

Delhi High Court Sushil Kanta Chakravarty vs Rajeshwar Kumar on 24 March, 1999 Equivalent citations: AIR 2000 Delhi 413, 79 (1999) DLT 210 Author: V Jain Bench: V Jain JUDGMENT Vijender Jain, J. 1. Interesting question involved in this matter for adjudication is as to the use of word 'owner' in Section 14(1)(e) of the Delhi Rent Control Act (hereafter referred to as 'Act'). Mr. Ahluwalia has contended that Section 54 of the Transfer of Property Act in specific terms provides that a contract for sale does not by itself create any interest in or charge on such property and agreement to sell is merely a document creating a right to obtain another document in the form of sale deed to be registered in accordance with law. 2. Briefly stating the facts of the case are that the property in question, i.e. House No. W-111A, Greater Kailash, Part-I, New Delhi was owned by Shri Sushil Kanta Chakravarty. On 29.6.1977 ground floor of the premises was leased out by said Shri Sunil Kanta Chakravarty to the respondent for residential purposes. On 20.10.1986 said Shri Sunil Kanta Chakravarty agreed to sell aforesaid premises to his brother Shri Sushil Kanta Chakravarty. On 11.2.1987 substantial money was paid to Shri Sunil Kanta Chakravarty and agreement was written along with receipt-cum-handing over possession document. There was also a general power of attorney issued in favour of Shri Sushil Kanta Chakravarty by said Shri Sunil Kanta Chakravarty. On 31.7.1987 respondent was informed about the purchase of the said property by Shri Sushil Kanta Chakravarty. Respondent-tenant started paying the rent to the petitioner Shri Sushil Kanta Chakravarty and on 26.10.1987 respondent implored the petitioner as a party to his appeal before the Rent Control Tribunal for fixation of standard rent. Petition for eviction was filed by the petitioner on 26.8.1993 under Section 14(1)(e) of the Act against the respondent. An application was filed by respondent under Order 7, Rule 11 of the CPC claiming that Shri Sushil Kanta Chakravarty was not the owner or the property in question within the meaning of Section 14(1)(e) of the Act. Learned Additional Rent Controller vide its order dated 14.4.1995 dismissed the eviction petition of the petitioner on the ground that as no sale deed had been executed, therefore, petitioner was not the owner within the meaning of Section 14(1)(e) of the Act. 3. It seems that in Suit No. 1731 /1989 for specific performance, which was filed by the petitioner against his brother, Shri Sunil Kanta Chakravarty, a compromise decree was passed on 24.4.1995 whereas Shri Sunil Kanta Chakravarty confirmed the agreement to sell in favour of Shri Sushil Kanta Chakravarty. On 17.7.1997 order for execution of the sale deed was issued and the same was executed and registered on 8.8.1997. 4. Mr. Ahluwalia, learned Counsel appearing for the respondent, has contended that Section 14(6) of the Act, which provides that where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under Sub-section (1) on the ground specified in Clause (e) of the proviso thereto unless a period of five years have elapsed from the date of such acquisition. The policy underlying the section and the object intended to be achieved by it was to prevent the transfer by landlord as a device to enable the purchaser to evict the tenant from the premises let out to the tenant. In support of his contentions, Mr. Ahluwalia has cited the case of V.N. Sarin v. Major Ajit Kumar Poplai and Anr., II (1966)

DLT 321. In V.N. Sarin 's case (supra) Supreme Court while underlying the policy for the insertion of Section 14(6) of the Act held that it was to prevent the transfer by landlord as a device to enable the purchaser to evict the tenant from the premises. But whether word 'owner' has to be understood in its strictest term was nowhere dealt in the said authority. I am afraid, the authority cited by the learned Counsel will not help the case of the respondent. As a matter of fact, in V.N. Sarin's case (supra) Supreme Court held : ".....We are satisfied that it would be unreasonable to hold that allotment of one parcel of property belonging to an undivided Hindu family to an individual coparcener as a result of partition is an acquisition of the said property by transfer by the said coparcener within the meaning of Section 14(6)." 5. Next argument of the learned Counsel for the respondent is that Section 54 of the Transfer of Property Act provides that till the proper sale deed duly registered in accordance with law is executed, there is no transfer of the property in the hands of the petitioner. What has been contended by the learned Counsel for the respondent before me is that even if a decree for specific performance is obtained and no sale deed is actually executed, it cannot be said that any interest in the property has passed. In support of his contentions, he has relied upon the judgment of this Court in Madhu Mangotra v. Veena Paintal, , BabuLal v. Hazari Lal Kishori Lal and Ors., and Delhi Automobiles Ltd. v. Economy Sales, 1994 (2) RCR 584. There cannot be two opinions with regard to the aforesaid contention of the learned Counsel for the respondent that a decree for specific performance in the absence of a sale deed would not amount to transfer in terms of Section 54 of the Transfer of Property Act. But would that mean that if it is not a transfer under Transfer of Property Act, word 'owner' has to be construed in relation to the definition under Transfer of Property Act? Delhi Rent Control Act is a special Act whereas Transfer of Property Act is a general Act. In my opinion, a restricted meaning cannot be given to the word 'owner' for the purpose of Act, more so, in view of the fact that nowhere in the Act word 'owner' has been defined. 6. Another contention of the learned Counsel for the respondent was that the revision petition is not maintainable in view of the fact that application under Order 7, Rule 11 of the Code of Civil Procedure for rejection of the plaint, which was allowed by the Additional Rent Controller, petitioner could have challenged that order by filing an appeal. 7 I have given my careful consideration to the arguments advanced by the learned Counsel appearing for the parties. The question for determination is that for the purposes of Rent Control Act wherein person in whose favour an agreement to sell-cum-power of attorney has been executed and has assumed possession after making substantial payment in terms of the agreement of the sale price, would be owner within the meaning of Section 14(1)(e) of the Act. In T.C. Rekhi v. Smt. Usha Gujral, 1971 RCJ 322 the question came up for consideration before mis Court and this is how My Lord Justice Inderdev Dua, Hon'ble the Chief Justice (as His Lordship then was) dealt : ".....I do not think the mere fact of Smt. Usha Gujral being a lessee from the Government of the site would take her out of the category of "owner" within the contemplation of Section 14(1)(e) of the Act. 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 remedy less 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.....” 8. Similar question came up before the Supreme Court in a case where a person held the land on long lease from DDA/L&DO, in Smt. Shanti Sharma and Ors. v. Smt. Ved Prabha and Ors., , while approving the definition of owner as contemplated in T.C. Rekhi’s case (supra), the Court held: “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 person 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, what appears to be the meaning of the term ‘owner’ is visa-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.” Another learned Single Judge of this Court in Rameshwar Narain (Deceased) through LR’s v. Sarla Sarin, , wherein the petition of a house owner was dismissed by the Additional Rent Controller in

whose favour there was an agreement to sell by the builder but no sale deed, this Court held that it was not necessary that the petitioner should be full owner of the premises in question in order to be covered by the word 'owner' appearing in Section 14(1)(e) of the Act. 9. In the light of the aforesaid authorities of this Court as well as Supreme Court it cannot be said that for invoking the aid of Section 14(1)(e) of the Act in order to maintain a petition the owner has to be an absolute owner. What the Legislature intended in incorporating the word 'owner' in Section 14(1)(e) of the Act is not to use the same in the sense of absolute owner but it was used in contra-distinction with a landlord as defined who is not an owner but who holds the property for the benefit of another person. The word 'owner' occurring in Section 14(1)(e) of the Act means something more than a tenant. Let us take an example, in Delhi it is of common knowledge that property is transferred and re-transferred on the basis of a power of attorney and, therefore, if the word 'owner' has to be construed in the strictest sense then a transferee on the basis of a second power of attorney of a residential house cannot seek eviction of a tenant which property has been constructed by the previous transferee and who has inducted the tenant on the basis of second power of attorney. That will negate the whole object of incorporating Sub-clause (e) in Section 14(1) of the Act. In the case before me it has not been pleaded that there was any fraud in executing the agreement to sell between one brother in favour of other brother or that the power of attorney was executed in order to get rid of the tenant. On the contrary, there was litigation between two brothers and Shri Sunil Kanta Chakravarty had revoked the power of attorney given in favour of Shri Sushil Kanta Chakravarty the petitioner herein, and a public notice to the same effect was issued in the newspaper and the present petitioner, Shri Sushil Kanta Chakravarty, had to file a suit for specific performance. All these facts will demonstrate that the transfer was not to defeat what was contemplated by the Legislature pursuant to enactment of Section 14(6) of the Act but was a genuine transfer. I find support from the view taken by the learned Single Judge of this Court in Rameshwar Narain (Deceased) through LR's case (supra) wherein it was held that : "This interpretation of the word 'owner' has been accepted by Hon'ble Supreme Court in Smt. Shanti Sharma and Ors. v. Smt Ved Parbha and Ors., . Under the Delhi Rent Control Act, the word "owner" occurring in Clause (e) of the proviso to Section 14(1) is not used in the sense of absolute owner. It is only used in contradistinction with a landlord as defined, who is not an owner but who holds the property for the benefit of another person. A landlord as defined, who is holding the property for himself and for his own benefit and not for the benefit of another person is certainly the owner/landlord. This is the view which has already been taken by the Court in Kanwal Kishore Chopra v. O.P. Dwivedi and Ors., ." Now let me deal with other submission of the learned Counsel for the respondent that the revision was not maintainable as the order allowing of the application under Order 7, Rule 11 of the Code of Civil Procedure passed by the Additional Rent Controller, Delhi was appealable. Section 25-B of the Act falls under Chapter IIIA of the Act which deals with the summary trial of the applications for eviction on the ground of bona fide requirement. It is made

obligatory that the provisions of Chapter IIIA of the Act will have overriding effect notwithstanding anything inconsistent there with contained elsewhere in the Act or any other law for the time being in force. In Sub-section (8) of Section 25-B of the Act, it has been mandated that no appeal or second appeal shall lie against an order for recovery of possession of any premises made by the Controller in accordance with procedure specified in this section provided that High Court may for the purposes of specifying 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 orders in the facts and circumstances of the case as it thinks fit, therefore, the proceedings before the Additional Rent Controller under Section 14(1)(e) of the Act have to follow the procedure laid down under Chapter IIIA and if any order has been made in a petition filed under Section 14(1)(e), the provision of Chapter IIIA would become operative and this Court will also have the jurisdiction to satisfy that the order made by the Controller is in accordance with law. Therefore, I do not find any merit in the submissions made by the learned Counsel for the respondent on this score that the remedy was only by way of filing an appeal to the Rent Control Tribunal. Therefore, I hold that to give restricted definition to the word 'owner' will be making the provision of Section 14(1)(e) of the Act nugatory and relying on Smt. Shanti Sharma and Ors. case (supra) and Rameshwar Norton (Deceased) through LRs case (supra) I hold that the impugned order of the Additional Rent Controller suffers from patent illegality. I, therefore, set aside the impugned order and remand the case back to the Court of Additional Rent Controller, Delhi with the direction to decide the case afresh in view of the discussions above. Petition stands disposed of accordingly.