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

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Reserved on: 16th May, 2023
Date of Decision: 10th August, 2023

+ **RC.REV. 71/2022 & CM APPL. 21691/2023**

ARUN SOOD

..... Petitioner

Through: Mr. Atul Gupta, Advocate

versus

HARDIT KAUR & ORS.

..... Respondent

Through: Mr. Akshay Makhija, Sr. Advocate
with Mr. Krish Kalra, Advocate for
R- 1, 2, 5 & 6

CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:**

1. This revision petition has been filed by the Petitioner, tenant assailing the order dated 23.10.2021 ('impugned order') passed by Additional Rent Controller, Tis Hazari Court, Central District, Delhi ('Trial Court') whereby the application(s) seeking leave to defend were dismissed and an eviction order was passed under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') in favour of the Respondent Nos. 1 and 2, landlords with respect to the premises i.e., ground floor built up property comprising of rooms, halls, verandah, tin sheds, open spaces, in a plot admeasuring 584 Sq. Yds.



bearing Municipal No. 777 in Ward No. 1, at Nicholson Road, Kashmiri Gate, Delhi as shown in red colour in the site plan annexed with the petition ('tenanted premises' or 'subject property').

2. As per the averments made in the eviction petition, the tenanted premises were let out to a partnership firm M/s Scientific Equipments Works i.e., Respondent No. 4, which had two partners namely Sh. Pramanand Sood i.e., Respondent No. 3 and Sh. C.P. Sood, the deceased father of the Petitioner herein. The said Respondent No. 3 and Respondent No. 4 have been arrayed as *proforma Respondents*, as stated in the revision petition.

2.1. The said Respondent Nos. 3 and 4 have not filed a separate revision petition assailing the eviction order dated 23.10.2021.

3. The Trial Court *vide* eviction order dated 23.10.2021 had granted a statutory period of six (6) months under Section 14(7) of the DRC Act to the tenants, which expired on 23.04.2022.

4. This revision petition was filed on 12.04.2022 by the Petitioner herein stating that he has learnt that the Respondent Nos. 1 and 2, landlords, have sold the tenanted premises on 31.03.2022 in favour of third parties i.e., Mrs. Shalini Arora and Mrs. Suman Arora, who have since been imp leaded as Respondent Nos. 5 and 6 respectively, in the present petition.

4.1. It is stated in this Petition that Respondent Nos. 1 and 2 have sought to forcibly dispossess the Petitioner from the tenanted premises on 04.04.2022 by breaking open the locks of the tenanted premises and in this regard Petitioner has also placed reliance on a police complaint dated 04.04.2022 filed with PS Kashmiri Gate, Delhi.

4.2. It is categorically asserted in the list of dates against the entry 05.04.2022 (*sic*) that the Petitioner is still (as on date of the filing of this



revision petition) in possession of the tenanted premises and the same is under his locks & keys. This assertion of actual physical possession was reiterated before this Court during proceedings dated 26.04.2022.

Arguments of the Respondent Nos. 1, 2, 5 and 6; Landlords, Owners

5. Mr. Akshay Makhija, Sr. Advocate addressed opening arguments on behalf of Respondent Nos. 1, 2, 5 and 6 and Mr. Krish Kalra, Advocate addressed arguments in rejoinder on behalf of the said Respondents to the following effect: -

5.1. He states that the Petitioner i.e., Mr. Arun Sood has never been in physical possession of the tenanted premises. He states that the physical possession of the tenanted premises was held by Respondent Nos. 3 and 4 to the exclusion of Petitioner. He relies upon the pleadings, orders and judgement of the Civil Judge in the suit for permanent injunction filed by Respondent Nos. 3 and 4 against Respondent Nos. 1 and 2 herein, which records the exclusive possession of Respondent Nos. 3 and 4.

5.2. He states that the physical possession of the tenanted premises has been handed over by son of Respondent Nos. 3 i.e., Amitabh Sood to Respondent Nos. 5 and 6 after passing of the eviction order on 12.03.2022. He states that Respondent Nos. 5 and 6 are in exclusive physical possession of the tenanted premises.

5.3. He states that on the averments made in the revision petition, no challenge is maintainable against the impugned eviction order and the remedy of the Petitioner herein lies in initiating appropriate proceedings before the Rent Controller under Section 19 of the DRC Act.

5.4. He states that the evidence on record sufficiently evidences that the tenanted premises are dilapidated, partially collapsed and in a dangerous



condition making it incapable of use or occupation. He states that the assertion of the Petitioner that he is in physical possession of the tenanted premises is false. He states that it is in the interest of public that the Respondents are permitted to demolish the existing dilapidated structure, level the land and secure the subject property by constructing a boundary wall.

5.5. He relies upon the reports issued by statutory bodies to substantiate the said pleas. In this regard, the relevant extract of the Respondents' supplementary written submission dated 23.03.2023, concerning the status of physical possession of the tenanted premises, reads as under:-

“Joint and exclusive possession of the Respondents no. 5 & 6 in the tenanted premises is established from (i) Status Report filed on behalf of MCD in terms of order dated 29.07.2022, (ii) Architect Survey Report dated 01.06.2022 & 12.08.2022, (iii) True copy of reply bearing no. 18828/ID-1807/2022/RTI Cell, North District, Delhi dated 17.10.2022 issued by the Office of the Public Information Officer, North District, Civil Lines, Delhi along with True Copy of Report dated 14.10.2022 by SI Vijay Maan PS: Kashmere Gate, and (iv) True Copy of Letter dated 21.10.2022 issued by GST Division along with GST Registration Certificate and Import/Export Certificate.”

(Emphasis supplied)

Arguments of the Petitioner, Tenant

6. In response, Mr. Tanmay Mehta, learned counsel for the Petitioner states as under: -

6.1. He states that the eviction petition was filed by Respondent Nos. 1 and 2 under Section 14(1)(e) of DRC Act for the purported *bona fide* need of their grandson/son respectively. He states that in the application seeking leave to defend, Petitioner had disputed the said *bona fide* need and expressly stated that Respondent Nos. 1 and 2 intend to sell the property after getting



it vacated.

6.2. He states that a perusal of the sale deed dated 31.03.2022 shows that Respondent Nos. 1 and 2 had entered into an agreement for sale of the tenanted premises as early as on 07.10.2021, however, the said fact was not disclosed to the Trial Court, which misled into passing the impugned eviction order. He states that Respondent Nos. 1 and 2 have thus obtained the impugned eviction order by withholding material facts.

6.3. He states that Respondent Nos. 1 and 2 in the eviction petition have duly admitted that the Petitioner herein is a tenant in the tenanted premises and therefore, no reliance can be placed on the pleadings and the judgement of the Civil Judge in the suit for permanent injunction filed by Respondent Nos. 3 and 4 with respect to the status of physical possession.

6.4. He states admittedly Petitioner herein has not executed any document of handing over/surrendering the possession of the tenanted premises in favour of the Respondent Nos. 1-2 or 5-6. He states that Respondent Nos. 5 and 6 i.e., the subsequent purchasers are disentitled from taking possession of the tenanted premises for a period of five (5) years as per Section 14(6) of the DRC Act.

6.5. He states that though the subject property is in a dilapidated condition, it can be repaired and made habitable; and the Petitioner herein is willing to restore the property by repairing it. He states in any event, the eviction petition was not filed under Section 14(1)(f) or Section 14(1)(g) of the DRC Act and therefore, the facts that the property is currently in a dilapidated condition and incapable of habitation, is of no effect.

6.6. He states that Section 19 of the DRC Act is not attracted since the possession of the premises continues with the Petitioner and in this regard,



he relies upon the judgement passed by the Coordinate Bench of this Court titled as ***Kuldeep Singh v. Sanjay Aggarwal; 2018 SCC Online Del 8562.*** He relies upon the continuing existence of the electric meter, standing in the name of Respondent No. 4 at the tenanted premises and the payment of the monthly charge of Rs. 320/- per month by the said Respondent No. 3, as a proof of the continuing physical possession of the Petitioner.

6.7. He states that a civil suit no. 1776/2022 was filed in the year 2022 by Respondent Nos. 5 and 6 against Municipal Corporation of Delhi ('MCD') seeking permission to reconstruct the subject property. He states that the said civil suit was unconditionally withdrawn by the said Respondents and therefore, they are estopped from raising the said pleas.

Arguments of Respondent 3 and 4

7. No oral submissions were addressed on behalf of Respondent Nos. 3 and 4, however, written submissions have been filed by Respondent Nos. 3 and 4 on 20.03.2023, which have been verbatim copied by the Petitioner in his written submissions filed on 21.03.2023. The material stand taken by Respondent Nos. 3 and 4 in the written submissions is as follows: -

7.1. Respondent No. 3 admits the joint possession of Petitioner in the tenanted premises.

7.2. Respondent No. 3 denies handing over/surrendering the possession to Respondent Nos. 5 and 6. It is stated that Respondent Nos. 3 and 4 are regularly paying the bill for the electricity meter installed in the tenanted premises, standing in the name of Respondent No. 4, till date.

Findings and analysis

8. This Court has perused the paper-book and considered the submissions of learned counsel for the parties.



9. The sum and substance of the challenge raised in this revision petition to the assail the impugned eviction order is based upon the singular fact of the subsequent sale of the tenanted premises by Respondent Nos. 1 and 2 on 31.03.2022 in favour of Respondent Nos. 5 and 6, which has come to the knowledge of the Petitioner in April, 2022 when he filed a police complaint alleging dispossession from the tenanted premises on 04.04.2022.

9.1. It is averred in this revision petition that the intent to sell the tenanted premises was withheld from the Trial Court during the pendency of the eviction petition and therefore, the eviction order has been obtained by suppression of material facts. It is stated that the Respondent Nos. 1 and 2 agreed to sell the tenanted premises as early as 07.10.2021, when part sale consideration was received by them.

9.2. There is no challenge raised to the findings in the impugned eviction order on the ground that any 'error' has been committed by the Trial Court, which is apparent on the face of the record or there has been any 'error' in the decision-making process or there has been an 'error' in the procedural compliance by the said Court. There is no averment in the revision petition that the eviction order of the Trial Court does not confirm to law or the finding of the fact is given on wrong premise of law.

9.3. In fact, the grounds state that Respondent Nos. 1 and 2 played a fraud on the Trial Court by withholding the agreement to sell the tenanted premises to Respondent Nos. 5 and 6.

9.4. In the opinion of this Court, the grounds on which this revision petition has been filed are not maintainable for assailing the impugned eviction order; as the said grounds do not fall within the scope of the proviso to Section 25 (B)(8) of the DRC Act.



The grounds, which are raised in this revision petition are statutorily recognised as grounds for maintaining a substantive petition under Section 19 of the DRC Act, which provision reads as under: -

“ 19. Recovery of possession for occupation and re-entry - “(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-section (1) of section 14 or under sections 14A, 14B, 14C, 14D and 21, the landlord shall not, except with the permission of the Controller obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(Emphasis Supplied)

9.5. The embargo on the sale of the tenanted premises recovered under Section 14(1)(e) of the DRC Act is for a period of three (3) years, except in circumstances in which the Rent Controller holds the said sale to be *bona fide*. The statute grants discretion to the Rent Controller to either put the tenant in possession of the tenanted premises or pay him compensation as determined by the Rent Controller.

9.6. The Petitioner in effect is seeking the relief of being put back in



possession of the tenanted premises by this revision petition, which is the relief he would be entitled to in an application filed under Section 19 of the DRC Act.

Physical possession of the tenanted premises is presently with Respondent Nos. 5 and 6

10. In the facts and circumstances of this case, as is evident from the record, the Petitioner is presently not in physical possession of the tenanted premises and he has, in fact, never been in physical possession of the tenanted premises. The facts which unequivocally evidence the said conclusion are as follows:-

10.1. The report dated 14.10.2022 filed by the SHO, PS Kashmiri Gate after undertaking an inquiry on the police complaint dated 04.04.2022 filed by the Petitioner categorically concludes that the said complainants could not produce any documents evidencing their possession and the allegation of illegal entry or theft as on 04.04.2022 was found to be unsubstantiated. The report, which was based on the inquiry conducted from the neighbours reads as under: -

“Complainant alleged that he in the possession and occupation of his tenanted premises bearing no: 777 Nicholson road K.gate Delhi. On 04/04/2022 he along with his person visits the said premises, the alleged person namely Suman arora, Shalani arora, Chandan Arora and Rajesh Arora came there and started arguing with him and they also threatened him with their consequences alleged persons claimed that they were the owner of the set property but they refused to show any document. He further alleged that one Nasir from the alleged side threatened his counsel at Tis Hazar Court. Complainant further requested to take action against the alleged person for illegal entry, theft and threatening.

Local enquiry into the matter has also been conducted and during enquiry the property in question i.e. Property No. 777, Nicholson Road, Kashmere Gate, Delhi was visited by the undersigned. Statements of the two shopkeepers namely Shivender Gupta S/o Shri Ram Tirath Gupta R/o F359/ 1 ,West



Karawal Nagar, Delhi and Rajesh S/o Shiv Kumar R/o 70/60 Majnu Ka Tilla Delhi were recorded. Shivendcr Gupta stated that he is running a shop of spare parts at 1/778 3rd Floor Nicholson Road since long time. The property in question is lying vacant for many months and a lady namely Shalini Arora use to visit this property for cleaning purpose. She has also deputed some security guards for the security of the said premises and she used to open locks and after getting the cleaning/inspection she put her locks on the said property. He never saw any other person visiting this property. Rajesh also disclosed the same version. One of the guards deployed at the said property namely Ravi Kumar S/o Ram Babu R/o H.No. 6, Chawla Farm Sonia Vihar Delhi was also enquired who stated that he along with other guards were deployed by Shalini Arora and she used to visit this property oftenly.

During enquiry alleged person Rajesh Arora was enquired who gave his written version that his wife Mrs. Suman Arora R/o H. No. 11 Model Town-II has purchased the said property jointly with Mrs. Shalini Arora from Dharamvir Singh and Hardit Kaur and they are in exclusive possession of this property and Arun Sood is threatening them to vacate the said premises. Arun sood has also filed a petition in Delhi High Court for eviction and next date of hearing is fixed on 29.10.2022. Statement of the other alleged person Chandan Arora has also been recorded and he stated that his wife Shalini Arora and uncle's Wife Suman Arora has jointly purchased the said property from Dharamvir Singh and Hardit Kaur.

Conclusion:- *During the course of enquiry, it was revealed that property is lying vacate and is being visited by alleged Shalini Arora and her partners/family for the purpose of cleaning/inspection randomly and she also deployed her security guards for security purpose. Complainant did not provide any documents regarding his ownership/possession or tenancy. As per enquiry conducted and statement recorded, the allegations regarding illegally entry, theft and threatening could not be substantiated in the area of PS Kashmere Gate. Incident regarding threatening at Tis Hazari Court does not falls under the jurisdiction of Police Station Kashmere Gate. He has been advised to approach the concerned police station for such an issue. The matter is regarding tenancy/ eviction between both the parties and the same is pending in Delhi High Court vide RC. Rev. No. 71/2022 and next date of hearing is 19.10.2022. No police action is warranted at this stage. Hence, complaint may be filed please."*

(Emphasis supplied)

10.2. The status report filed on behalf of MCD in terms of order dated 29.07.2022 passed in Suit No. 1776/2022, titled as ***Shalini Arora & Anr. v.***



MCD, records that an inspection of the tenanted premises was facilitated by Respondent Nos. 5 and 6. The report of MCD reads as under:-

“STATUS REPORT REGARDING PROPERTY BEARING NO. 777 IN WARD NO. 1 (AS KNOWN AS 1/777) NICHOLSON ROAD KASHMERE GATE, DELHI-110006 ON BEHALF OF DEFENDANT/MCD

RESPECTFULLY SHOWETH:

It is submitted that in compliance of order dated 29.07.2022, the property bearing no. 777 in ward no. 1 (As known as 1/777) Nicholson Road Kashmere Gate, Delhi-06 was inspected on 08.08.2022 in the presence of plaintiffs and their Advocate-Mohd. Raziq. The plaintiffs have provided coloured photographs and site plan of the suit property in question as directed.

During inspection on 08.08.2022, it was noticed that the property comprises of ground floor only which is lying abandoned and it seems that the property has not been repaired since long time. Upon inspection, it was noticed that halls/ rooms inside the property needs immediate repairs. Whereas the tin sheds at front portion and rear portion are in dangerous condition of the suit property and need to be removed/replaced. The entire boundary wall appears to be dangerous and need immediate repair to strengthen the same as per UBBL-2016. During inspection photographs of the property were taken from different angles which are annexed herewith. Report is submitted please.

(Sanjay Kumar)
Assistant Engineer (Bldg.)
City SP Zone, MCD

(K.K. Kaushik)
Junior Engineer (Bldg.)
City SP Zone, MCD

10.3. The police report records that the Respondent Nos. 5 and 6 have also deployed security guards at the tenanted premises, who are regulating the control over the tenanted premises.

10.4. The letter dated 21.10.2022 issued by GST Division, confirming that they have visited the tenanted premises for verification of existence of exporter firm M/s CSKN Trading Co. and found that the said firm exists at the given address. It is a matter of record that Respondent No. 5 is the proprietor of M/s CSKN Trading Co. The relevant text of the letter dated



21.10.2022 reads as under:-

“Please refer to your office letter C.No. VIII(SB)10/Cus. Prev/Group-III/1722/2022/18087 dated 04.10.2022 on the subject cited above.

2. *In this regard, it is to inform that no refund application has been filed by the Exporter M/s CSKN TRADING CO. regarding above said Shipping bills, further it is also submitted that the Physical verification of business premises of the Exporter M/s CSKN TRADING CO. (IE CODE AFRPA0422N), Plot no. 777 Kashmere Gate, 777, Nicholson Road, New Delhi, Central Delhi, Delhi, 110006 (GSTIN 07AFRPA0422NIZH) has been conducted and the firm is found existent at the given address. Copy of Physical Verification Report (Form REG-30) is enclosed.*

This is for information and necessary action at your end.”

(Emphasis supplied)

10.5. The Respondent Nos. 5 and 6 have taken steps to have an electric meter installed in the premises and are bearing the cost of the electricity drawn from said electric meter. The monthly invoice placed on record for the said meter shows a high monthly consumption of electricity.

10.6. Each of the aforesaid facts and documents show that the physical possession of the tenanted premises is presently with Respondent Nos. 5 and 6 and the tenanted premises are under their control and lock & key.

Respondent No. 3's categorical denial of Petitioner's physical possession of the tenanted premises

11. It is a matter of judicial record that Respondent No. 3 has categorically denied that Petitioner has ever been in physical possession of the tenanted premises. On 21.04.2008, Respondent No. 3 had filed a suit for perpetual injunction (Suit No. 184/2007) against Respondent Nos. 1 and 2 herein. In the said suit, Respondent No. 3 had categorically asserted that after the death of late Sh. C.P. Sood i.e., the father of the Petitioner herein, Respondent No. 3 has been in exclusive possession of the tenanted premises.



The relevant extract of the plaint reads as under: -

“1. That M/s Scientific Equipment Works, a partnership firm, constituted of the plaintiff and his elder brother Shri C.P. Sood had occupied the ground floor of property No. 1/777, Nicholson Road, Kashmere Gate, Delhi as along red in the annexed plan as a tenant of Shri Anwar Khan S/o Shri Mehboob Khan in May 1955. Later on, 73 //True Typed Copy// the property was purchased by the defendants and the said firm became the tenant under the defendants.

2. That the plaintiff and his brother were joint tenants in the aforesaid property as partners of M/s Scientific Equipment Works.

3. That Shri C.P. Sood died on 22.01.1994 and the plaintiff came into exclusive possession of the aforesaid premises and became the tenant under the defendants.”

(Emphasis supplied)

11.1. In the said civil suit, the Petitioner herein had filed an application seeking impleadment; however, the said application was opposed vehemently by Respondent No. 3 and he categorically stated that the Petitioner is not in possession of any part of the premises. The extract of the reply of Respondent No. 3 reads as under: -

*“3. it is submitted that the Plaintiff is in exclusive possession of the premises in dispute and **the applicant is not in possession of any part of the premises in dispute.**”*

(Emphasis supplied)

11.2. In the said civil suit, a final judgment dated 05.10.2013 was passed relying upon the assertions made by Respondent No. 3 in the plaint and the relief for perpetual injunction was granted in favour of Respondent No. 3 herein and against Respondent Nos. 1 and 2 restraining the landlords from dispossessing Respondent No. 3 from the tenanted premises. The relevant portion of the judgement reads as under: -

“2. Brief stated relevant facts of the case as per the plaintiff are that M/s. Scientific Equipment Works, a partnership firm, constituted of the Plaintiff



and his elder brother shri CP. Sood had occupied the ground floor of property No. 1777, Nicholson Road, Kashmere Gate, Delhi as shown ___to the annexed plan as a tenant of Shri Anwar Khan S/o Shri Mehboob Khan in May 1955. Later on, the property was purchased by the defendants and the said firm became the tenant under the defendants. **The plaintiff and his brother were joint tenants in the aforesaid property as partners of M/s Scientific Equipment Works. Shri C.P. Sood died on 22.1.1994 and the plaintiff came into exclusive possession of the aforesaid premises and become the tenant under the defendants.** It is further submitted that the last agreed rate of rent was Rs. 305/ per month. The Plaintiff had been tendering the rent to the defendants by money orders but the defendants refused to accept the money orders with the result that the defendants have not accepted the rent from the plaintiff for the last more than twelve years. The defendant No. 2 alongwith 3-4 persons come to the aforesaid premises on 26.3.2007 and called upon the plaintiff to hand over actual and physical possession of the property to the defendants as the defendants intend to sell the said property with vacant possession. The plaintiff refused to vacate the premises as he was the tenant in the said premises and the defendants had no right to call upon him to vacate the premises. At that juncture the defendant no. 2 left the spot alongwith his associates after extending a threat that they will take possession of the premises at any time in odd hours after breaking open the looks of the plaintiff and after removing the entire stocks of the plaintiff. It is further submitted that the defendants have no right to take forcible and illegal possession of the premises from the plaintiff during the continuance of the tenancy of the plaintiff. Hence the present suit is filed by the plaintiff.”

XXX

XXX

XXX

“9. In view of the foregoing discussion, the plaintiff is entitled to the relief of perpetual injunction prayed for accordingly a decree of perpetual injunction is passed in favour of the plaintiff and against the defendants and the defendants are restrained from forcibly and illegally dispossessing the plaintiff from the property bearing no. 1/777, Nicholson Road, Kashmere gate, Delhi as shown in red colour in the site plan. Costs of the suit is also awarded to the plaintiff. Decree sheet be prepared accordingly. File be consigned to the record room after due compliance.”

(Emphasis supplied)

11.3. The application filed by the Petitioner seeking his impleadment in the aforesaid suit for perpetual injunction filed by Respondent No. 3 herein, was taken up for hearing on 03.07.2007, 28.07.2007, 08.10.2009 and 29.04.2013. The Petitioner failed to pursue his application despite opportunities and



therefore, the said application was dismissed in default on 29.04.2013. The order dated 28.07.2007, which was passed in the presence of the counsel for the Petitioner is relevant and reads as under:-

“Written Statement filed along with reply to the interim application. Copy supplied. Ld. Counsel for the defendant submit that as per the knowledge of defendant a firm is in possession of the suit property as tenant on the other hand, Ld. Counsel for plaintiff submits that the plaintiff alone is in the exclusive possession of the suit property as tenant. An application under order 1 rule 10 CPC has been moved by one Sh. Arun Sood who is the son of the brother of the plaintiff and claim to be a partner of the said firm which is stated to have been dissolved. In the fact and circumstance one thing which emerges out is clear that the plaintiff is in possession of the suit property. In the circumstance interim application stands disposed of with a direction to the defendants not to dispossess the plaintiff forcible and illegally from the ground floor of property bearing No. 1/777, Nicholson Road, Kashmere Gate, Delhi till further orders.”

The above direction has been made without deciding the application under order 1 rule 10 CPC. By way of application under order 1 rule 10 CPC the applicant claims to be in co-possession of the suit property.

Ld. Counsel for the plaintiff prays for the appointments of Local Commissioner to ascertain the factual position. At this stage I deem it neither necessary nor proper to issue such direction. The application is directed to supply copy of the application under order 1 rule 10 CPC to the Ld. Counsel for defendants today itself.

To come up for arguments on application under order 1 rule 10 CPC on 16/10/07.”

(Emphasis supplied)

11.4. The subsequent order dated 29.04.2013, dismissing the impleadment application, reads as under:-

“It is 4.30 PM now, none has appeared on behalf of the application on the last date of hearing last opportunity was given to the applicant for arguing on the application under order 1 rule 10 CPC today. Considering that despite repeated called none has appeared on behalf of the applicant, application under order 1 rule 10 CPC is dismissed for none prosecution as well as for in default”

Put up on 22.05.2013 for arguments on application under order 39



rule 1&2 CPC as well as for framing of issues.”

(Emphasis supplied)

11.5. The aforesaid judicial record of Suit no. 184/2007 shows that Respondent No. 3 had categorically asserted that he is in physical possession of the tenanted premises to the exclusion of the Petitioner herein. In the eviction proceedings, the Respondent No. 3 in his affidavit filed alongwith application seeking leave to defend dated 23.12.2019 has categorically placed reliance upon the record of the aforesaid suit for perpetual injunction at paragraph 7 and affirmed the same.

11.6. The plea now taken by Respondent No. 3 that the Petitioner is in joint possession of the tenanted premises along with Respondent No. 3 is therefore, contrary to the judicial record and the stand taken in the leave to defend filed in the eviction proceedings. The said submission of Respondent No. 3 is false and without any merit. In this regard, it would be instructive to refer to the judgment of the Supreme Court in ***Amar Singh v. Union of India, (2011) 7 SCC 69***. The relevant extract of the judgment read as under: -

“50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.”

(Emphasis Supplied)

A similar view was taken in ***Joint Action Committee of Air Line Pilots’ Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435***, which reads as under: -

“12. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity..... Taking inconsistent pleas by a



party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

(Emphasis Supplied)

On the issue of impermissibility of a party taking contradictory stands before two different Courts, the Supreme Court recently in the case of ***Premlata Alias Sunita v. Naseeb Bee and Others, (2022) 6 SCC 585***, observed as under: -

“6. The respondents-original defendants cannot be permitted to take two contradictory stands before two different authorities/courts. They cannot be permitted to approbate and reprobate once the objection raised on behalf of the original defendants that the Revenue Authority would have no jurisdiction came to be accepted by the Revenue Authority/Tahsildar and the proceedings under Section 250 of the MPLRC came to be dismissed and thereafter when the plaintiff instituted a suit before the civil court it was not open for the respondents-original defendants thereafter to take an objection that the suit before the civil court would also be barred in view of Section 257 of the MPLRC.

(Emphasis Supplied)

Physical possession of Respondent No. 3 in the tenanted premises

12. Respondent Nos. 5 and 6 have stated that the physical possession of the tenanted premise was handed over to them on 12.03.2022 by Mr. Amitabh Sood, the son of Respondent No. 3 for and on behalf of Respondent No. 3, who is himself 94 years old.

12.1. In the affidavit filed with application for leave to defend, Respondent No. 3 had categorically asserted that he is using the tenanted premises as a godown. The relevant portion of the affidavit reads as under: -

“2. That the petitioners have falsely alleged in the petition that the tenanted premises is lying locked and unused for the last more than fifteen years. **It is submitted that the tenanted premises are being used by the answering respondent as a godown for the reason that it cannot be used for any commercial activity as it is lying in a dilapidated condition since prior to**



1979. The premises in dispute cannot be utilized for commercial purposes as it is lying in a dilapidated condition. Neither the earlier landlord or the present petitioners ever allowed the answering respondents to carry on the repairs to the tenanted premises. A portion of the tenanted premises is lying in a collapsed condition.”

(Emphasis supplied)

13. Respondent No. 3 has not filed an independent revision petition assailing the eviction order. Respondent No. 3 entered appearance in the present proceedings on 28.07.2022, when he filed a short affidavit supporting the claims of the Petitioner. However, in this affidavit, the Respondent No. 3 has raised no plea that his material or goods are presently lying stored at the godown in the tenanted premises, as a proof of his physical possession.

13.1. Respondent No. 3 has not disputed the contents of the report of the SHO, PS Kashmiri Gate nor the status report filed by the MCD, which shows Respondent Nos. 5 and 6 in control and full access of the tenanted premises.

13.2. In these facts, it is evident that Respondent No. 3 vacated the godown, removed his articles, if any, after passing of the impugned eviction order. This lends force to the assertion of Respondent Nos. 1, 2, 5 and 6 that Respondent No. 3 handed over the physical possession as contended by Respondent Nos. 1, 2, 5 and 6.

13.3. In the written submissions, Respondent No.3 has only placed reliance on the fact that an electric meter standing in the name of Respondent No. 4 continues to remain installed at the tenanted premises, which generates fixed charge of Rs. 320/- per month and is being paid by Respondent No. 3 to show his physical possession. The meagre amount of Rs. 320/- evidences that no electricity is being drawn from the said electric meter.



13.4. The presence of the said electric meter even after Respondent No. 3 has handed over possession is natural in the course of things, considering the fact that Respondent No. 3 in past was in possession; however, it does not evidence Respondent No. 3's continuing physical possession and use of the tenanted premises. The existence of the electric meter does not prove or indicate actual physical possession of the tenanted premises as on the date of filing of this revision petition.

Petitioner is not in physical possession of the tenanted premises

14. The Petitioner has relied upon the averments made by the landlords in the eviction petition, wherein, Respondent Nos. 1 and 2 have acknowledged the Petitioner as a tenant in common with Respondent No. 3. He states that in view of the said acknowledgement, the Petitioner's possession of the tenanted premises stands admitted. He states that since the Petitioner has not surrendered the possession of the tenanted premises to the Respondent Nos. 1-2 or 5-6, the possession has not been lawfully recovered by the said Respondents.

15. This Court has already extracted above facts which evidence that the Petitioner was never in physical possession of the tenanted premises. This was also the stand of Respondent No. 3 consistently in the judicial record that Petitioner has never been in possession of the tenanted premises.

16. The Petitioner has not placed on record any document which would substantiate his plea that he was/is in physical possession of the tenanted premises. As noted above, he has merely relied upon the electricity bills standing in the name of Respondent No. 4, which bills are paid by Respondent No. 3. The said bills and payment thereof do not prove the physical possession of the Petitioner herein.



17. In the opinion of this Court, the effect of the averments made by the landlords in the eviction petition is that the Petitioner herein was entitled to possession of the tenanted premises being the son of late Sh. C.P. Sood upon his demise. However, the record of civil suit no. 184/2007 records that the Petitioner was never permitted to occupy and obtain the physical possession by Respondent No. 3 i.e., Mr. P. N. Sood.

18. The fact that the Petitioner is not in physical possession of the tenanted premises assumes significance on the issue of maintainability of this revision petition; especially in view of the fact that in contrast Respondent Nos. 5 and 6 are in actual physical possession of the tenanted premises, as on date of filing of this revision petition.

19. The assertion made by the Petitioner in the list of dates (in the present revision petition) and before this Court during the proceeding on 26.04.2022 to the effect that he has the lock-keys to the tenanted premises are false to his knowledge and are not borne out from the record. The said averment of physical possession has been made by the Petitioner to maintain the revision petition; as he as well is aware that this is the essential requirement for maintaining this revision petition.

20. The significance of physical possession is well recognised in Section 25 of the DRC Act. The said provision contemplates that the landlord is entitled to vacant possession of the premises, after the 'interest' of the tenant has been determined. Section 25 of the DRC Act reads as under: -

25. Vacant possession to landlord - *"Notwithstanding anything contained in any other law, where the interest of a tenant in any premises is determined for any reason whatsoever and any order is made by the Controller under this Act for the recovery of possession of such premises the order shall, subject to the provisions of section 18, be binding on all persons who may be in*



occupation of the premises and vacant possession thereof shall be given to the landlord by evicting all such person therefrom:

Provided that nothing in this section shall apply to any persons who has an independent title to such premises."

(Emphasis supplied)

In the facts of the present case, the 'interest', if any, of the Petitioner in the tenanted premises was determined i.e., it came to an end with the passing of the eviction order dated 23.10.2021. The Petitioner was not in physical possession even prior to 23.10.2021. By filing this revision petition the Petitioner is infact seeking a relief, which will have the effect of putting him in physical possession of the tenanted premises for the first time ever. The relief of possession sought by the Petitioner in this revision petition cannot be granted in the facts of this case.

The statute requires handing over of the vacant possession to the landlord i.e., the physical possession after passing of the eviction order. Therefore, the tenant who has physical possession of the tenanted premises has to hand-over the same to the landlord under the statute. This distinction between handover of physical possession and surrender of interest has been succinctly explained by the Division Bench of this Court in ***Vidyawanti v. Taken Dass, 1973 SCC OnLine Del 18***, which reads as under:

"Section 25 is divided into two parts. The substantive part of the section describes the persons on whom the order for the recovery of possession of the premises is binding and who are, therefore liable to be evicted in execution of this order. These are "all persons who may be in occupation of the premises" The word "occupation" is neutral. It only signifies the physical occupation of the premises. It does not indicate or imply any interest in or title to the premises or C the lack of it in the occupant. It seems to be used in contradistinction with the words "where the interest of a tenant in any premises is determined." The interest in the premises



had been of the tenant and that has been determined. The implication is that such an interest is not possessed by the persons in occupation Similarly, the words “vacant possession thereof shall be given to the landlord by evicting all such persons therefrom” also show that the landlord is entitled to possession because of the termination of the interest of the tenant. The occupants were not in legal possession of the premises and they have, therefore, to be evicted, The word “occupation” does not, therefore, apparently amount to legal possession of the premises.

Since the order for possession is binding only on the tenant whose interest has been determined and against whom it has been passed it follows that it is not binding on a person who claims a title to the premises independent of the tenant.”

(Emphasis supplied)

21. A tenant who has handed over physical possession as per Section 25 of the DRC Act cannot maintain a revision petition on account of a subsequent sale by the landlord during the statutory period; but he can maintain a petition under Section 19 of the DRC Act before the Rent Controller for the relief of restitution of physical possession.

22. In the facts of this case, upon passing of the impugned eviction order, the ‘interest’ of the Petitioner in the tenanted premises came to an end. The Petitioner as recorded above was never in physical possession of the tenanted premises. The Respondent Nos. 1-2 and 5-6 obtained the vacant possession of the tenanted premises from Respondent No. 3 as per the mandate of Section 25 of the DRC Act. The Petitioner herein is therefore not entitled to maintain this revision petition and in garb thereof seek physical possession, which he never had.

23. In the judgment of ***Kuldeep Singh v. Sanjay Aggarwal (supra)***, relied upon by the Petitioner, there was no dispute that the tenant remained and continued in physical possession of the tenanted premises even after the



eviction order dated 05.11.2015 was passed therein. However, during the pendency of the revision petition, the landlord had sold the property on 24.05.2016 to a third-party. It was in these circumstances that the Coordinate Bench of this Court in the facts of that case after taking note of Section 19 of the DRC Act held as under:-

1. *This revision petition is filed by the petitioner/tenant under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'DRC Act') seeking to impugn the **eviction order dated 05.11.2015** passed by the court of Rent Controller.*

2. *The landlord/respondent let out the property i.e. a shop part of Khasra No. 642, Village Chandrawali, Shahdara, Delhi to the petitioner/tenant. The respondent filed an eviction petition under section 14(1)(e) of the DRC Act. It was stated in the eviction petition that the premises was required by the respondent bona fide for his wife who is completely dependent on him for the purpose of her livelihood. It was pleaded that the respondent/his wife had no other reasonable or suitable commercial premises available except the said tenanted shop for carrying out her work.*

XXX

XXX

XXX

12. *Hence, where a landlord acquires any premises by transfer, he cannot move an eviction petition under Section 14(1)(e) of the DRC Act unless a period of 5 years have lapsed from the date of acquisition of the property. Admittedly, the respondent herein has already **sold his rights in the property on 24.05.2016** and handed over the rights to a fresh landlord. The new landlord, if he were to file an eviction petition today, the same would not be maintainable under Section 14(6) of the DRC Act. New landlord cannot be permitted to circumvent provisions of Section 14(6) of the DRC Act and take possession of the suit property contrary to the provisions of the DRC Act.*

13. *There is another factor which persuades me to hold that on account of the subsequent facts which have developed after passing of the eviction order, the plea of the petitioner has to be accepted. I may refer Section 19 of the DRC Act which reads as follows:—*

“19. Recovery of possession for occupation and re-entry.- (1)

Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 148 and 21, the landlord shall not, except with the permission of the Controller, obtained in the prescribed manner, re-let the whole or any



part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under subsection (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

XXX

XXX

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15. Hence, where a landlord seeks eviction under Section 14(1)(e) of the DRC Act and thereafter parts with premises within three years from the date of obtaining the possession without permission of the Rent Controller, the Controller may, on an application made on behalf of the evicted tenant, direct the landlord to put the tenant in possession. In the present case the landlord/respondent has already parted with possession of the premises in question without permission of the Rent Controller, even prior to having executed the eviction order. It is manifest that in the eventuality that the landlord was to get possession of the premises, the petitioners/tenant would in law be entitled to approach the Rent Controller seeking back to possession of the tenanted premises.

16. Taking into account the subsequent events, it is manifest that the facts which gave rise to passing of an eviction order by the Rent Controller, no longer exist. Further there is a bar on the new landlord seeking eviction of the premises and DRC Act.

(Emphasis supplied)

24. However, in the facts of this case, the Petitioner is presently not in physical possession of the tenanted premises. The Petitioner was not in physical possession on the date of filing the revision petition and his remedy, if any, is therefore, to approach the Rent Controller under Section 19 of the



DRC Act for determination of his rights in accordance with law. Infact, as per the record the Petitioner never had physical possession of the tenanted premises.

25. The Trial Court in the eviction order has specifically dealt with the Petitioner's contention with respect to the consequence of a potential sale of the tenanted premises by the landlords after passing of the eviction order and within the statutory period; and held as under:-

"17. As far as plea of the respondents qua non-starting of the business in the tenanted premises by Sh. Swarndeep and selling the tenanted premises after eviction is concerned, this plea of the respondents is baseless as Section-19 of DRC Act takes care of the tenants if such an act is submitted by the petitioner/landlord. The tenants/respondents can always approach the Rent Controller concerned immediately for redressal of their grievances and re-entry in the tenanted premises."

(Emphasis supplied)

26. The effect of the averment of the Petitioner that the Respondent No. 1-2 possibly entered into an agreement to sell during the pendency of the eviction proceedings would also be dealt with by the Rent Controller if an application under Section 19 of the DRC Act is filed by the Petitioner. However, the present revision petition is not maintainable at the behest of the Petitioner.

Maintaining a Section 19 DRC Act petition

27. The fact that the Petitioner is not in physical possession of the tenanted premises is significant and has a material bearing on the relief sought in this revision petition. In the eviction petition filed by Respondent Nos. 1 and 2, the averments made by the landlord at paragraph 9 with respect to the premises lying vacant and unused and the reply of the Petitioner and



Respondent No. 3 thereto is significant. The relevant pleadings read as under: -

Eviction Petition	Reply of Respondent No. 3 in affidavit of leave to defend	Reply of Petitioner in affidavit of leave to defend
In and around 1955 the premises in suit was let out by the previous/ the then owners/ landlords namely Smt. Rajeshwari Anwar wife of Sh. Anwar Khan and St. Anwar Khan son of Sh Mahboob Khan, to M/s. Scientific Equipment's Works, a partnership firm, consisting of two partners Sh. Parma Nand Sood (P.N.Sood) and Sh. C.P.Sood. Later on one of the above named partners Sh. C.P.Sood, died on 22.01.1994 leaving behind Will dated 30.11.1989, whereby, he bequeathing his tenancy rights qua the suit property in favor his son Arun Sood Accordingly both Mr. Parma Nand Sood and Mr. Arun Sood, being partners of Scientific Equipment's Works Bre tenants in common possessing the premises in suit, though, at present, as stated above, the suit premises is lying locked, vacant, unused in dilapidated condition requiring extensive repairs, as matter of fact	That the petitioners have falsely alleged in the petition that the tenanted premises is lying locked and unused for the last more than fifteen years. <u>It is submitted that the tenanted premises are being used by the answering respondent as a godown for the reason that it cannot be used for any commercial activity as it is lying in a dilapidated condition since prior to 1979.</u> The premises in dispute cannot be utilized for commercial purposes as it is lying in a dilapidated condition. Neither the earlier landlord or the present petitioners ever allowed the answering respondents to carry on the repairs to the tenanted premises. <u>A portion of the tenanted premises is lying in a collapsed condition.</u>	No response



lying abandoned.		
<u>The respondents have failed to pay the monthly rent for the last more than 25 years.</u>	No response	That the petitioners have stated wrong that the respondent have not paid and or tendered the rent of the tenanted premises. As a matter of fact it is the petitioner have been refusing to receive the rent. The respondent is ready and willing to pay the legally recoverable rent.

28. The Respondent Nos. 1-2 and 5-6 have also placed on record an Architect's inspection report dated 01.06.2022 and 12.08.2022, which records that the property is dilapidated, damaged and is in collapsing condition. The Architect's have declared the building as dangerous and notified that it may cause danger to human life. The photographs, placed on record, evidence the complete state of disrepair, which is also evident to the naked eye. The Petitioner has not disputed the photographs and the state of the building seen therein.

29. The aforesaid averments in the pleadings and the report of Architect as well as of MCD evidence that the tenanted premises are in complete state of disrepair.

30. The object of the DRC Act as recognised by the Courts is to grant protection to the possession of the tenant, his use of tenanted premises and save him from harassment by the landlord. It is a beneficial legislation for the tenant. The checks and balances envisaged under Section 14 (e) read with Section 25 (B) and Section 19, are intended for a tenant, who is actually occupying the tenanted premises and needs to be protected against the avarices of the landlord. In this regard, it would be appropriate to refer the



judgment of Supreme Court in *Amarjit Singh vs. Smt Khatoon Quamarain*, (1986) 4 SCC 736, wherein the Court highlighting the object of Rent laws, observed as under:

17.Rent restriction laws are both beneficial and restrictive, beneficial for those who want protection from eviction and rack renting but restrictive so far as the landlord's right or claim for eviction is concerned. Rent restriction laws would provide a habitat for the landlord or landlady if need be, but not to seek comforts other than habitat — that right the landlord must seek elsewhere.

20. The Act in question has the authority of law. There is no denial of equality nor any arbitrariness in the second limb of Section 14(1)(e) of the Act, read in the manner contended for by the appellant. Article 21 is not violated so far as the landlord is concerned. The rent restricting Acts are beneficial legislations for the protection of the weaker party in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The Rent Restriction Acts deal with the problem of rack renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bona fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution.

(Emphasis supplied)

Further, recently the Supreme Court in *Abid-Ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30 observed the object of Section 14(1)(e) vis-a-vis Section 25-B which reads as under:

“19. Before a presumption is drawn, the landlord is duty-bound to place prima facie material supported by the adequate averments. It is only thereafter; the presumption gets attracted and the onus shifts on the tenant. The object of Section 14(1)(e) vis-a-vis Section 25-B has to be seen in the light of yet another provision contained under Section 19. Section 19 gives a right to the dispossessed tenant for repossession if there is a non-compliance on



the part of the landlord albeit after eviction, to put the premises to use for the intended purpose. Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. Thus, Section 19 inter alia throws more light on the legislative objective facilitating a speedy possession. The object is also reflected in the proviso to Section 25-B(S), denying a right of appeal.”

(Emphasis supplied)

However, in the facts of the present case, where the tenanted premises has not been occupied by the Petitioner ever; (Petitioner is not in physical possession) and in fact the tenanted premises is admittedly lying unused and is now in the dangerous condition of collapsing for many years, the reliance placed on the provisions of the DRC Act by the Petitioner, in the facts of this case, for seeking re-possession appears to be an abuse of process and the provisions of the DRC Act in the facts of this case.

31. The Petitioner has admittedly never paid any rent for the tenanted premises to Respondent Nos. 1 and 2 and has never actually occupied the said premises. The present petition seeking to invoke this beneficial legislation perfunctorily, in light of the averments made in the eviction petition, is a text book illustration of the tyranny unleashed by litigants like the Petitioner herein.

32. The present revision petition is premised solely on account of the subsequent event of the sale of tenanted premises *qua* the sale deed dated 31.03.2022. It is the statutory mandate that this subsequent event of sale would give rise to a cause of action to the tenant, who is not in physical possession, to file an appropriate application before the Rent Controller under Section 19 of the DRC Act. However, this subsequent event would not entitle the tenant to maintain a revision petition. The Petitioner in this case



was never in physical possession of the tenanted premises and therefore, the Petitioner cannot maintain this revision petition for seeking possession. The maintainability of the petition under section 19 of DRC Act by a tenant who was never in physical possession will be decided by the Rent Controller, if such a petition is filed by the Petitioner herein.

33. In view of the findings of this Court that the Petitioner has never been in physical possession of the tenanted premises, the present revision petition filed as on 12.04.2022 is not maintainable and is hereby dismissed. All interim orders stand vacated.

34. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 10, 2023/ms/sk/rhc