

Delhi District Court

Smt. Swinder Kaur Dhillon vs Sh. R.L. Handa on 9 December, 2013

Author: Mr. Tarun Yogesh

IN THE COURT OF SH. TARUN YOGESH: ADDITIONAL RENT  
CONTROLLER :PATIALA HOUSE COURTS: NEW DELHI

E. No.25/08

Smt. Swinder Kaur Dhillon  
W/o Late Sh. Ujagar Singh Dhillon,  
193, Bath Road, Hounslow, Middlesex,  
TW3 3BU, U.K.  
Through Ms. Harjit Kaur Dhillon  
GPA Holder

Vs.

Sh. R.L. Handa  
S/o Late Sh. Karamchand Handa,  
Flat No. 35, Bhagat Singh Market,  
New Delhi - 110 001.

PETITION FOR EVICTION OF TENANT UNDER SECTION 14 D  
AND 14 (1) (e) READ WITH SECTION 25B OF DELHI RENT  
CONTROL ACT, 1958.

Date of Institution of the petition  
Date on which Judgment was reserved  
Date of Pronouncement of Judgment

#### JUDGMENT

1. The present eviction petition under section 14 D and 14(1) (e) read with section 25B of Delhi Rent Control Act, 1958 (in short DRC Act) has been filed by petitioner Smt. Swinder Kaur Dhillon through GPA Holder / E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 1 of 35 daughter Ms. Harjit Kaur Dhillon for seeking eviction of respondent Sh. R. L. Handa from Flat no. 35, Bhagat Singh Market, New Delhi-110001 (hereinafter referred as suit / demised property). Facts of the case necessary for deciding her eviction petition are discussed below.

2. Suit premises is stated to be occupied by respondent and his family members and respondent Sh. R. L. Handa is stated to have been inducted as tenant for a period of 11 months w.e.f. 01.10.1969 till 31.08.1970 under rent agreement dated 26.09.1969. However, after expiry of initial period of 11 months he is stated to have continued to remain tenant on month to month basis w.e.f. 01.09.1970. Details of accommodation available to respondent / tenant is mentioned as comprising two bed rooms, front and back verandah, kitchen, bath room and latrine, etc. with roof and respondent is alleged to have got constructed one room on the roof without landlord's permission. The site plan showing sketch of premises has also been filed alongwith the eviction petition.

3. The grounds for seeking eviction of respondent from tenanted premises are mentioned in para 18 (a) of the petition and gist of these grounds is succinctly discussed below.

(i) That suit premises which were let out to respondent for E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 2 of 35 residential purpose only is now required by petitioner for occupation as residence for herself and her unmarried daughter and she or any of her family members for whom the premises is required neither own nor possess any other reasonable, suitable residential accommodation in Delhi or anywhere else in India.

(ii) That property was allotted to late Sh. Ujagar Singh Dhillon and respondent was inducted as tenant upon monthly rent of Rs. 250/- for a period of 11 months vide rent agreement dated 26.09.1969 till 31.08.1970. After expiry of the period of tenancy he became tenant on monthly basis w.e.f. 01.09.1970 and last paid rent of Rs.300/- was paid till 28.02.1989. But, thereafter since March 1989 till date, no rent has been paid by respondent who has exposed himself to eviction under section 14 (1) (a) of DRC Act for which she reserves her right to file another petition and as matter of abundant caution seeks leave of the court under Order II Rule 2 CPC.

(iii) That her husband late Sh. Ujagar Singh Dhillon was the owner / landlord of suit premises which was allotted by Land & Development Office, Nirman Bhawan, New Delhi in his name by virtue of lease deed dated 18.09.1969 executed by L & DO in the office of Sub-Registrar, New Delhi bearing document no. 6393, Vol. No. 2271 and pages 70 to 74. After his death on 26.05.1999, E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 3 of 35 she has become the owner / landlord of demised premises and Director (Estate-II) NDMC by specific order dated 05.12.2007 has substituted the leasehold rights in the property in her name upon the same terms and conditions as laid in the lease deed dated 30.08.1969.

(iv) That she has also acquired knowledge that respondent has caused or committed to be caused substantial damage to the premises by constructing one room on the roof of suit premises without prior consent or permission of late Sh. Ujagar Singh Dhillon or petitioner herself and has therefore exposed himself to eviction under section 14 (1) (j) of Delhi Rent Control Act, 1958 for which she reserves her right to file another petition and as matter of abundant caution seeks leave of the court under Order II Rule 2 CPC.

(v) That respondent was already having his own accommodation at Ashok Vihar, but, instead of occupying the said property for his residence, he sold his property and his act under the circumstances is not fair and contrary to the preamble / object of section 14 (1) (h) and (hh) of DRC Act and respondent has exposed himself for eviction from the premises for which she reserves her right to file another petition and as matter of abundant caution seeks leave of E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 4 of 35 the court under Order II Rule 2 CPC.

(vi) That she is now aged 83 years old and a widow, suffering from acute arthritis and high blood pressure and requires special diet due to her ailment and age. Further her arthritis gets aggravated due to damp and cold climate in U.K. and she needs to live in dry and warm weather. Petitioner also states to have stayed with her friends and relatives on her visits to India and feels very

uncomfortable to stay with them and demand for her special needs for the reason of her old age and goes on to state to have visited India several times and stayed for a couple of months after death of her husband.

(vii) That her daughter namely Ms. Harjit Kaur Dhillon has studied in Bangla Saheb School and is attached to Bangla Sahab Gurudwara and she too wants to settle down in Delhi and spent her last days of life in social work. Her daughter is stated to have retired as an engineer in 2006 and now wants to work for education and health for women in rural areas in Punjab.

(viii) That petitioner and her unmarried daughter require the suit premises for their residence and after the death of her husband she wants to stay in India at Delhi as she is attached to Bangla Saheb Gurudwara and is anxious to stay in her own house which is very E. No. 25/o8 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 5 of 35 close to the gurudwara, in the fag end of her life.

4. Leave to defend application under section 25B DRC Act filed by respondent Sh. R. L. Handa was allowed by my learned predecessor judge vide order dated 21.01.2012 and written statement has been filed on record wherein besides having denied petitioner's averments in respect of her bonafide need for premises, respondent has also raised following preliminary objections / submissions.

(a) That he is an old man aged about 79 years, suffering from various ailments and has been staying in the suit property since 1969. Further he is working as Chief Co-ordinator in Ramakrishan Mission without any gains and suit property / accommodation being situated near Ramkrishan Mission, he wishes to spend his last days in the premises only.

(b) That the petition filed by petitioner is frivolous and no bonafide requirement for premises as required under section 14 D and 14 (1)

(e) of DRC Act has been shown by petitioner.

(c) That the petition filed by petitioner deserves dismissal on the ground that averments of illness of petitioner are baseless, unsubstantiated and false and she does not require to stay in suit premises for her treatment. Further, her averment that her daughter E. No. 25/o8 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 6 of 35 intends to work for charity in Punjab and needs to stay in suit premises is incorrect and motivated to mislead the court for obtaining adverse order against him.

(d) That the petition filed by petitioner is based on her malafides and she wants to get him evicted from the suit premises in order to put the house for sale and fraudulently remove the sale proceeds from India as done in the past.

(e) That petitioner does not require the suit property for her residence, rather she intends to get him evicted by pleading her requirement for bonafide use of premises, but, in fact she intends to sell the suit property and remove the sale proceeds out of India surreptitiously without paying requisite tax and duties.

(f) That petitioner's husband had a plot of land at 145, Hargovind Enclave, Delhi-110092, purchased in his brother's name which plot of land has been sold and sale proceeds were illegally and surreptitiously taken out of India without paying Capital Gains Tax in violation of Foreign Exchange Regulation Act 1973 and Income Tax Act. His successors including petitioner are therefore not only liable to pay tax with penalties, but, are also liable to be prosecuted by DG Investigation, Ministry of Finance.

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(g) That petitioner's averment that her daughter wants to work for education and health for women in rural areas of Punjab is false and baseless and even assuming without admitting those averments, it is practically infeasible.

5. On merits, respondent has not replied the contents / averments of paras no. 1 to 7; paras no. 9 to 11 and paras no. 13 to 16 of the eviction petition. He has nonetheless denied the contents of para no. 8 of petition in respect of construction of one room on the roof without permission of landlord as wrong for stating that as per his information, petitioner's husband has got constructed the additional room over the roof of the suit premises. Respondent has also challenged the site plan filed by petitioner by claiming that it does not depict the factual construction at site.

6. Respondent has denied the contents of para no. 12 of the petition as wrong and incorrect for stating that petitioner has conveniently suppressed the date of commencement and completion of alleged construction of additional room on the roof of the suit property by her husband in 1989 and similarly denied the contents of para no. 17 (wrongly typed para no. 18) to state that petitioner has deliberately concealed about additional one room constructed by her husband on the roof of the E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 8 of 35 demised premises.

7. As regards the grounds of eviction mentioned by petitioner in para no 18 (a) of her petition, respondent has given his para-wise reply for denying her averments as incorrect and motivated, except the contents of sub-para no. (ii) and sub-para no. (iv) to the limited extent that late Sh. Ujagar Singh Dhillon was the owner of the premises and he died on 26.05.1999. Respondent claims himself to be protected under the provisions of Delhi Rent Control Act, 1958 and has denied petitioner's averments regarding execution of Will by late Sh. Ujagar Singh in her favour and petitioner becoming the owner and landlord of suit premises after the death of her husband. Respondent has categorically denied petitioner's claim of being landlord / owner of the suit property and her contention of having no other reasonable and suitable residential accommodation in Delhi or anywhere else in India for stating that petitioner has one residential house owned by her and her sister-in-law in village Tathi Khara of Taran Taran District of Punjab and her family had purchased a benami plot in Hargovind Enclave which has been sold out and sale proceeds were surreptitiously taken out of India. Respondent has also denied petitioner's averments regarding non-payment of monthly rents after February 1989 and damage being caused to demised premises by alleged construction of one room on the roof of the suit property E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 9 of 35 without prior consent of late Sh. Ujagar Singh Dhillon.

8. In his reply to the contents / averments of sub-para no. (vi) of para 18 (a) of the petition, respondent has denied those contents as wrong, nonetheless submits that he was forced to sell his flat at Ashok Vihar to raise funds for his urgent financial requirements and denied petitioner's allegation that his act is not fair or contrary to any provision of DRC Act or exposes him to eviction from the demised premises.

9. As regards the contents of sub-paras (vii), (viii) and (ix) of para no 18 (a) of the petition in respect of bonafide requirement of premises by petitioner and her daughter Ms. Harjit Kaur, respondent Sh. R. L. Handa has denied those contents / averments as wrong, incorrect and misleading to state that petitioner's allegations regarding acute arthritis, high blood pressure or special diet due to her ailments and old age are utterly false and baseless. He has denied petitioner's contention that she has been staying with her relatives and friends on her visits to India and feels very uncomfortable due to her old age to stay with others and demand for her special needs and instead claims that petitioner has not visited India for last about four (4) years. Respondent has also denied petitioner's averment to the effect that her daughter wants to settle down in Delhi and spend her last days in social work and instead claims that her averment stands belied E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 10 of 35 for the reason that anyone who wishes to work in rural areas of Punjab would not stay at Delhi. Respondent submits that the averments have been made with ulterior motive to harass him and further states that he has been working for a charitable organization close to the demised premises and wishes to spend his last days in the demised property where he has spent most of his life. In the same breath, respondent has also denied petitioner's contention / averment of bonafide requirement for premises out of special love and sentiment to stay in India in Delhi after the demise of her husband and her attachment to Bangla Sahib Gurudwara or her anxiety to stay in her own house near the gurudwara.

10. In order to prove her case for seeking eviction of respondent from demised premises, petitioner has examined herself as PW1 and her daughter Ms. Harjit Kaur Dhillon as PW2. Both witnesses have tendered their evidence through affidavits marked as Ex P1 and Ex PW2/A during their examination in chief and have been cross-examined by learned counsel for respondent. Respondent Sh. R. L. Handa on his part has also examined two witnesses having examined RW1 Sh. Layak Ram from the office of Chief Architect, NDMC and RW2 Swami Suprakashnanda from Ramakrishna Mission Sevashram. Respondent's witnesses have deposed upon solemn affirmation and through affidavit during their examination in chief and have been cross-examined by petitioner's counsel. E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 11 of 35

11. During her evidence, petitioner Smt. Swinder Kaur Dhillon has proved certified copy death certificate of her husband late Sh. Ujagar Singh Dhillon as Ex PW1/1 and the site plan filed on record as Ex PW1/2. Carbon copy of rent agreement dated 26.09.1969 bearing original signatures of her deceased husband and respondent (referred in her affidavit as Ex PW1/3) has been proved as Ex PW1/12. Petitioner has also referred to the copy of order dated 05.12.2007 substituting the leasehold rights of property in her name in NDMC records as Ex PW1/4 which has been objected by respondent's counsel for stating that document has to be proved by original record of NDMC. Copy of her passport alongwith her Indian visas has been proved as Ex PW1/5 (colly) and document recording details of her visit to India (page no. 33) is referred as Mark 'B' (instead of Ex PW1/6 as

mentioned in her affidavit). Similarly documents / copies of correspondence (page no. 43 to 83) have been referred as Mark 'C' (instead of ExPW1/7 as mentioned in her affidavit), notice dated 10.11.2008 is referred as Mark 'D' (instead of ExPW1/8 as mentioned in her affidavit) and letter dated 14.01.2005 written on her behalf by her daughter Ms. Harjit Kaur Dhillon, addressed to respondent is referred as Mark 'E' (instead of ExPW1/9 as mentioned in her affidavit). The General Power of Attorney executed in favour of her daughter / PW2 has been proved by petitioner as Ex PW1/10. E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 12 of 35

12. During her cross-examination by respondent's counsel, petitioner / PW1 has stated to have migrated to United Kingdom alongwith her husband and three sons in the year 1965 for the sake of their higher education and also stated to have decided to come back after their studies were over. PW1 also stated to have left behind her daughters, the elder daughter who was studying in a college at Chandigarh and younger daughter who was studying in a school situated in Bangla Sahib Gurudwara besides stating that her younger daughter Ms. Manjit Kaur joined them in England after one year while their elder daughter Ms. Harjit Kaur joined them in the year 1968. Petitioner / PW1 has been confronted with letter dated 10.03.1989 marked as Ex PW1/X1, but, denied her husband's handwriting and signature upon the document / letter. During her further cross-examination by respondent's counsel, PW1 claims to have wanted to come back after completion of higher education of her children, but, could not decide due to 1984 riots and again in 1992 when the conditions were not conducive to return.

13. During her cross-examination by respondent's counsel, petitioner / PW1 has also stated that except for her daughter Ms. Harjit Kaur who has remained unmarried, her other children including sons namely Sh. Surjit Singh, Sh. Jitender Singh and Sh. Gurinder Singh and the other daughter E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 13 of 35 namely Smt. Manjit Kaur are married and they alongwith their spouses and her grandchildren are living in America. She admits that none of her grandchildren reside in India as they live in America, but also states that one of her grandsons namely Mr. Ranvir Singh is a doctor by profession and keeps visiting India. Petitioner admits that she has nothing left in U.K. as her children and grandchildren are living in America, nonetheless has reiterated her desire that she wants to stay in India.

14. Similarly she admits of being a British citizen and covered by the National Health Service besides stating that she is not required to pay for the services of the doctor and under the National Health Service of U. K. even hospitalization is free. She also states that her house in London is centrally heated and the modes of transportation used there, be it car or bus are also centrally heated (air-conditioned). To the specific query put to her by respondent's counsel with respect to financial means for her medical expenses as she is not covered by any health scheme in India, petitioner / PW1 has replied stating that she is getting her pension, her children are well-settled and she has enough land to meet those expenses. PW1 has stated that she can receive her pension from British Airways and her husband's pension anywhere and denied the suggestions put to her by respondent's counsel of having stated her intention to spend majority of time in United States at the time of applying for Green Card; her husband E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 14 of 35 having informed respondent that she is unable to bear the heat of Delhi; her husband intention to sell his property in India as none of her family member wanted to settle down

in India and letters written by her husband to the respondent to this effect. She has been confronted with letter dated 05.09.1986 referred as Ex PW1/X□9 and explained by stating that her husband has written the letter as she may have fallen ill as she had to stay in the village and there was lack of facility. She has also been confronted with letters dated 03.04.1987, 17.12.1990, 08.04.1991, 02.12.1991 and 12.06.1992 marked as exhibits on record and claimed that her husband might have written those letters, but, she has no knowledge as he did not discuss the issue with her. Petitioner has also denied the suggestions put to her by respondent's counsel that she has not been regularly visiting India or that her visits to India were made only with the objective of liquidating her assets in India and to transfer the money through hawala to U. K. and she has no spiritual needs that can be catered only in India. She has also denied the suggestion put to her by respondent's counsel that the sole intention behind the present eviction petition is to evict tenant / respondent on fictitious grounds and then sell the demised premises and repatriate the funds to England as has been done by her husband in the past. PW1 has also been confronted by letter dated 29.01.2001 of her son Sh. Surjit Singh referred as Ex PW1/X□5 and denied to have instructed him to write such letter besides stating that the letter was written without E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 15 of 35 her authorization.

15. PW2 Ms. Harjit Kaur has mentioned the General Power of Attorney in her name, certain letters of her erstwhile employer, copy of her passport and visas and pictures of prescription tablets in her affidavit and referred to documents Ex PW2/1 and Ex PW2/2 during tendering of her affidavit. She has been cross□examined by respondent's counsel and denied the suggestion put to her by respondent's counsel that demised premises have not been mutated in her mother's name. She also clarified her mother's response by claiming that though she had resigned from her permanent job in the year 1999, but continued to work on contractual basis till 2006. PW2 admits of being a British citizen and holding a USA Green Card besides admitting of having not applied for PIO card, but, claims to have an Overseas Citizen of India Card. She also claims to have made donations to Bangla Sahib Gurudwara, New Delhi and contributed in 'Karah Prasad' and has denied the suggestions to the contrary put to her by respondent's counsel. She has replied the query put to her by respondent's counsel by stating to have not studied or done any research on issues regarding to women's productive health, but, claims to have done work on other issues. PW2 also claims to have intended to select a few intelligent girls and support them financially to do her social work in Punjab and denied the suggestion that reason to shift to Delhi is totally E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 16 of 35 bogus as financial support can be extended from U.K. as well.

16. Respondent's witness RW1 Sh. Layak Ram has appeared alongwith summoned record and referred to the copy of letter dated 25.09.1989, issued by the office of NDMC, Deptt. of Architecture and Environs, Sansad Marg, New Delhi in respect of sanctioned plan for additional construction in property no. F□35, Bhagat Singh Market, New Delhi as Ex PW1/X□2. He has been cross□examined by petitioner's counsel and having seen from record has confirmed that plan in respect of F□35, Bhagat Singh Market, New Delhi was sanctioned in the name of Sh. Ujagar Singh Dhillon.

17. The other witness RW2 namely Swami Suprakashnanda has tendered his affidavit marked as Ex RW2/1 during his examination□n□chief, but, his testimony is not relevant in the present case as he has simply deposed that respondent Sh. R. L. Nanda is the Chief□Coordinator and member of

Managing Committee of Ramakrishna Mission, New Delhi and has been assisting and visiting the institution daily and should not be dispossessed from his present house on "baseless grounds". He has been cross-examined by petitioner's counsel and admits that he has no knowledge about the case and has no personal interest in the case. He also claims that he had no knowledge that landlady is a widow aged 87 years E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 17 of 35 besides stating that he was of the view that property belonged to respondent R. L. Handa and clarifies that except for such realization, there is no specific reason for use of term "baseless grounds" in his affidavit.

18. I have heard rival submissions addressed by Senior Advocate Sh. H. S. Phoolka and advocate Ms. Prabhsahay Kaur for petitioner and advocates Sh. Mukul Talwar and Sh. Sunil Kumar for respondent. Petitioner's counsels have addressed their arguments and relied upon judgments and case laws for seeking decree of eviction against respondent on the ground of bonafide requirement of premises by petitioner being a widow who requires the premises for occupation for herself and her unmarried daughter Ms. Harjit Kaur. Respondent's counsels on the other hand have argued against passing any order of eviction against respondent and have challenged petitioner's contention of bonafide requirement of premises for herself and her unmarried daughter for their residence. Respondent's counsels have referred to the cross-examination of PW1 and PW2 to argue that petitioner has no intention to return back to India and is only interested in evicting the tenant / respondent from demised premises in order to sell the property and take away the sale proceeds surreptitiously without paying requisite tax and duties. Learned counsels for respondent have placed strong reliance upon the letters written and E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 18 of 35 addressed to respondent by late Sh. Ujagar Singh and the letter dated 29.01.2001 of petitioner's son Sh. Surjit Singh, marked as exhibits on judicial record to prove respondent's case and have also pointed out that there is no evidence or document proved on record by petitioner to prove her contention that she is suffering from acute arthritis or high blood pressure or that her daughter has done some research or course or training for social work to be carried out in rural Punjab for challenging the grounds of eviction mentioned in para no. 18 (a) of the petition.

19. Before advertizing myself to the rival contentions raised by them in respect of bonafide requirement of suit premises by petitioner, it is imperative to deal with respondent's denial of petitioner's claim of being owner and landlord of the suit premises. In his reply to para no. 18 (a) (i) of the petition, respondent has denied petitioner's averment by stating, "It is categorically denied that the petitioner is the landlord / owner of the suit property." Similarly, in his reply to para no. 18 (a) (iv) of the petition, he has denied petitioner's averment of late Sh. Ujagar Singh having executed any Will bequeathing the suit property in her name and mutation of petitioner's name in NDMC records besides stating, "It is however denied that the petitioner had become the owner and landlord of the suit premises, after the death of her husband." However, respondent has not replied the contents of paras no. 1 to 7 of the eviction petition, E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 19 of 35 having stated, "That the contents of para no. 1 to of the petition need no reply." Therefore technically speaking having not denied / disputed the contents of para no. 3 (a) of the petition, respondent has admitted petitioner as his landlord. Even otherwise section 116 of the Evidence Act, 1872 is a compete answer to the plea taken by him. Hon'ble Supreme Court in the judgment titled Bansraj Lalta Prasad Mishra v. Stanley Parker Jones reported as (2006) 3 SCC 91



has held :

"The underlying policy of section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section."

"The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 20 of 35 of the landlord should not be allowed to launch his landlord in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted."

"Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time....." In another judgment titled as *Atyam Veerraju v. Pechetti Venkanna* reported as (1966) 1 SCR 831 Hon'ble Supreme Court has quoted with approval the judgement of the Privy Council in *Bilas Kunwar v. Desraj Ranjit Singh*, wherein it was observed:

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

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20. Similarly in other reported judgments titled *Vinod Kumar Verma Vs. Manmohan Verma & Anr.*, 148 (2008) Delhi Law Times 580 and *A.K. Nayar Vs. Mahesh Prasad*, 143 (2008) Delhi Law Times 423, Hon'ble Mr. Justice Vipin Sanghi and Hon'ble Mr. Justice Shiv Narayan Dhingra of High Court of Delhi have recorded their finding that the word "owner" has not been defined in the Act and relied upon the judgment of the Hon'ble Supreme Court of India in *Smt. Shanti Sharma & Ors. Vs. Smt. Ved Prabha & Ors.* AIR 1987 SC 2028 for holding.

"In this context what appears to be the meaning of the term 'owner', is vis-à-vis the tenant, the owner should be something more than the tenant" and that the word 'owner' has 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". The idea of ownership in cases being one of the better rights to be in possession and to obtain it.

21. The next objection / contention raised by respondent to his eviction from suit premises is that petitioner wants to evict him from demised E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 22 of 35 premises by pleading bonafide requirement for suit premises, but, actually she intends to sell the property and remove the sale proceed out of India surreptitiously without payment of requisite tax and duties. He has relied upon letters filed on record and marked as exhibits for confronting PW1 and PW2 during their cross-examination to prove his contention. However, petitioner and her daughter having examined themselves as PW1 and PW2 have nonetheless denied such suggestions put to them by learned counsel for respondent for reiterating their desire to shift to Delhi as the weather suits the petitioner who feels comfortable in Delhi and wants to live in her own house in Delhi and the unmarried daughter having lived with her in UK and having supported each other also wants to do social work for upliftment of rural women in Punjab and wishes to settle in India to carry forward her work.

22. In the first judgment titled Sudershan Thukral Vs. Khem Col. B. Mankani reported in 50 (1993) Delhi Law Times 607, Hon'ble Ms. Justice Usha Mehra has held, "The Trial Court rightly analysed that merely because respondent thought of selling the property in 1990, no inference can be drawn that the present need of the respondent is not bonafide. It can happen that the owner for E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 23 of 35 the circumstances beyond his control wanted to dispose of the property. The reasons could be numerous but subsequently he has changed his mind. That does not prove that the accommodation with him is sufficient for himself and for the members of his family....Two years period is a long period in which much water can flow and the circumstances might have changed. "

23. In the next judgment titled Smt. Urmil Joshi & Ors Vs. Smt. Raj Batra in RC . Rev. 100/2012; MANU/DE/1028/2012, Hon'ble Ms. Justice Indermeet Kaur in similar facts and circumstances of the case has observed, " In the instant case also it is specifically averred that the petitioner wishes to return to India to settle here but cannot do so because of non-availability of accommodation; there is nothing to show that this statement is to be disbelieved. It is also admitted that the petitioner and her daughter have to make frequent visits to India; they have to come here for their personal needs; the factum that the landlady in fact wishes to shift to India had not been disputed in the application seeking leave to defend." Hon'ble Ms. Justice E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 24 of 35 went ahead to record her finding, "The landlady is the best judge of her requirement; it is not for the tenant or the court to dictate terms as to how and in what manner she has to meet her needs for an accommodation" and relied upon the previous ruling in Prativa Devi (Smt.) Vs. T. V. Krishnan reported in MANU/SC/0811/1987 : (1996) 5 SCC 353 to the effect that, " 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."

24. So, upon perusal of the evidence led on record and the judgments / case laws relied upon by petitioner's counsel, I am of the considered opinion that no much significance / inference can be drawn from those letters / correspondence since 1987 till 2001 which have been filed and exhibited on record for confronting the witnesses. Hon'ble Ms. Justice Usha Mehra in the judgment titled Sudarshan Thukral vs. Khem Col. B. Mankani (supra) has observed that reliance upon letter

indicating intention to sell is misplaced as no inference can be drawn that present need of landlord is not bonafide. The anxiety / apprehension of tenant / respondent is misplaced and baseless as section 19 of DRC Act E. No. 25/o8 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 25 of 35 specifically takes care of such apprehension in as much as it provides that landlord after getting the premises evicted under section 14 D of the Act cannot re-let the same for a period of three year without obtaining the permission of Controller. (reliance be placed upon V.K. Bhandare vs. Sheikh Mohd. Yahya: 2009 (158) DLT 124 ).

25. As regards petitioner's averment of bonafide requirement of suit premises for herself and her unmarried daughter for their residence, in her affidavit marked Ex.P1 she has stated of being 88 years old, suffering from various ailments and intends to shift to Delhi to live in her own house as the whether suits her and she feels most comfortable in Delhi. Petitioner has also stated of having lived together with her unmarried daughter in U.K. and supported each other for claiming that after her retirement in 2006, her daughter Ms. Harjit Kaur has no permanent employment and source of income and wants to do social work for upliftment of rural women in Punjab and wishes to settle in India to carry forward her work. She has also stated that her daughter has been educated and is attached with the Bangla Sahib Gurudwara besides stating that being old, she herself wishes to spend the last years of her life in India in her own house for spiritual and personal reasons and has special sentiments attached with the suit premises which was her matrimonial home. Her daughter PW2 Ms. Harjeet Kaur Dhillon in her affidavit E. No. 25/o8 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 26 of 35 Ex.PW2/A has made similar depositions besides deposing of being engaged in doing social work for upliftment of rural women in Punjab for which she wishes to settle in India to carry forward her work and to arrange and sponsor work-shop for welfare of women for educating them about their rights, awareness on health issues and to enhance their skills to empower them in employment and self-reliance. She too has deposed about her special attachment with Gurudwara Bangla Sahib in Delhi. Both petitioner / PW1 and her daughter /PW2 have also deposed that suit premises being their only property in Delhi which is being occupied by respondent, they have to stay with their relatives and friends on their visits to India and her mother feels very uncomfortable to stay with others due to old age and special needs.

26. Petitioner / PW1 and her daughter Ms. Harjit Kaur / PW2 have referred to copy of passport and Indian visas proved as Ex PW1/5 and Ex PW2/2 and document Mark 'B' recording the details of their visits to Delhi and the period of their stay in India at Delhi since the year 2001, to prove their visits and stay in India. Admittedly petitioner and her daughter are British Citizens and have visited their home country all these years when they had to stay at the place of their friends and relatives. Even during the pendency of the trial of the present case, petitioner Smt. Swinder Kaur Dhillon and her daughter Ms. Harjeet Kaur Dhillon could E. No. 25/o8 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 27 of 35 not stay in the suit premises which is being occupied by respondent, so, their bonafide requirement for suit premises for their stay in India is borne out from the facts and depositions on record as they cannot be expected to stay at their native village Tathi Khara of Taran Taran District of Punjab as and when they visit their home country. The bonafide requirement of petitioner having been statutorily recognized, respondent's contention that they have not visited India for last four years and averment of bonafide requirement is incorrect and motivated and a pretext to get rid of tenant is belied from the fact that petitioner / widow had to stay elsewhere and

not in her own property for her appearance in this case during trial. It has been held in a catena of judgments that landlady is the best judge of her requirement and it is not for the tenant or the court to dictate terms as to how and in what manner she has to meet her needs for an accommodation.

27. The other four judgments cited by petitioner's counsel deal with bonafide requirement of landlady being a widow under section 14□D of DRC Act. In the first judgment titled Praveen Jain Vs. Vimla 2010 (174) DLT 689 : 2009(4) AD (Delhi) 653, Hon'ble Mr. Justice Shiv Narayan Dhingra has held, "It is settled law that the requirement of the landlady herself E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 28 of 35 and her family is to be considered by the ARC while considering a petition under section 14□D. The landlady's requirement of the premises 'for her own use' is not confined to actual physical user by landlady herself. The requirement includes the requirement of other family members of the landlady who are living with her and are dependent on the landlady for residence or on whom the landlady is dependent for her care, security and well□being and who are living with the landlady because of bond of love and affection. The test to be applied is whether the requirement pleaded may properly be regarded as landlady's own requirement and the requirement of the family members,i.e, her sons and daughters living with her. While considering this requirement, the court has to take into consideration the profession of the landlady, her lifestyle, standard, etc."

28. In the next judgment titled V Rajaswari Vs. Bombay Tyres Intl. Ltd. reported in 1995 Supp (3) Supreme Court Cases 172, the Division Bench of Hon'ble Apex Court has held, "On a careful consideration of the above arguments, we are of the view that under section 14□D, the tenant has E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 29 of 35 practically no defence whatever. All that has to be proved under the said section which has been extracted above, are □

(i) that the landlady is a widow. (ii) that the premises are required by her for her own residence. In this case, both these requirements are satisfied. As regards the first we do not want to state the obvious. Regarding the second, the fact that she is living with her daughter or any other person, is no ground to say that the premises in question is not required for her residence. If this be so, we are unable to see as to how her demand for increased rent would militate against her plea."

29. Similarly in the next judgment titled Gurdip Kaur Vs. Kartar Singh Khurana & Another reported in 60 (1995) Delhi Law Times 131, Hon'ble Mr. Justice Arun Kumar of Delhi High Court while reversing the order granting leave to contest to tenant has observed.

"Such an approach would defeat the very purpose of the statutory provision contained under section 14□D of the Act.

The said provision is intended to ensure recovery of immediate possession of premises to a widow. The provision was enacted by the legislature to ameliorate the condition of E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 30 of 35 helpless widows like the one in the present case. In addition of being widow, the petitioner in the present case is a handicapped person."

30. The fourth and last judgment on the point of bonafide requirement by landlord/widow in case title S.N. Kapoor (Dead) by Lrs vs. Basant Lal Khatri & Ors. Reported in (2002) 1 Supreme Court cases 329, the Division Bench of Hon'ble Supreme Court of India has referred to its previous judgment in V. Rajaswari vs. Bombay Tyre Intl. Ltd. to hold, "In adjudging the claim under section 14 D what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence and that the claim by her is bonafide and not feigned one. So far as a claim under section 14(1)(e) is concerned, the very requirement has to be shown not only to be bonafide but the move of the landlord/landlady to seek the eviction of the tenant must be genuine. As far as the claim under section 14 D is concerned, the widow/landlady's need for her own residence is recognized statutory to be a valid one, but the move or the request made to avail of the special benefit must be shown to be bonafide and not a pretext only to get rid of E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 31 of 35 the tenant."

31. The judgments cited by respondent's counsel are not relevant in the facts and circumstances of the present case as in the first judgment titled Sarwati Devi vs. Birbal Singh: 2013 (1) RLR 407, petitioner landlady had admitted of owning four other vacant rooms and so her bonafide requirement under section 14 D was held not genuine. The other judgments titled Vinod Ahuja vs. Anil Bajaj & Anr: 194 (2012) Delhi Law Time 2003 and Shiv Saroop Gupta vs. Mahesh Chand Gupta (1999) 6 Supreme Court Cases 222 are also not applicable in the facts and circumstances of the present case as they have been pronounced in respect of grant of leave to defend application on raising of triable issues.

32. Thus, on the basis of averments raised in their pleading, evidence led on record by petitioner and respondent, submissions addressed by their respective counsels and case laws relied upon by them which have been discussed above, I am of the considered opinion that so far as the contention / objection raised by respondent Sh. R.L. Handa in respect of bonafide requirement of suit premises i.e. Flat no. 35, Bhagat Singh Market, New Delhi-110001 by petitioner for residence for herself and her unmarried daughter is concerned, the special provision under section 14 D of DRC Act laying widow's right to recover immediate possession E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 32 of 35 having been given statutory recognition as held by the Division Bench of Hon'ble Supreme Court of India in S.N. Kapoor vs. Basant Lal (supra) and petitioner's requirement of premises for her own use including requirement of other family members of the petitioner / landlady living with her and dependent upon her for residence, upon whom the landlady / petitioner is dependent for her care, security and well-being because of bond of love and affection, being recognized in Praveen Jain Vs. Vimla 2010 (174) DLT 689 (supra), tenant / respondent has practically no defence whatever. Petitioner Smt. Swinder Kaur Dhillon has stated that she has no other reasonable, suitable residential accommodation in Delhi or anywhere else in India and though respondent Sh. R. L. Handa in para no. 18(a) (i) of his reply / written statement has denied her averment as incorrect, but has not disclosed any alternative residential accommodation available to petitioner in Delhi except for stating that she has got a residential house owned by her and her sister-in-law in village Tathi Khara of Tarantaran District of Punjab. "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. (see Prativa Devi vs. T.V. Krishnan). Thus, in the present case,

petitioner has successfully proved E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 33 of 35 her bonafide requirement for suit premises.

33. Before concluding I feel it necessary to record my observation to the effect that though the object of Delhi Rent Control Act 1958 is to control rents and eviction of tenants for providing succour to tenant, but, in the fact and circumstances of the present case, respondent Sh. R. L. Handa has tried to continue with his possession of suit property by seeking protection of law which he is not entitled to. In para no. 18 (a)

(vi) of his reply he has admitted petitioner's averment for stating that he was forced to sell his flat at Ashok Vihar to raise funds for his urgent financial requirement. Though petitioner has deposed in para no. 17 of her affidavit Ex.P1 about his act of selling his own flat and occupying her property for his residence, but, no question or suggestion has been put to petitioner / PW1 and respondent himself has chosen not to appear in witness box and subject himself to cross examination by petitioner's counsel. This act of respondent in selling off his own property at Ashok Vihar for his urgent financial requirement and continuing to stay in the tenanted premises smacks of his malafide intention to usurp petitioner's property. The duty of court is not restricted to provide relief to tenants but also extends to guard against any abuse of legal provision, lest the benevolent provisions of law may be abused by litigant which may result in injustice to the other party and the object of law may be defeated. E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 34 of 35

34. Petitioner Smt. Swinder Kaur Dhillon is held entitled to an eviction order and accordingly eviction order is passed in her favour and against respondent Sh. R. L. Handa directing the respondent to vacate the tenanted premises i.e. Flat no. 35, Bhagat Singh Market, New Delhi-110001 comprising of two bed rooms, front and back verandah, kitchen, bathroom and latrine, etc with roof as described in the site plan filed by the petitioner and handover its vacant possession to the petitioner. Petitioner Smt. Swinder Kaur Dhillon being a widow and her eviction petition having been filed under section 14D of DRC Act which provides right to recover immediate possession of premises, grounds of eviction under section 14(1)(e) of DRC Act being *pari materia* the same, order of eviction of respondent from suit premises is passed under section 14D of DRC Act which provides for recovery of immediate possession of premises to accrue to a widow and does not require the mandatory period of expiration of six months time from the date of order as required under section 14 (7) DRC Act. There shall be no order as to cost. Case file be consigned to record room.

Announced in the open court on 09.12.2013. (Tarun Yogesh) Add. Rent Controller : Patiala House Courts New Delhi : 09.12.2013 E. No. 25/08 Smt. Swinder Kaur Dhillon Vs. Sh. R. L. Handa Page No. 35 of 35