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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Pronounced on: 14.09.2023****+ RC REV. 60/2021 and C.M. APPL. Nos. 9798-99/2021, 9822/2021, 16459/2022****SH. VINAY KUMAR SONI**

..... Petitioner

Through: Mr. J.P. Singh, Sr. Adv. with Ms. Gita Dhingra and Manisha Mehta, Adv.

Versus

SH. VIJAY KUMAR

..... Respondent

Through: Mr. Rajat Aneja and Ms. Chandrika Gupta, Ms. Anushka Chaudhary, Adv.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present revision petition is directed against the judgment/order dated 22.10.2020 passed by learned Addl. Rent Controller-02, Central, Tis Hazari Courts whereby the petition filed by the respondent under Section 14 (1) (e) read with Section 25(B) of Delhi Rent Control Act (hereinafter referred to as "DRC Act") has been allowed and the respondent has been held entitled to recover the possession of the concerned premises (hereinafter referred to as "tenanted premises") i.e. Flat No. 36 (Private) First Floor, Municipal No. 1863, Wazir Singh Street, Chuna Mandi, Paharganj, New Delhi.



2. The factual background in the context of which the present petition has been filed is briefly encapsulated hereinbelow.
3. The respondent filed an eviction petition invoking Section 14(1) (e) of the DRC Act against the tenants being the legal representatives of Late Sh. Chiman Lal, who was the original tenant in respect of the tenanted premises. The eviction petition was filed on the assertion that the tenanted premises was initially let out to Late Sh. Chiman Lal for use by him and his family members for residential purposes. After the death of Sh. Chiman Lal, his sons and daughters became joint tenants by operation of law. It was pleaded that the tenanted premises are required by the respondent (landlord) for the *bonafide* purpose of his own residence, and the residence of his family members. It was further pleaded that the accommodation available with the respondent (landlord) was not reasonably suitable and that there was no suitable alternative accommodation available to satisfy the growing needs of the respondent (landlord).
4. As regards the ownership of the tenanted premises, the case set up by the respondent (landlord) was that the property was originally owned by one Late Sh. Sheikh Hazi Abdul Aziz at the time of induction of Sh. Chiman Lal Soni as the tenant. The said Sheikh Hazi Abdul Aziz was an Indian national and expired in Karachi (Pakistan) where he had gone temporarily in October, 1958. He is stated to have been survived by a number of legal heirs including Sheikh Abdul Hamid who was also an Indian national. It is stated that Sheikh Hazi Abdul Aziz during his lifetime orally devised and bequeathed the property in question to his son Sheikh Abdul Hamid by an oral Will which was accepted by all the legal heirs of Sheikh Hazi Abdul Aziz by executing no objection/release deeds. Consequently, his son Sheikh



Abdul Hamid became the sole and absolute owner of the property. Further Sheikh Abdul Hamid expired on 02.09.1968 at Calcutta leaving behind one widow Hazar Bi and one adopted daughter Mst. Rukhsana Begum. Sheikh Abdul Hamid during his lifetime bequeathed the disputed property to one Sheikh Mohammad Naqi by an 'oral will' dated 01.08.1968. Consequently, on the demise of Sheikh Abdul Hamid, Sheikh Mohammad Naqi became the sole and absolute owner of the property in question. Release deeds are stated to have been executed by the legal heirs of Sheikh Abdul Hamid sometime in 1992 affirming and accepting the factum of devolution of the property to Sheikh Mohammad Naqi in terms of the oral Will of Sheikh Abdul Hamid.

5. Subsequently, a registered sale deed was stated to have been executed by Sheikh Mohammad Naqi whereby absolute title in respect of the property in question is stated to have been conveyed/transferred to the respondent (landlord). It is contended that the respondent thereby became the sole and absolute owner of the concerned property and acquired the status of landlord qua the tenants, by operation of law.

6. The petitioner, being one of the tenants, sought leave to defend as contemplated under Section 25B (4) and (5) of the DRC Act which was granted vide order dated 27.02.2003. It was noticed in the said order that leave to defend had primarily been sought on the following grounds:-

“(i) that there is no relationship of landlord and tenant between the parties; and the petitioner is not the owner of the premises in question; that petitioner is alleged to have purchased the property in question from one Mr. Mohd. Naqi who reportedly acquired the said property by way of oral Will of Abdul Hamid; that Abdul Hamid allegedly got the property by virtue of oral Will of Abdul Aziz who died on 28.01.1959 in Karachi (Pakistan) as a Pakistani National; and

(ii) that no oral will was executed by Abdul Aziz in favour of Abdul Hamid in as much as all his legal heirs had been collecting the rent from the predecessor of the respondents and also from other tenants in different



portions of the property; and two other persons namely Shri Raj Kumar and Mukesh Kumar have also claimed themselves to be the owners of the premises in question by virtue of four regd sale deeds of different dates and have served a notice dated 22.02.01 on the respondents claiming the rent; and

(iii) that the premises in question was declared as Enemy property vide notification dated 10.09.1965 and therefore, this Court has no jurisdiction as per Section 3 of the Act to entertain and decide the present petition; and

(iv) that the petitioner does not require the premises for his bonafide residence or the residence of his family members since he has already got vacant possession of Flat No. 25 in property No. 2254 Wazir Singh Street, Chuna Mandi, Paharganj, New Delhi consisting of four rooms, open big Courtyard latrine, bathroom and kitchen etc in an area of 150 sq. yards; and the said accommodation acquired about 1 ½ years back is lying vacant and unused;

(v) that the father of the petitioner is owning property no. 3247, Nalwa Street, Paharganj, New Delhi constructed on an area of about 120 sq yards out of which a two rooms set is lying vacant and the father of the petitioner is not dependent on him for residence.”

7. After the aforesaid order was passed, some correspondence/orders came to be issued by the Custodian of Enemy Property (hereinafter referred to as the “Custodian”) resulting in a *lis* between the respondent (landlord) and the Custodian, which became subject matter of a civil writ petition filed in the High Court of Delhi. Vide order dated 04.07.2013 passed in the eviction proceedings, the case was adjourned *sine die* with liberty to the parties to get the eviction petition revived after the decision of the High Court on the issue of the ownership of the tenanted premises.

8. In the meantime, the respondent (landlord) also filed a suit against the Custodian seeking the following reliefs:-

(a) the plaintiff no.1 may kindly be declared as owner of the property No. 1862 to 1864 and 2248 to 2254, situated at Ward No. XV, Wazir Singh Street, Raj Guru Road, Chuna Mandi, Pahar Ganj, New Delhi and the plaintiff no.2 may also kindly be declared as owner of the property No. 1859 to 1861 and 2254 to 2260, Ward No. XV, Wazar Singh Street, Raj Guru Road, Chuna Mandi, Pahar Ganj, New Delhi. On the basis of Sale



Deed executed by Sh. Sheikh Mohd. Naqi in favour of plaintiffs. It may kindly be further declared that the above mentioned property do not belongs to or vest in the Govt. of India through Custodian of Enemy Property Mumbai. It may kindly be declared the Certificate Notification/Office Orders/ Rent Receipt issued by them, Letters issued to occupants and Certificate issued by defendant no.3 under Section 8 & 12 of the Enemy Property Act may kindly be quashed declared null and void and not binding on the plaintiff and not to change the status of the occupants because there will be multiplicity of suits if the status of the occupants is changed;

(b) the defendants may kindly be restrained by issue of permanent injunction from taking control management and supervision of the abovementioned property from the plaintiffs. They may further be restrained from interference in the above mentioned properties including the portion in actual and physical possession of the plaintiffs. And also may kindly be restrained from creating any third part interest in the said property;

(c) the cost of the suit may also be awarded in favour of the plaintiffs and against the defendants;

(d) the plaintiff may be granted any other or further relief to which they are found entitled in the circumstances of the case, in the interest of justice.”

9. In the said suit, one of the tenants in the property was impleaded as a party pursuant to an application being filed by the said tenant. An application under Order 12 Rule 6 of the CPC also came to be filed in the said suit by the plaintiff (landlord) therein, which was disposed of vide judgement/decreed dated 28.03.2018, in which it was, *inter alia*, held as under:-

“26. In these facts, there is clear admission of the fact by defendant no.1 to 3 that during the vesting period the property as per them was not owned by Pakistani National and if it is so, then all the Certificates/Notifications/Office Order/Rent Receipt/Letters to occupants etc. issued by defendant No. 1 to 3 with respect to the suit property under Enemy Property Act are liable to declared null and void. Further defendant no.1 and 3 in view of their aforesaid admission are also not entitled to control, manage or supervise the suit property as enemy property.

27. Accordingly, application under Order XII Rule 6 CPC is partly allowed and the Certificate/Notification/Office Orders/ Rent Receipts and Letters



issued to occupants by defendant no.1 to 3 under Enemy Property Act are declared null and void and defendant no.1 to 3 are restrained from controlling, managing or supervising the suit property as Enemy Property. It is also declared that the suit property do not vest in Defendant No. 1 to Defendant No.3 being enemy property under un-amended Enemy Property Act, 1968.

28. Decree sheet be drawn accordingly.

29. However, it is made clear that defendant no.1 to 3 in view of the recent amendment of 2017 in various provision of Enemy Property Act, including amendment in definitions may reconsider the matter in light of said amendments only and issue fresh notification etc, if necessary.”

10. After the aforesaid judgment dated 28.03.2018, a notice came to be issued by the Custodian to the occupants of the property in question. The said notice was assailed by the petitioner in a civil writ petition [W.P.(C) 6461/2018]. Vide order dated 10.09.2018 passed by this court in W.P.(C) 6461/2018, it was *inter alia* held as under:-

“3. The respondents have filed the present application stating that there is urgency in the matter as tenants inducted in the said property are being evicted by the petitioner and therefore, status quo be directed to be maintained. It is common knowledge that it takes long time to evict tenants that have statutory protection. This Court is also at a loss to understand the anxiety of the respondents to ensure that the tenants continue to occupy the said property. In the event, the petitioner does not prevail in the present petition and the property is found to be enemy property, the Custodian would be at liberty to deal with it in any manner permissible including inducting tenants if the Custodian so desires. However, at this stage, the petitioner cannot be prevented from continuing with the proceedings to evict the tenants, which this Court is informed commenced several years earlier.

4. Having stated the above, this Court also considers it apposite to restrain the petitioner from creating any third party interest, except with the permission of the court, till the next date of hearing. It is so directed.”

11. Thereafter, vide order dated 29.11.2018, the eviction proceedings were revived, which order was assailed by the petitioner herein vide CM(M) 579/2019; the same was disposed of by this court vide order dated 30.01.2020. The said order dated 30.01.2020 took note of the aforesaid



judgment/decreed dated 28.03.2018 as also the order dated 10.09.2018 passed in WP(C) 6461/2018 and it was, *inter-alia*, held as under:-

“8. In view of the abovementioned findings and observations, it is directed that the eviction petition shall be adjudicated on its own merits after perusing the decree dated 28th March, 2018. However, the pendency of the RFA shall not come in the way of the ARC proceeding with the final adjudication of the eviction proceedings. Any orders passed in the eviction petition or further proceedings pursuant thereto, shall finally be subject to the outcome of the RFA, which is yet to be decided by this Court.”

12. In pursuance thereof, proceedings continued in the eviction petition ultimately culminated in the impugned judgment dated 22.10.2020. The impugned judgment notes that the following points arise for determination in these proceedings:-

*“(i) Whether the petitioner is the owner of the suit premises? And whether there exists relationship of landlord and tenant between the parties?
(ii) Whether the premises are required bona fide by the petitioner? And
(iii) Whether the applicant has no other reasonably suitable accommodation?”*

13. As regards the existence of landlord-tenant relationship, the impugned judgment after minute examination of the pleadings, documents and the evidence on record, holds as under:-

“17. Now, coming to the facts of the present petition. So far as the ownership of the petitioner qua the demised premises and relationship of landlord and tenants between the parties is concerned, both have been very categorically disputed by the respondent. As per the case put forth by the petitioner, Sheikh Hazi Abdul Aziz was original owner of the premises in question who had expired as an Indian national in Karachi, Pakistan in October 1958. However, before his death, he had bequeathed vide oral Will the premises in question to his son namely Sheikh Abdul Hamid, who was also an Indian national. Sheikh Abdul Hamid died in Calcutta on 02.09.1968. However, before his death, Sheikh Abdul Hamid bequeathed the property in question by an oral Will to Sheikh Mohd. Naqi, who was a resident of Calcutta. Subsequently, the petitioner had purchased the property in question from Sheikh Mohd. Naqi vide registered sale deed dated 18.03.1996. It has further been submitted that the LR of deceased



Sheikh Hazi Abdul Aziz as well as LRs of Sheikh Abdul Hamid have already executed the release deeds and deed of declaration vide which they have acknowledged the oral Wills of Sheikh Hazi Abdul Aziz and Sheikh Abdul Hamid respectively. By executing the release deed and deed of declaration, they have admitted petitioner as sole and absolute owner of the property in question. It has further been submitted on behalf of the petitioner that the premises was let out to Sh. Chaman Lal, father of the respondents by Sheikh Hazi Abdul Aziz and after his death, the father of respondents has paid rent to Sheikh Abdul Hamid and thus, attorned him as the landlord therefore, the petitioner has now become the landlord and the respondents have become the tenants under him by operation of law.

18. *On the other hand, as per the case of the respondents, Sheikh Hazi Abdul Aziz died on 28.01.1959 in Karachi, Pakistan as Pakistani national and even if, he was not died as Pakistani national, he had left behind 8-9 LRs who were Pakistani nationals who could not have transferred their shares in favour of the petitioner in view of the provisions of Foreign Exchange Regulation Act, 1973. The respondents have very categorically disputed the oral Will of Sheikh Hazi Abdul Aziz as well as of Sheikh Abdul Hamid and submitted that even after the death of Sheikh Hazi Abdul Aziz, all the LRs of Sheikh Hazi Abdul Aziz accepted rent and issued rent receipt till 1964. Moreover, even after the death of Sheikh Abdul Hamid, the LRs of Sheikh Abdul Hamid kept on receiving rent till 1974. It has further been submitted on behalf of the respondent that the property in question vests in Custodian of Enemy Property under the Enemy Property Act and various notices have already been issued by the Custodian thereby challenging the ownership of the petitioner. It has been submitted by Id. Counsel for the respondent that vide order dated 28.03.2018, passed by Sh. S.P.S. Laler, ADJ, notices issued by the Custodian and Enemy Property were cancelled and it was held that property did not vests in the Custodian of Enemy Property yet vide the same order, petitioner was not held to be the owner of the property and the said issue has not yet been decided by the competent court. Moreover, the order dated 28.03.2018 has already been challenged and it is pending before Hon'ble High Court. Further, even after the order dated 28.03.2018, fresh notices have been issued by the Custodian under the Enemy Property Act qua the demised premises in question. Thus, petitioner is neither the owner of the property nor there exists relationship of landlord and tenants between the parties.*

19. *In support of her submissions, Id. Counsel for the respondents have relied upon following case law:*

- a) *Vinay Eknath Lad v. Chiu Mao Chen, Civil Appeal No. 4726 of 2010, (decided on 18.12.2019 by Hon'ble Supreme Court).*
- b) *Saida Fatma & Ors. v. Union of India & Ors., Civil Appeal no. 11468 of 1995, (decided on 28.11.2002 by Hon'ble Supreme Court).*



c) *Sewa Ram & Ors. v. Union of India & Ors, (decided on 01.04.1997 by Hon'ble Supreme Court).*

d) *Ibrahim Shah Mohamad v. Noor Ahmed Noor Mohamed, AIR 1984 Guj 126.*

e) *Mahabir Prasad v. Syed Mustafa Hussain, (1937) 39 BOMLR 990.*

20. *I have gone through the record. Basically, the petitioner has relied upon one sale deed dated 18.03.1996 executed by Sheikh Mohd. Naqi in favour of the petitioner and also release deeds executed by LRs of Sheikh Abdul Hamid admitting the oral Will of Sheikh Abdul Hamid. Bare perusal of the written statement shows that the respondents have admitted Sheikh Hazi Abdul Aziz as the original owner/ landlord of demised premises. It has been further submitted in the written statement by the respondents that they have never acknowledged Sheikh Abdul Hamid as the sole landlord of the disputed premises. Meaning thereby, they have at least accepted Sheikh Abdul Hamid as co-landlord/ joint landlord of the disputed premises. In fact, the petitioner has placed on record various letters / communications between Sh. Chiman Lal, father of the respondent and Sheikh Abdul Hamid which are Ex.PW1/103 to Ex.PW1/117 which clearly prove the existence of relationship of landlord and tenant between Sheikh Abdul Hamid and Chiman Lal. Ex.PW1/122 to Ex.PW1/124 are counterfoils of the rent receipts issued to Sh. Chiman Lal.*

21. *During the cross examination of RW1, he was asked as to whether he could identify the signature of his father to which, he replied in affirmative. However, when these letters were put to him and he was asked to identify the signatures, he gave very evasive reply and neither admitted the signature nor denied the same. Further, during his cross examination, he has stated that he has not seen Sheikh Hazi Abdul Aziz and Azzizuddin reading or writing. However, subsequently he had stated that he had seen Azizuddin reading and signing. He was further asked as to whether he could produce rent receipts issued to his father for the period 1965-68. He had stated that he had the same in his possession and could produce the same in the Court. However, despite opportunity and despite directions from the court, he had failed to produce the rent receipts for the period 1965-68, for the reasons best known to him. Although, he could find the receipts prior to the period i.e. before 1965.*

22. *On the other hand, the petitioner has duly proved the sale deed by examining Sh. N.C. Bajaj as PW5, who was one of the attesting witnesses to the sale deed. The sale deed is Ex.PW1/1. The petitioner has also proved mutation letter Ex. PW1/2 and House Tax Bills receipt Ex.PW1/3 to Ex.PW1/4. The petitioner has also proved mutation of the property in favour of Sheikh Abdul Hamid by examining PW6 Sh. Ranbir Singh, Patwari, who had proved the Jamabandi Ex.PW1/86. The petitioner has also proved that the property has already been mutated in his name in the MCD records and*



he has also proved the release deeds executed by LRs of Sheikh Hazi Abdul Aziz, which were Ex.PW1/5 to Ex.PW1/7 and the release deeds executed by LR of Sheikh Abdul Hamid which are Ex.PW1/8 to Ex.PW1/12. Ld. Counsel for the respondent has argued that the said release deeds have not been proved as per law and the same cannot be relied upon, as being Pakistani national, the LRs of Sheikh Hazi Abdul Aziz and Sheikh Abdul Hamid, could not have transferred their shares infavour of the petitioner as the same are in violation of Section 31 of the FERA 1973.

23. *This court does not find force in the arguments raised by the counsel for the respondent. In the considered opinion of this court, the release deeds have been duly proved by the petitioner as the petitioner himself is one of the attesting witnesses to the said release deed which are Ex.PW1/8 to Ex.PW1/12. So far as the arguments that the release deeds have been executed in violation of Section 31 of FERA Act is concerned, the same is also not sustainable as after going through the said release deeds, it can be said that no transfer of property was effected vide the said release deeds. Bare perusal of the said release deed clearly shows that vide said release deeds, the LRs have just acknowledged the oral Will of Sheikh Abdul Hamid and they have declared Sheikh Mohd. Naqi as sole and absolute owner of the property in question. Since, there was no transfer of property as such, the said release deeds cannot be said to have been executed in violation of any provision of FERA 1973. Moreover, since the respondents have admitted Sheikh Abdul Hamid to be the co-landlord/ co-owner, they cannot dispute the oral Will of Sheikh Hazi Abdul Aziz through which, Sheikh Abdul Hamid was claiming his ownership. Otherwise also, relationship of landlord and tenant between Sheikh Abdul Hamid and Chiman Lal has been duly proved. Further, respondents have not denied contents of Para 3(b) of the petition thereby admitting themselves to be the tenants and it is the Cardinal principle of Rent Jurisprudence that once a tenant is always a tenant. So far as the arguments that even after the death of Sheikh Hazi Abdul Aziz, his LRs kept on issuing the rent receipts and even after the death of Sheikh Abdul Hamid, LRs of Sheikh Abdul Hamid kept on receiving the of rent is concerned, the same is not sustainable in view of the release deed/ deed of declaration executed by the LRs of Sheikh Hazi Abdul Aziz as well as Sheikh Abdul Hamid. Further, bare perusal of sale deed Ex.PW1/1 shows that in the said sale deed, there are very categorical averments with respect to the oral Will of Sheikh Hazi Abdul Aziz as well as of Sheikh Abdul Hamid. Thus, it cannot be said that the said facts were concealed by the petitioner or Sheikh Mohd. Naqi at the time of execution/ registration of the sale deed dated 18.03.1996.*

24. *I have gone through the case laws filed on behalf of the respondents and there is no dispute about the law laid down in the said judgments, however, the same are not applicable to the facts of the present case under consideration. In case titled as Ibrahim Shah Mohamad v. Noor*



Ahmed Noor Mohamed, oral gift, trade by Mohameddan and also an oral Will was directly in issue. Moreover, in para 20 of the said judgment, it was observed by the court that there was specific statement before Mutation Officer so far as the properties gifted was concerned, however, there was no specific statement so far as the Will was concerned. Whereas in the present case, there was specific averments regarding oral Will in the sale deed.

25. In Mahabir Prasad v. Syed Mustafa Hussain, the oral Will was directly in issue whereas in the present case, since all the LRs of original owner and all the LR of the last admitted landlord have acknowledged the oral Will, the respondents being tenants have no locus standi to challenge/ dispute the said oral Wills.

26. In Vinay Eknath Lad v. Chiu Mao Chen case relied upon by the counsel for the respondent it was held that where the tenants disputed the ownership of the landlord the same is to be proved by the landlord in some form. In the considered opinion of this court, this judgment helps the case of the petitioner more than the case of the respondent as the petitioner has been able to establish the ownership by furnishing on record sufficient documentary evidence and he has established his ownership in some form and it is now well settled that in an eviction petition filed by the landlord against the tenants under the Rent Law 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 i.e. the landlord need not to prove his absolute ownership and he just has to show that his right over the property in question is more than the tenant / respondent which the petitioner has been able to prove in the present case under consideration.

27. Lastly, the respondents relied upon the judgment of Saida Fatma & Ors. v. Union of India & Ors. Case and Sewa Ram & Ors. v. Union of India & Ors. and the judgment in the said two cases also do not apply to the facts of the present case as in those cases, it was held that when the property vests under the Enemy Property Act and the persons dealing with the property is Pakistani national, the bar of Section 31 of FERA applies and he cannot deal with the property. However, in the present case, it has already been held by competent court that the property does not vests under the Enemy Property Act nor the person dealing with the property i.e. Sheikh Hazi Abdul Aziz was Pakistani National. Infact, RW2 Sh. Sanjeev Mishra, Law Officer, Custodian when stepped into the witness box had stated that as per the record, Sheikh Hazi Abdul Aziz died in Karachi, Pakistan as Indian National. Although, RW2 had produced various document but all were photocopies and could not be proved, as per law. Ld. Counsel for the respondents has relied upon one document Mark RW2/A, which is a letter dated 28.10.2015, issued by the Custodian of Enemy Property wherein it was held that Sheikh Hazi Abdul Aziz was died intestate. Although, the said document has not been proved on record. However, on face of it, it was



decided in the said letter that the property in question was not an Enemy property, which supports the case of the petitioner.

28. *In view of the above, it can be said that for the purpose of present petition, the petitioner has been able to prove that he is the owner of the property in question and their exists relationship of landlord and tenant between the parties.*

29. *Therefore, in the light of the pleadings of the parties and other material placed before this court, in so far as the purpose of clause (e) of subsection (1) of section 14 of Act 59 of 1958 is concerned, it is clear that the petitioner is the owner/landlord and there exists relationship of landlord and tenant between the parties.”*

14. As regards the *bonafide* requirement of the respondent (landlord) and availability of suitable alternative accommodation, the impugned judgment, again after minutely examining the pleadings, documents and evidence on record, came to the following conclusion:-

“34. From a reading of the application for eviction, replication and the testimony of the petitioner, it is clear that as per the version of the petitioner, he bonafidely requires the tenanted premises for himself. No material contradiction came out from the cross-examination of the petitioner. The bona-fide requirement of the petitioner stands established alongwith the factum that he has no other alternative accommodation available with him to meet his requirement. In the light of the material on record, especially the pleadings of the petitioner and the testimony of witnesses, if one attempts to peep into the mind of the petitioner to ascertain his bona-fide requirement then it is found that the premises is bonafidely required by the petitioners for his own use. Needless to say that the landlord is the best judge of his requirement and there is no law which deprives the landlord of the beneficial enjoyment of his property. In the case in hand, the need of the petitioner is bona-fide and he has full choice to take the benefit of his property as per his convenience. Moreover, the respondent has failed to establish the fact that the petitioner was already having sufficient accommodation available with him and that the petitioner has concealed the material facts. Therefore, the petitioner is entitled for eviction of respondent from the tenanted premises”.

15. It is in the above backdrop that the present petition has been filed by the petitioner (tenant).



Submissions of learned counsel for the petitioner:-

16. Learned counsel for the petitioner has strenuously disputed the respondent's assertion that the respondent is the owner of the property in question. The petitioner disputes the veracity of the two oral Wills i.e. the oral Will of Late Sheikh Hazi Abdul Aziz and the oral Will of Late Sheikh Abdul Hamid on the basis of which the property is stated to have devolved upon Sheikh Mohammad Naqi. It is contended that the respondent's claim of ownership is subject matter of a suit filed by some other tenant and the issue of ownership is yet to be conclusively decided therein. It is contended that the rule of estoppel incorporated under Section 116 of the Evidence Act, 1872 would not apply since it is well settled that the tenant is entitled to question the derivative title asserted by the landlord. It is contended that the Court of the Rent Controller being a Court of limited jurisdiction is not entitled to return a finding of title. It is contended that even the devolution of the property and/or attornment in favour of Sheikh Abdul Hamid is also not accepted by the tenant inasmuch as even after the death of Sheikh Hazi Abdul Aziz, all his legal heirs continued to issue rent receipts to the various tenants in the property.

17. It is further contended that even after the death of Sheikh Abdul Hamid, his legal heirs i.e. his wife Hazar Bi and his daughter Rukhsana Begum had been collecting rent. Certified copies of these rent receipts were marked as Ex. RW 1/13 to RW 1/21. It is further stated that there was no devolution in favour of Sheikh Mohammad Naqi and that the sale deed in favour of the respondent is forged, fabricated, illegal, invalid and unenforceable under law. Serious doubts have also been expressed with



regard to the veracity and genuineness of the release deeds stated to have been executed in 1992 by the legal heirs of Sheikh Abdul Hamid accepting devolution of the property upon Sheikh Mohammad Naqi. It is contended that these alleged release deeds were executed in Pakistan more than 25 years after the alleged oral Will of Late Sheikh Abdul Hamid. It is further contended that there was no reason why the surviving legal heirs of Sheikh Abdul Hamid and even Sheikh Mohammad Naqi himself could not be produced before the concerned Rent Controller by the landlord to depose in his support. Extensive reference has also been made to the evidence adduced before the concerned Rent Controller to negate the contentions of the landlord regarding the chain of devolution. Specific reliance has also been placed on the cross-examination of the respondent himself before the concerned Rent Controller to contend that even the respondent himself was completely unaware about the circumstances regarding the making of the alleged oral Wills. It is submitted that there is no cogent proof whatsoever in support of the chain of succession as asserted by the landlord.

18. It is further contended that there are documents to suggest that Sheikh Abdul Hamid was mentally sick at the time when he is stated to have made his oral Will. It is contended that the procedure contemplated under Muslim Law for proving an oral Will has been completely disregarded. Reliance in this regard has been placed on the judgment in the case of *Mahabir Prasad Vs. Mustafa Husain, Syed*,¹. Strenuous arguments have also been addressed by learned counsel for the petitioner to discredit the release deeds alleged to have been executed in 1992 in Pakistan by the legal heirs of Sheikh Abdul Hamid affirming the devolution of the property upon Sheikh Mohammad

¹ (1937) 39 Bom LR 990: 1937 SCC Online PC 36 : AIR 1937 PC 174



Naqi. It is submitted that during the cross-examination of the respondent on the said release deeds, the learned Rent Controller himself made an observation that the said release deeds were not stamped/registered. Yet, reliance has been placed in the impugned judgment upon these release deeds. It is further strenuously contended that in the proceedings initiated against another tenant (Virender Kapoor and Paresh Kapoor, both sons of late Yoginder Kumar Kapoor) by the respondent (landlord), it was admitted by the respondent (landlord) in the pleadings that he never travelled to Pakistan in 1992. This is in the face of the release deeds in which the respondent himself is referred to as the witness. It is contended that although the respondent's application under Order 12 Rule 6 CPC came to be decided in his favour and culminated in the judgment decree dated 28.03.2018, an RFA/appeal was filed by the Custodian against the said judgment which is stated to be still pending. It is contended that the present proceedings ought to be deferred till the decision in the said RFA is conclusively adjudicated upon.

Submissions of learned counsel for the respondent:-

19. Learned counsel for the respondent (landlord) has strongly refuted the contentions made by learned counsel for the petitioner. He has submitted that it has not been denied that the father of the petitioner/tenant (Sh. Chiman Lal) was originally inducted as a tenant in the property by the original landlord Sheikh Hazi Abdul Aziz. Attention has been drawn to the counter-foils/ rent receipts signed by Sh. Chiman Lal in favour of Sheikh Hazi Abdul Aziz and marked as Ex. PW 1/122 to Ex. PW 1/124 before the concerned Rent Controller. Attention has also been drawn to the fact that



after the death of Sheikh Hazi Abdul Aziz in 1959, his son Sheikh Abdul Hamid started collecting rent from all the tenants of the same building. In this regard, extensive reference has been made to the cross-examination of the petitioner (tenant) Sh. Vinay Kumar Soni, particularly, the cross-examination dated 01.12.2005 and 09.08.2019. It is submitted that the oral Will of Sheikh Abdul Hamid has been confirmed by the release deeds executed in 1992 by the legal heirs of Sheikh Abdul Hamid which were filed before the concerned Rent Controller marked as Ex. PW 1/8 – Ex. PW 1/12. Attention has been drawn to the fact that apart from the aforesaid release deeds to which the respondent (landlord) himself is an attesting witness, a fresh deed of declaration was issued on 20.07.1997 by the legal heirs of Sheikh Abdul Hamid at New Delhi which is also placed on record and marked as Ex. PW 1/14.

20. Strenuous reliance has been placed on the judgment/ decree dated 28.03.2018 to contend that the property in question is not an enemy property. It is submitted that this became clear through a detailed investigation report dated 28.10.2015 by the concerned ADM and submitted to the Custodian, whose report was thereafter accepted by the Custodian on 19.11.2015. It is on this basis that the respondent's application under Order 12 Rule 6 CPC was allowed and the same culminated in judgment/ decree dated 28.03.2018. It is submitted that the said judgment/ decree dated 28.03.2018 has not been stayed by the Appellate Court, despite an appeal being belatedly filed by the Custodian. It is submitted that in the light of the extensive evidence regarding chain of devolution in favour of Sheikh Mohammad Naqi, the registered sale deed executed by Sheikh Mohammad Naqi in favour of the respondent, and on account of the judgment/ decree



dated 28.03.2018, there is no merit in the plea of the petitioner regarding absence of landlord-tenant relationship, and that the contentions of the petitioner/tenant in this regard are completely misconceived. Reliance has also been placed upon Sections 116 and 118 of Mulla's Principle of Mohammedan Law and on the basis thereof, it is contended that the oral Wills in the present case are permissible under Muslim Law and also duly confirmed by the legal representatives of the deceased. In support of the veracity of the oral Wills, reliance has been placed upon the judgments in the case of *Iqbal Amiri Vs. State*,² and *Asma Beevi Vs. M. Ammer Ali*.³

21. Reliance has also been placed on the judgment of *Kausar Iram Vs. Govt. of India*,⁴, in support of the contentions that the release deeds merely accepted the oral Wills in question and the release deeds by themselves cannot be considered as a deed transferring the properties in favour of the beneficiaries under the Will. Reliance has also been placed on the judgment of Supreme Court of India in the case of *Abid-Ul-Islam Vs. Inder Sain Dua*⁵ to contend that the scope of revisional powers is very limited and that finding of facts are not liable to be interfered with. Finally, strenuous reliance has been placed on the judgment of the Supreme Court in the case of *Shanti Sharma Vs. Ved Prabha*,⁶ in which it has been held that as long as it is established that a landlord has a better title than that of a tenant, a tenant cannot resist/refute the existence of a landlord tenant relationship.

22. It was contended that in the facts of the present case, once it has been established that the last paid rent was being remitted to the admitted

²(2016) 229 DLT 586 : 2016 SCC Online Del 2176

³Order dated 10.06.2008 in A.S. No. 247 of 1996 passed by the Madras High Court

⁴2018 SCC Online Del 6431

⁵(2022) 6 SCC 30

⁶(1987) 4 SCC 193



landlords i.e. Sheikh Hazi Abdul Aziz and Sheikh Abdul Hamid, and the fact that after Sheikh Abdul Hamid, it was Sheikh Mohammad Naqi who became the owner of the property by way of an oral Will of Sheikh Abdul Hamid, and which oral Will has been confirmed by all his legal heirs by executing release deeds/NOCs, the challenge to the plea of ownership as well as the relationship of landlord and tenant cannot possibly be sustained.

23. As regards, the existence of *bonafide* requirement and sufficiency of alternative accommodation, it is contended that the impugned judgment of the concerned Rent Controller arrives at a cogent finding of fact in this regard after minutely analysing the evidence/material on record and there is no warrant to interfere with the said findings in these proceedings.

Analysis and Conclusion

24. Having heard respective counsel for the parties, I find no merit in the present revision petition. The reasons are enumerated hereunder.

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 Vs. Chiu Mao Chen***,⁷ wherein it has been observed 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 [Apollo Zipper (India) Ltd. v. W. Newman & Co. Ltd., (2018) 6 SCC 744 : (2018) 3 SCC (Civ) 807] has been cited : (SCC p. 754, para 40)

⁷ (2019) 20 SCC 182



“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 Prakash [Sheela v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375] and Boorugu Mahadev & Sons v. Sirigiri Narasing Rao [Boorugu Mahadev & Sons v. Sirigiri Narasing Rao, (2016) 3 SCC 343 : (2016) 2 SCC (Civ) 344] 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.”

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.

27. In the case of **Shanti Sharma Vs. Ved Prabha** (supra), 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."

28. The Supreme Court in **Boorugu Mahadev & Sons Vs. Sirigiri Narasing Rao**⁸, has 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)"

29. The Supreme Court in **Swadesh Ranjan Sinha Vs. Haradeb Banerjee**⁹, has 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."

30. In **Puran Chand Aggarwal v. Lekh Raj**¹⁰, this Court has held as under:

⁸ (2016) 3 SCC 343

⁹ (1991) 4 SCC 572



“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.”

31. In **Meenakshi v. Ramesh Khanna**¹¹, 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.

¹⁰ 2014 SCC OnLine Del 1506,

¹¹ 1995 SCC OnLine Del 373



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.”

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.

33. In the present case, there is no controversy that the father of the petitioner/tenant (Sh. Chiman Lal) was originally inducted as tenant in the subject property by the original landlord i.e. Sheikh Hazi Abdul Aziz to whom he had been paying rent. The rent receipts signed by Sh. Chiman Lal in favour of Sheikh Hazi Abdul Aziz were brought on record and formed part of the evidence adduced before the concerned Rent Controller.

34. Further, after the demise of Sheikh Hazi Abdul Aziz, the rent was paid by the tenants to his legal heirs/Sheikh Abdul Hamid. The impugned judgment records, as a matter of fact, that the tenants “*have at least accepted Sheikh Abdul Hamid as co-landlord/joint landlord of the disputed premises*”. It has also been noted that the landlord has placed on record various letters/communications between Sh.Chiman Lal, father of the petitioner herein and Sheikh Abdul Hamid (Ex.PW 1/103 to Ex.PW 1/117)



which clearly prove the existence of relationship of landlord and tenant between Sheikh Abdul Hamid and Sh.Chiman Lal. As regards these documents, it has been specifically noticed in the impugned judgment as under:-

“21. During the cross examination of RW-1, he was asked as to whether he could identify the signatures of his father to which, he replied in affirmative. However, when these letters were put to him and he was asked to identify the signatures, he gave very evasive reply and neither admitted the signature nor denied the same. Further, during his cross examination, he has stated that he has not seen Sheikh Hazi Abdul Aziz and Azzizuddin reading or writing. However, subsequently he had stated that he had seen Azizuddin reading and signing. He was further asked as to whether he could produce rent receipts issued to his father for the period 1965-68. He had stated that he had the same in his possession and could produce the same in the Court. However, despite opportunity and despite directions from the court, he had failed to produce the rent receipts for the period 1965-68, for the reasons best known to him. Although, he could find the receipts prior to the period i.e. before 1965.”

35. The impugned judgment also notices the copious and extensive evidence adduced by the respondent (landlord) to establish his title including the sale deed executed by Sheikh Mohammad Naqi in his favour, the mutation letter and the house tax bills. The sale deed dated 18.03.1996 executed by Sheikh Mohammad Naqi in favour of the respondent extensively refers to the chain of devolution of title upon Sheikh Mohammad Naqi as under:-

“Whereas Haji Abdul Aziz, son of late Haji Mohd, Umer was the sole and absolute owner of property No. XV/1859 to 1864 and 2248-2260, situate at Chuna Mandi, Paharganj, New Delhi. He purchased it from Haji Mohd, Ishaq, son of Haji Abdul Aziz and Zakmullah Khan, son of Maulavi Hafizullah Khan by means of Sale Deed dated 10th August, 1949, registered as Document No. 911, Book no. 19, on pages No. 48 to 54 with the Sub-Registrar, Delhi, on 19th August 1942, area 1354.5 Sq. Yds.

AND WHEREAS Sheikh Haji Abdul Aziz orally devised and bequeathed the said property to his son, Sheikh Abdul Hamid, son of Haji Abdul Aziz.

AND WHEREAS (i) Haji Abdul Aziz died on 28.1.1959.



(ii) His oral will was admitted and accepted by his son and daughters in favour of Sheikh Abdul Hamid. Their Release Deed was registered by the Sub-Registrar No. 1, Delhi on 22.4.1964, as Document No. 4269, in Book No. 1, Vol. No. 1091, on pages 57 and 58.

(iii) The aforesaid property was mutated in the Municipal records in the name of Sheikh Abdul Hamid.

AND WHEREAS the said Sheikh Abdul Hamid became the sole owner of the property.

AND WHEREAS (i) Sheikh Abdul Hamid orally devised and bequeathed the aforesaid property in favour of Vender on 1.8.1968 according to Muslim Personal Law.

(ii) Sheikh Abdul Hamid died on 2.9.1968 at Calcutta.

AND WHEREAS the oral will of Sheikh Abdul Hamid was accepted and admitted by (i) his widow Mst. Hazra Bi vide her Release Deed dated 2nd January, 1992, and his sisters (ii) Mst. Saeda Khatoon wife of Sheikh Aftab Ahmed, (iii) Mst. Ruqayya Begam wife of Sheikh Sultan Ahmad Batla (iv) Mst. Khairun Nisa, wife of Sheikh Mohd. Ahmed, (v) (a) Sheikh Mohd. Ishaq, son of late Haji Mahboob Elahi, (b) Sheikh Aiz Anwar, (c) Sheikh Yusuf Akhtar, (d) Sheikh Zafar Ahmed, (e) Sheikh Suhail Akhtar, (f) Sheikh Iqbal Ahmed, (g) Mst. Aisha Ishlaq, wife of Sheikh Shamim Ahmed, (v) (a) is the husband, (v) (i), (v) (c), (v) (d), (v) (e), (v) (f), (v) (g) are the children of late Zaibun-Nisa, the deceased sister of Sheikh Abdul Hamid. They executed their Release Deeds dated 7th January, 1992.”

36. Admittedly, no court of law has set aside or nullified the aforesaid sale deed in favour of the respondent (landlord).

37. It is also notable that in the written statement filed on behalf of the petitioner in response to the eviction petition, the primary defence of the petitioner (tenant) was that the property vests in the Central Government. It was categorically pleaded by the petitioner as under:-

“3. That the disputed premises vested with the Central Government being an Enemy Property vide notification dated 10.09.1965 and as such this Hon’ble Court has no jurisdiction as per Section 3 of Delhi Rent Control Act to entertain and decide the present eviction petition.”

38. The above controversy has been put to rest vide judgment dated 28.03.2018 wherein it has been held that the property in question does not vest in the Custodian of enemy property and/or other authorities under the



Enemy Property Act, 1968. Further all certificates/notifications/office orders/rent receipts/letters to occupants issued by the said authorities have been declared null and void. The said authorities have been held to be not entitled to control, manage and supervise the concerned property as enemy property. The relevant portion of the aforesaid judgment/decreed dated 28.03.2018 has been extracted hereinabove. The above finding assumes relevance in the light of the defence/stand taken in the written statement to the effect that the property in question vests with the Central Government, being an enemy property. The said contention stands negated by the aforesaid judgment dated 28.03.2018. Admittedly, although an RFA/appeal has been filed by the Union of India/Custodian against the aforesaid judgment, the operation of the said judgment/decreed has not been stayed.

39. Further, as regards the plea regarding genuineness/veracity of the oral Wills is concerned, it is notable that none of the concerned legal heirs have disputed the same. No material whatsoever has been placed on record to establish that the factum of making of the said oral Wills has been disputed by any legal heir in any correspondence/proceedings. The respondent (landlord) has relied upon Section 116 and Section 118 of Mulla's Principles of Mohammedan Law in support of his contentions that an oral Will is very much permissible under Mohammedan Law. The said Section 116 and Section 118 are reproduced here as under:-

“116. Form of will immaterial-A will (Vasiyyat) may be made either verbally or in writing.

118. Limit of testamentary power-A Mahomedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal third cannot take effect, unless the heirs consent thereto after the death of the testator.”



40. Section 118 (supra) has been *inter alia* explained in Mulla's Principles of Mohammedan Law in the 20th Edition as under:-

“Consent of heirs: It will be seen from this and the preceding section that the power of a Mahomedan to dispose of his property by will is limited in two ways, first, as regards the persons to whom the property may be bequeathed, and, secondly, as regards the extent to which the property may be bequeathed. The only case in which a testamentary disposition is binding upon the heirs is where the bequest does not exceed the legal third and it is made to a person who is not an heir. But a bequest in excess of the legal third may be validated by the consent of the heirs; similarly, a bequest to an heir may be rendered valid by the consent of the other heirs. The reason is that the limits of testamentary power exist solely for the benefit of the heirs, and the heirs may, if they like to forgo the benefit by giving their consent. For the same reason, if the testator has no heirs, he may bequeath the whole of his property to a stranger: (see Baillie, 625). If the heirs do not consent, the remaining two-thirds must go to the heirs in the shares prescribed by the law. The testator cannot reduce or enlarge their shares, nor can he restrict the enjoyment of their shares.”

41. A perusal of the aforesaid provisions makes it clear that an oral Will is permissible under Muslim Law; moreover even if the bequest in favour of the beneficiary exceeds 1/3rd of the estate, the said oral Will could be confirmed by his legal representatives even after his death. This exposition of law has been recognized in various judgments.

42. In ***Iqbal Amiri Vs. State*** (supra), it has been held as under:-

“4. During the course of arguments, I put it to the counsel for the plaintiff that Part VI of the Indian Succession Act, 1925 dealing with the testamentary succession does not apply to Mahomedans and this is clear from Sections 57 and 58 of the Act. Counsel for the petitioner also concedes that the issue of how a Will is executed and proved of a Mahomedan is cited in MULLA Principles of Mahomedan Law, Nineteenth Edition by Lexis Nexis, and as per which there is no format of a Will and in fact a Will of a Mahomedan can be an oral Will ie a Will even does not have to be attested as it need not be in writing.

5. In view of the above, it is clear that a probate case with respect to the Will of a deceased Mahomedan is not maintainable because the provisions of the Indian Succession Act pertaining to testamentary succession will not apply to Mahomedans...”



43. It has been noted that the testamentary succession as contemplated in the Indian Succession Act, 1925, does not apply to Muslims and that it is permissible for Muslims to make an oral Will. The same position is taken note of in ***Asma Beevi Vs. M. Ammer Ali*** (supra).

44. In the present case, the oral Wills have also been confirmed by all the concerned legal heirs by executing release deeds/NOCs affirming the factum of devolution in favour of the beneficiaries under the Wills. As held by this Court in ***Kausar Iram Vs. Govt. of India*** (supra), a release deed of such a kind merely records the consent of the legal heirs in accepting the Will in question. The same cannot be construed as a deed transferring the properties in favour of the beneficiaries under the Will. Reference is apposite to the following observations in the said judgment:-

“28. The Release Deed dated 17.07.1977 records the consent of the other legal heirs accepting the Will of Late Rehman Elahi. The said deed cannot be considered as a deed transferring the properties in favour of the beneficiaries under the Will of Late Hazi Rehman Elahi. The conclusion of the Custodian that “the properties cannot be released to others by them [the widown, son and three daughters of Late Shri Rehman Elahi residing in Pakistan] as they were enemy nations on the crucial date” cannot be sustained, as the said persons had merely accepted Late Hazi Rehman Elahi’s Will and his properties were transmitted directly to the beneficiaries under his Will. There was no hiatus in transmission of the said properties of Late Hazi Rehman Elahi to the beneficiaries under his Will and the said properties were not even for a brief moment, the properties of other natural heirs who were residing in Pakistan. It is further relevant to state that any doubt that could possibly have been entertained was settled by the arbitral award rendered by Sheikh Mohd. Harron, which was made the Rule of Law on 26.04.1978.”

45. The factum of the petitioner having been inducted as a tenant in the tenanted premises by the erstwhile owner i.e. Sheikh Hazi Abdul Aziz, is not in dispute. Admittedly, Sheikh Abdul Hamid was one of the legal heirs of Sheikh Hazi Abdul Aziz. The oral Wills executed by Sheikh Hazi Abdul



Aziz and Sheikh Abdul Hamid have not been refuted/disputed by any of the surviving legal heirs; moreover, they have been corroborated by virtue of release deeds executed by the surviving legal heirs.

46. As noticed hereinabove, it is a well settled proposition in rent jurisprudence, the landlord is not required to prove his title in the subject property in the way he would be expected to do in a title suit. It is sufficient if the landlord can establish that his title is better than that of the tenant. On the basis of the evidence adduced on behalf of the respondent and which has been taken note of in the impugned order, it can be concluded that the respondent (landlord) has discharged his burden of ownership vis-à-vis the Rent Control Act.

47. There is also no merit in the contention raised on behalf of the petitioner as regards alleged admission/s made by the respondent herein in eviction proceedings qua another tenant (Virender Kapoor and Paresh Kapoor, both sons of late Yoginder Kumar Kapoor). Learned counsel for the respondent has filed the pleadings in the said eviction proceedings to bring out that no admission, as alleged by the petitioner, has been made therein. Learned counsel for the respondent has also placed on record a copy of the judgment dated 23.05.2023 passed in the said eviction proceeding whereby the leave to defend application filed by the said tenant has been dismissed, and an eviction order has been passed qua the said tenant. In respect of the landlord tenant relationship, the said judgment dated 23.05.2023 *inter alia* holds as under:-

“11. In the present case, the status of the respondents as tenants in the demised premises is admitted. Perusal of record and submissions made reveal that Abdul Aziz was the admitted owner / landlord of the premises in question qua the predecessors of the respondents. The respondents have also admitted Abdul Hamid to be co-owner / co-landlord of the premises in



question. Furthermore, perusal of the record Le. rent receipts as well as the letter dated 17.09.1963 issued by Y.K. Kapoor to Abdul Hamid placed on record alongwith the petition, and the cross examination of Y.K. Kapoor as PW-1 in suit no. 589/97, referred to above, clearly establishes the relationship of landlord and tenant between Abdul Hamid and the respondents.

12. The ground of challenge to the oral Wills of Abdul Aziz and Abdul Hamid is that even after their death, all their legal heirs were issuing the rent receipts to the respondents. The oral Wills are also challenged on the ground that the Release Deeds by the LR's of both Abdul Aziz and Abdul Hamid could not effect transfer of the property situated in India under the Foreign Exchange Regulation Act since the said legal representatives were Pakistani nationals

13. Though it is averred by the respondents that Abdul Aziz died a Pakistani national, however, no material to substantiate the same has been placed on record. Whereas, the Death Certificate dated 12.02.1959, of said Abdul Aziz, issued by Indian High Commission in Pakistan at Karachi, reflects that he was holder of Republic of India passport bearing no. A653341 dated 01.12.1958. As regards the averment that the property in question vested with the Custodian of Enemy Property for India, it is the admitted position between the parties that vide order dated 28.03.2018 in CS no. 19994/2016 titled as "Vijay Kumar Vs. Union of India & Drs." (Custodian of Enemy Property being defendant no. 2 and Additional District Magistrate (Central), Delhi being defendant no. 3), it was held by the Civil Court that there was clear admission by defendants no. 1 to 3 that the property as per them was not owned by Pakistani national and accordingly part decree was passed under Order 12 Rule 6 CPC and the certificate/notification/office orders/rent receipts and letters issued to occupants by defendants no. 1 to 3 therein under the Enemy Property Act were declared null and void and defendants no. 1 to 3 were restrained from controlling, managing or supervising the suit property as Enemy Property. It was also declared that the suit property does not vest with defendants no. 1 to 3 being enemy property under the Enemy Property Act. The said order though challenged, however there is no stay on the same. Thus, as of date, the property does not vest with the Custodian of Enemy Property for India and there is no merit in the submissions of the respondents regarding the same.

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18. From the above dicta, it is clear that the tenant cannot challenge the Will of the original owner / landlord. In the present case, the oral Will of Abdul Aziz in favour of his son Abdul Hamid has been consented to by his legal heirs vide Release Deed executed by them acknowledging the Will of



Late Haji Abdul Aziz. The Release Deeds are also on record. Similarly, the Release Deeds executed by legal heirs of Abdul Hamid acknowledging and consenting to the oral Will of Abdul Hamid in favour of Mohd. Naqi, have also been placed on record. The respondents have not disclosed any other landlord except the said legal heirs of Abdul Aziz and Abdul Hamid respectively. However, in view of the consent given by the said legal heirs themselves to the oral Wills bequeathing the property firstly to Abdul Hamid and then to Mohd. Naqi, no ground remains for the respondents/tenants to challenge the Will of the deceased landlords. Under these facts and circumstances, it is not in the domain of the tenant to challenge the said Wills and it is only the legal heirs of the testators/landlords who could raise challenge to the said Wills. However, it is not the case of the respondents that the said legal heirs ever challenged the Wills of the respective landlords. It is also not the case of the tenant that he filed any interpleader suit impleading all the legal heirs of the deceased to decide as to who shall be the landlord owner after the death of the original owner, if there was any doubt as to the ownership.

*19. It is pertinent to note that the petitioner has placed on record a registered Sale Deed executed in his favour by Sheikh Mohd. Naqi i.e. the person in whose favour the oral Will was executed by Sheikh Abdul Hamid and consented to by the legal heirs of Sheikh Abdul Hamid. The factum of above said both oral Wills as well as the Release Deeds executed by the legal representatives of Abdul Aziz and Abdul Hamid, have also been detailed in the said registered Sale Deed. It is trite law that once landlord has produced a document showing his ownership on record, he is deemed to have discharged his burden of ownership vis-a-vis the Rent Control Act and such a document can at best be challenged by the heirs of the owner and not by the tenant. Reliance being placed upon *Plastichemicals Company Vs. Ashit Chadda & Anr.*, 114(2004) DLT 408. The averments of respondents that Mohd. Naqi never got the property mutated in his favour or paid House Tax or contacted the occupants of Aziz Building to receive the rent, are also devoid of merit in light of the registered Sale Deed in favour of the petitioner.*

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22. Furthermore, as discussed above, the respondents have already admitted Abdul Hamid to be the co-owner/colandlord of the premises in question. Said Abdul Hamid himself asserts ownership over the premises in question by way of oral Will of Abdul Aziz and the Release Deeds executed by the LR's of Abdul Aziz. Under these facts and circumstances, it does not lie with the tenant to challenge the said Release Deeds as it is not for the tenant to question the title of the landlord. The same derives higher significance since the legal heirs themselves who have executed the Release



Deeds have not raised any objection to the said oral Wills. Hence, there is no merit in this averment of the respondents and same is liable to be rejected.

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26. In view of the same, the Court holds that the petitioner is the owner of the tenanted premises and he is the landlord in respect of the tenanted premises, qua the respondents”

48. Reliance placed on behalf of the petitioner, on the judgment of the Supreme Court in the case of **Vinay Eknath Lad** (supra) is also misplaced. The said case does not advance the case of the petitioner inasmuch as in the present case, the respondent has discharged the onus of proof to the extent necessary for the purpose of the present proceedings. The Supreme Court has specifically observed in **Vinay Eknath** (supra) that the onus on the landlord is not akin to that in a title suit.

49. In the present case, the respondent (landlord) has placed on record voluminous material and evidence to establish his right in the suit property, and the conclusion drawn in the impugned judgement cannot be faulted.

50. Necessarily also, the findings rendered in these proceedings will not operate to the detriment of the Union of India and the Custodian in any other proceedings, particularly, in the context of RFA stated to have been filed against the judgment/decreed dated 28.03.2018. As already held by this Court while reviving the instant eviction proceedings, the order passed in the present eviction petition shall be subject to the outcome of the said RFA which is yet to be decided by the Court. As already held by this Court vide the order dated 30.01.2020, the pendency of the said RFA does not prevent the respondent (landlord) from pursuing the eviction proceedings to seek eviction of the petitioner (tenant).



51. As regards the finding in the impugned judgment regarding existence of *bonafide* requirement of the respondent (landlord) and absence of sufficient alternative accommodation, there is no warrant to interfere with the same in these proceedings. As held by the Supreme Court in the case of ***Abid-Ul-Islam*** (supra), where the tenant disputes the *bonafide* necessity of the landlord or pleads existence of sufficient alternate accommodation, the tenant is expected to put adequate reasonable material in support of the facts pleaded to raise a triable issue. In para 20 of the said judgment relying upon the observations made in the case of ***Baldev Singh Bajwa Vs. Monish Saini***¹², the Supreme Court observed as under:-

“20. Dealing with a parimateria provision, this Court in Baldev Singh Bajwa v. Monish Saini [Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778] , was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. One cannot lose sight of the object behind Section 25-B in facilitating not only the expeditious but effective remedy for a class of landlords, sans the normal procedural route. In this regard, we wish to quote the decision of this Court in Baldev Singh [Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778] : (SCC pp. 790-93, paras 14-17 & 19)

“14. The phrase “bona fide requirement” or “bona fide need” or “required reasonably in good faith” or “required”, occurs in almost all Rent Control Acts with the underlying legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to. In Ram Dass v. Ishwar Chander [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] it is said that the bona fide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it, and that desire, to become a “requirement” in law must have the objective element of a “need”, which can be decided only by taking all the relevant circumstances into consideration so

¹²(2005) 12 SCC 778



that the protection afforded to a tenant is not rendered illusory or whittled down.

15. *In Bega Begum v. Abdul Ahad Khan [Bega Begum v. Abdul Ahad Khan, (1979) 1 SCC 273] it was held by this Court that the words “reasonable requirement” undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.*

16. *In Surjit Singh Kalra v. Union of India [Surjit Singh Kalra v. Union of India, (1991) 2 SCC 87] a three-Judge Bench of this Court has held as under : (SCC p. 99, para 20)*

‘20. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the word bona fide requirement in Sections 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states ‘special procedure for the disposal of applications for eviction on the ground of bona fide requirement’.’

17. *In Shiv Sarup Gupta v. Mahesh Chand Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] this Court while dealing with the aspect of bona fide requirement has said that the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the Judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.*

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19. *... In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to the tenant's right to rebut it but with strong and cogent evidence. In our view, in the proceeding taken up under Section 13-B by the NRI landlords for the ejection of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy*



burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

52. The law is also well settled, and reiterated in a catena of judgments that the landlord is the best judge of his requirements and the tenant cannot be allowed to dictate to the landlord as to how he should accommodate himself without evicting the tenant. This principle has been reiterated in the following judgments.

53. In **Prativa Devi (Smt.) Vs. T.V. Krishnan**¹³, it has been held as under:-

"The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own."

54. In **Sarla Ahuja Vs. United India Insurance Co. Ltd**¹⁴, it has been held as under:-

"It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

55. In **Shiv Sarup Gupta Vs. Mahesh Chand Gupta (Dr)**¹⁵, it has been held as under:-

¹³(1996) 5 SCC 353

¹⁴AIR 1999 SC 100

¹⁵(1999) 6 SCC 222



“Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court.”

56. In **Baldev Singh Bajwa Vs. Monish Saini** (supra), it has been held as under:-

“A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine”

57. In **Anil Bajaj Vs. Vinod Ahuja**¹⁶, it has been held as under:-

“It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business.”

58. On an overall conspectus, in the present case there is no warrant to interfere with the findings rendered in the impugned judgment as regards the existence of *bonafide* necessity of the landlord for the tenanted premises. Further, no cogent material whatsoever has been placed on record to establish existence of sufficient alternate accommodation. As such there is no occasion for this Court to interfere with the findings rendered with regard to the issue of *bonafide* necessity and absence of sufficient alternate accommodation.

59. The scope of revisional jurisdiction of this Court has been delineated by the Supreme Court in **Abid-Ul-Islam** (supra) as under:-

“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The

¹⁶(2014) 15 SCC 610



scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

24. We do not wish to go further on this settled proposition of law, except by quoting the decision of this Court in *Sarla Ahuja v. United India Insurance Co. Ltd.* [*Sarla Ahuja v. United India Insurance Co. Ltd.*, (1998) 8 SCC 119] : (SCC pp. 122-25, paras 5-14)

“5. Section 25-B of the Act lays down ‘special procedure for the disposal of application for eviction on the ground of bona fide requirement’. Sub-section (1) says that every application for recovery of possession on the ground specified in Section 14(1)(e) of the Act shall be dealt with in accordance with the procedure specified in Section 25-B. Sub-section (8) says that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Rent Controller in accordance with the procedure specified in this section. The proviso to that sub-section reads thus:

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

6. *The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall 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.*

7. *Although, the word “revision” is not employed in the proviso to Section 25-B(8) of the Act, it is evident from the language used therein that the power conferred is revisional power. In legal parlance, distinction between appellate and revisional jurisdiction is well understood. Ordinarily, appellate jurisdiction is wide enough to afford a rehearing of the whole case for enabling the appellate forum to arrive at fresh conclusions untrammelled by the*



conclusions reached in the order challenged before it. Of course, the statute which provides appeal provision can circumscribe or limit the width of such appellate powers. Revisional power, on the contrary, is ordinarily a power of supervision keeping subordinate tribunals within the bounds of law. Expansion or constriction of such revisional power would depend upon how the statute has couched such power therein. In some legislations, revisional jurisdiction is meant for satisfying itself as to the regularity, legality or propriety of proceedings or decisions of the subordinate court. In Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar [Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259] this Court considered the scope of the words (“the High Court may call for and examine the records ... to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order...”) by which power of revision has been conferred by a particular statute. Dealing with the contention that the above words indicated conferment of a very wide power on the revisional authority, this Court has observed thus in the said decision : (SCC p. 262, para 3)

‘3. ... The dominant idea conveyed by the incorporation of the words ‘to satisfy itself’ under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power of superintendence. Therefore, despite the wide language employed in Section 25, the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority.’

8. Dealing with Section 32, the Delhi and Ajmer Rent (Control) Act, 1952, which is almost identically worded as in the proviso to Section 25-B(8) of the Act, a three-Judge Bench of this Court has stated thus in Hari Shankar v. Rao Girdhari Lal Chowdhury [Hari Shankar v. Rao Girdhari Lal Chowdhury, 1962 Supp (1) SCR 933 : AIR 1963 SC 698] : (AIR p. 701, para 8)

‘8. ... The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section — in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit, — is controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is “according to law”. It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal.’



9. In *Malini Ayyappa Naicker v. Seth Manghraj Udhavadas* [*Malini Ayyappa Naicker v. Seth Manghraj Udhavadas*, (1969) 1 SCC 688] another three-Judge Bench of this Court was considering a similarly worded proviso in Section 75(1) of the Provincial Insolvency Act, 1920. Though, the learned Judges did not give an exhaustive definition of the expression “according to law”, a catalogue of instance in which the High Court may interfere under the said proviso was given in the decision as the following [*Ed. : The passage quoted is an extract from Beaumont, C.J.'s judgment in Bell & Co. Ltd. v. Waman Hemraj*, 1937 SCC OnLine Bom 99, para 4 : (1938) 40 Bom LR 125 which was approved by the Supreme Court in the case cited.] : (SCC p. 691, para 7)

‘7. ... “4. ... are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere.” ’

10. The Bench has, however, cautioned that the High Court should not interfere merely because it considered that “possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at”.

11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable. A reading of the impugned order shows that the High Court has overstepped the limit of its power as a revisional court. The order impugned on that score is hence vitiated by jurisdictional deficiency.

12. Clause (e) of the proviso to Section 14(1) of the Act affords one of the grounds to the landlord to seek recovery of possession of the building leased. The said clause reads thus:

‘14. (1)(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;



Explanation.—For the purposes of this clause, “premises let for residential purposes” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;’

13. If the landlord has another residential accommodation which is reasonably suitable, he is not permitted to avail himself of the benefit afforded in the ground set out in the clause. The learned Single Judge of the High Court has noted that the landlord in this case has ‘admitted in her deposition that the house in Calcutta was a 3-bedroom house with drawing/dining room and one of the bedrooms was used by her, another by her son with his wife and another bedroom was kept for her daughter who used to come and stay’. This was one of the reasons which persuaded the learned Single Judge to interfere with the order of eviction. To deprive a landlord of the benefit of the ground mentioned in Section 14(1)(e) on account of availability of alternative residential accommodation, it is not enough that such alternative accommodation is in a far different State. Such accommodation must be available in the same city or town, or at least within reasonable proximity thereof if it is outside the limits of the city. The said limb of clause (e) cannot be interpreted as to mean that if the landlord has another house anywhere in the world, he cannot seek recovery of possession of his building under clause (e). The High Court therefore went wrong in observing that since the landlord has possession of another flat at Calcutta she is disentitled to seek recovery of possession of the tenanted premises situated at Delhi.

14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”



60. In the circumstances, taking note of the aforesaid observations of the Supreme Court, there is no warrant to interfere with the impugned eviction order dated 22.10.2020.

61. It is, however, clarified that the impugned eviction order will not come in the way of Union of India/Custodian seeking to take appropriate recourse against the respondent (landlord) as may be permissible under law or as may be warranted depending upon the outcome of the RFA stated to have been filed against the aforesaid judgment/decreed dated 28.03.2018. The impugned eviction order shall not be an impediment to the exercise of any right/s by the Union of India/ Custodian. It is further 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.

62. With the aforesaid observations, the present revision petition is dismissed.

63. All pending applications stand disposed of.

SEPTEMBER 14, 2023
r/hg

SACHIN DATTA, J.