything except denying petitioner's ownership. The tenant is completely silent on this aspect. Merely by saying that the



petitioner is not the owner, the tenant is trying to ensure that the case drags on for years for trial. If leave is granted on basis of such vague pleas, it will encourage the tenants to deny ownership of the petitioners in every case. The tenants are well aware that once leave to contest is granted, the cases go on for trial for years. Their purpose is achieved. Keeping this in mind, the Controllers should rather have positive approach in such matters so as to discourage such vague and frivolous pleas which are most of the time false to the knowledge of persons raising them.

8. The object of the requirement contained in Clause (e) that the petitioner should be the owner of the premises is not to provide an additional ground to the tenant to delay the proceedings by simply denying ownership of the landlord of the premises and thereby putting him to proof by way of full fledged trial. The object seems to be to ensure that the provision is not misused by people having no legal right or interest in the premises. Unfortunately, the Controllers have started misreading the provision which results in converting the proceedings into suits as if they are meant to determine title to property. In proceedings under Section 14(1)(e) of the Act, the tenant is never a contender for title to the property. When the tenant does not even aver that there is any other person having a better title to the property, what is the worth of a plea of denial of ownership of the petitioner? While dealing with the question of ownership in cases under Section 14(1)(e) of the Act, the Controllers should keep these aspects in mind while considering the application of the tenants for leave to contest.

88. Recently, in ***Vinay Kumar Soni vs. Vijay Kumar***, 2023 SCC OnLine Del 5660, this Court has held as under:-

“25. Although, it is well settled that a tenant is not precluded from questioning the derivative title asserted by a landlord, it is equally well settled that for the purpose of establishing landlord-tenant relationship, the standard of proof to which a landlord is subjected in proceedings under rent control legislation is not akin to standard of proof in a title suit. This position is re-affirmed in the judgment of the Supreme Court in Vinay Eknath Lad v. Chiu Mao Chen, wherein it has been observed as under:—

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26. The principle that the tenant is not precluded from questioning the derivative title of a landlord does not detract from the principle laid down by the Supreme Court in a number of cases that all that the landlord needs to establish is that it has a better title than the tenant.



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32. Thus, in proceedings under rent control legislation, the existence of landlord tenant relationship, is to be ascertained by applying the well settled and time tested propositions that (i) for the purpose of establishing landlord-tenant relationship, the onus of proof on the landlord is not akin to a title suit; (ii) as long as it is established that a landlord has a better title than that of a tenant, a tenant cannot resist a plea of existence of a landlord tenant relationship.”

89. In the present case, not only have the petitioners founded their eviction petition on a conveyance deed executed in their favour, it is also a fact that the petitioners’ predecessors (erstwhile landlord/s) have not initiated any proceedings seeking cancellation of the conveyance deed in favour of the petitioners. Moreover, as rightly observed in the order dated 27.03.2017, till the conveyance deed in favour of the petitioners remains valid, it was not open for the legal heirs of the erstwhile landlord to claim to be the owner of the property for the purpose of these proceedings.

90. In the above context and in the light of the legal position referred to hereinabove, the impugned order completely misdirects itself in dealing with the matter as if dealing with a title suit, and finding that triable issues arise as regards existence of landlord-tenant relationship between the parties.

91. The impugned order dated 04.07.2019, while dealing with the landlord-tenant relationship between the parties takes note of the infirmity/inconsistency/defect sought to be highlighted by the tenants in the title documents of the petitioners, particularly, the discrepancy vis-à-vis the name/spelling of the GPA holder. It was concluded that the controversy with regard to the title documents/power of attorney/alleged discrepancy in the power of attorney is “far from settled” that thus it was found that triable issues have arisen regarding acquisition of title by the petitioners and



consequently a triable issue arose concerning subsisting landlord-tenant relationship.

92. In so holding, the observations made by the same court in the context of identical submissions as contained in orders dated 02.07.2016 and 27.03.2017 were wholly disregarded. It was also disregarded that the erstwhile owner of the property (predecessor of the petitioners) had not taken any proceedings to seek cancellation of the conveyance deed executed in favour of the petitioners. In this regard, it is notable that under Section 31 (1) of the Specific Relief Act, 1963, it was open to the erstwhile landlords to initiate appropriate proceedings seeking that the conveyance deed in favour of the petitioners be adjudged void or voidable and consequently cancelled. It was incumbent for the legal heirs of the erstwhile landlord to exercise this option, particularly in the light of the observations made while dismissing their impleadment applications in the petitioners' eviction petition. Further, the impugned order disregards the fact that the suit filed by the tenants on 29.05.1989 seeking appropriate declaration with regard to their status as tenant came to be dismissed (as having abated) vide order dated 19.10.2011.

93. In ***Prem Singh vs. Birbal***, (2006) 5 SCC 353, it has been held by the Supreme Court as under:-

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.”

Reference is also apposite to the observations of the Supreme Court in ***Thota Ganga Laxmi vs. Govt. of A.P.***, (2010) 15 SCC 207, wherein, it has been held as under:-



“4. In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.”

94. Considerable emphasis has been laid by the learned counsel for the respondents on the fact that there is a discrepancy in the Power of Attorney executed by Smt. Gul R. Shivdasani and other alleged defects in the title of the petitioners, however, the same would not justify grant of leave to defend on the issue of landlord-tenant relationship in view of the following circumstances:-

- (i) the settled legal position (as noticed hereinabove), that the petitioner/landlord has merely to show that he is something more than a tenant in these proceedings. As held in **Vijay Kumar Soni** (supra), the principle that the tenant is not precluded from questioning the derivative title of a landlord does not detract from the principle laid down by the Supreme Court in a number of cases that all that the landlord needs to establish is that it has a better title than the tenant.
- (ii) the petitioners, in the present case, have founded their case on a registered Agreement to Sell dated 24.04.1989 in their favour executed by Smt. Gul R. Shivdasani and as also registered Conveyance Deed dated 19.07.1994. If there was any



controversy/ dispute with regard to the title asserted by the petitioners (asserted since 1989, when civil suit no. 501/1989 also came to be filed by the tenants), there was nothing which prevented the erstwhile landlord or her legal heirs to initiate proceedings under Section 31 and/or Section 34 of the Specific Relief Act, 1963 to cancel/ seek declaration qua the conveyance deed in favour of the petitioners. Admittedly, this was never done.

- (iii) Findings of fact have been rendered while disposing of the impleadment applications filed by Pratap R. Shivdasani and Sunita Struck that the said applicants could not even *prima facie* establish that the ownership documents relied upon by the petitioners were cancelled by their mother during her lifetime.
- (iv) In the aftermath of the registered Agreement to Sell dated 24.04.1989 the tenants/respondents did, in fact, avail the remedy of filing the Civil Suit 501/1989 whereby the title of the petitioners was sought to be refuted. However, the said suit came to be dismissed (as having been abated) on 19.11.2011

95. Further, as regards the alleged infirmity in the title of the petitioners based on the provisions of the Government Grants Act, 1895, and the rights of the Union of India thereunder and/or under the perpetual lease deed in respect of the property, the same does not preclude the Union of India from taking any and every action in respect of the concerned property. However, the same cannot enure to the benefit of the tenants for the purpose of the present proceedings, given the scope of examination, and the onus of proof required to be discharged by the landlord (claiming derivative title) in these



proceedings.

96. In the circumstances, it can be said that the petitioners have discharged the onus to establish title for the purpose of landlord-tenant relationship. As such, having found in favour of the petitioners on the issue of *bona fide* requirement and availability of alternative accommodation, there was no justification to grant leave to defend on the issue of landlord-tenant relationship.

97. In the facts and circumstances, the present case is a fit case for exercise of revisional jurisdiction inasmuch, (i) inconsistent orders have come to be passed by the learned Rent Controller; (ii) the impugned orders are contrary to the well settled legal position; and (iii) there is apparent perversity in the impugned orders (as elaborated hereinabove).

98. The scope of revisional jurisdiction of this Court has been delineated by the Supreme Court in *Abid-Ul-Islam vs. Inder Sain Dua*, (2022) 6 SCC 30 wherein, the Supreme Court while reiterating the restrictive nature of these proceedings, has also approved the observations of the Supreme Court in *Sarla Ahuja vs. United India Insurance Co. Ltd.*, (1998) 8 SCC 119 wherein, it has been held that “*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 scrutinise the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. 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.*”



99. Also, in the judgment of ***Shiv Sarup Gupta*** (supra), it has been held by the Supreme Court as under:-

“11. Section 25-B of the Delhi Rent Control Act, 1958 finding its place in Chapter III-A of the Act was inserted in the body of the main Act by Act 18 of 1976 with effect from 1-12-1975. It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained provision in the sense that remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself. Sub-section (8) provides that 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 Section 25-B:

“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 (or not), call for the records of the case and pass such order in respect thereto as it thinks fit.”

The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is “for the purpose of satisfying if an order made by the Controller is according to law”. The revisional jurisdiction exercisable by the High Court under Section 25-B(8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. The High Court cannot enter into appreciation or reappraisal 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 on the material available. Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the finding of the Controller “not according to law” calling for an interference under the



proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law. (See: Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] and Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141] .)”

100. In the present case, for all the aforesaid reasons, the impugned orders cannot be said to be “in accordance with law”. There are serious infirmities in the impugned orders which warrants exercise of revisional jurisdiction.

101. Also, as held by this Court in ***Lt. Col. Kul Parkash Tejpal*** (supra) and ***K.K. Sarin*** (supra), in a situation where there is evident irregularity/illegality in granting leave to defend, it would be wholly unfair to leave the landlord to face the rigors of a long drawn trial. Thus, in a situation where leave to defend has been evidently wrongly granted, it is incumbent on this Court to pass necessary consequential orders.

CONCLUSION

CM(M) 1829/2019

102. In view of the reasoning given hereinabove, the rejection of the petitioners’ impleadment applications vide impugned order dated 24.04.2019 in eviction petition No. 1/2019 filed by Smt. Sunita Struck was improper and not in consonance with law. Accordingly, the same is set aside.

RC. Rev.705/2019

103. Also, this Court finds that the eviction petition filed by Smt. Sunita Struck was not even maintainable and was precluded on account of findings rendered in the order dated 27.03.2017 while disposing of the impleadment applications filed by Smt. Sunita Struck in the petitioners’ eviction petition No. 6249/2016.

104. The learned Rent Controller committed a grievous error while



entertaining the eviction petition filed by Smt. Sunita Struck despite the findings rendered in the order dated 27.03.2017 (passed in the impleadment application filed by Sunita Struck in the petitioner's eviction petition) as under:-

“However, in the present case the petitioner has claim herself to be the owner and has come in the Court on the basis of the title of her predecessors, which has been sold to the petitioners. Therefore, till the conveyance deed/sale in favour of petitioners remains valid, the applicant cannot claim herself to be the owner of the property and therefore will not be a necessary or proper party in this case.

For the aforesaid reasons, this application is no merits and therefore dismissed.”

105. Further, and additionally, the said eviction petition filed by Smt. Sunita Struck is also liable to be dismissed on the ground of concealment of material facts as elaborated hereinabove.

106. The order dated 16.11.2019 passed in Sunita Struck's eviction petition is liable to be set aside since the same is in the context of a petition which suffers from concealment of material facts (as elaborated hereinabove) as a result of which the following facts came to be wholly disregarded:

- (i) title asserted by the present petitioners based on registered agreement to sell dated 24.04.1989 and conveyance deed dated 19.07.1994,
- (ii) order dated 27.03.2017 in the impleadment application filed by Sunita Struck in the petitioners' eviction petition comprehensively rejecting Sunita Struck's assertions regarding having any right in respect of the tenanted premises. The said order has admittedly acquired finality. The assertions made by Sunita Struck in her eviction petition, were in utter



contradiction to the said findings.

As such, the learned Rent Controller completely misdirected himself in entertaining the eviction petition filed by Sunita Struck and in passing the order dated 16.11.2019.

107. Consequently, the impugned order dated 16.11.2019 in RC Rev. 705/2019 is set aside and Eviction Petition No. 1/2019 filed by Smt. Sunita Struck (in which the aforesaid order dated 16.11.2019 came to be passed) is itself dismissed.

RC. Rev.458/2019

108. In the light of the inconsistencies in the impugned order dated 04.07.2019 vis-à-vis the previous orders dated 02.07.2016 and 27.03.2017 passed in the same proceedings (while dealing with impleadment application of Pratap R. Shivdasani and Sunita Struck) and in view of the said impugned order being in contravention of the well settled legal position regarding the test to be applied for ascertaining existence of landlord-tenant relationship, (as elaborated hereinabove), the impugned order dated 04.07.2019 is set aside.

109. Since no ground is found to grant leave to defend in the eviction petition filed by the petitioners, an eviction order is passed in favour of the petitioners in respect of the tenanted property. The respondents/tenants are directed to vacate the property and hand over vacant physical possession of the same to the petitioners. However, it is directed that in view of the sub-section (7) of Section 14 of the DRC Act, the order for recovery of possession of property shall not be executed before the expiration of a period of six months from today.



110. It is clarified that the findings rendered as regards the existence of landlord-tenant relationship are only in the context of proceedings under the DRC Act and for no other purpose.

111. The present petitions stand disposed of in the aforesaid terms.

112. All pending applications also stand disposed of.

SEPTEMBER 25, 2023
rp/hg

SACHIN DATTA, J.