

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.314 of 2023

Basant Vishwakarma, S/o Late Harihar Vishwakarma, resident of Golpar, P.O. Ramgarh Cantt., P.S. Ramgarh, District Ramgarh.

..... Petitioner.

-Versus-

1. The State of Jharkhand, through the Secretary, Revenue and Land Reforms Department, Government of Jharkhand, Project Building, Dhurwa, Ranchi.
2. The Divisional Commissioner, North Chhotanagpur Division, Hazaribagh.
3. The Deputy Commissioner, Ramgarh.
4. The Sub Divisional Officer-cum-Jharkhand Building Lease, Rent & Control Officer, Ramgarh.
5. Ayub Khan, S/o Late Khalil Khan, Village Main Road, Ramgarh Cantt., P.O. Ramgarh Cantt., P.S. Ramgarh, District Ramgarh.

.....Respondents.

With
W.P.(C) No.79 of 2023

Md. Bashir, son of Md. Ibrahim, village Naisarai, P.O. Ramgarh, P.S. Ramgarh, District Ramgarh. Having his shop at Sunderbagh Tand, Raja Bangla, Main Road, Ramgarh, P.O., P.S. & District Ramgarh.

..... Petitioner.

-Versus-

Ayub Khan, S/o Late Khalil Khan, resident of Dusadh Tola, Ramgarh Cantt., P.O.& P.S. Ramgarh, District Ramgarh.

.....Respondent.

With
W.P.(C) No.665 of 2023

Pravesh Vishwakarma, S/o Lakhan Vishwakarma, Village Dharmu, P.O. Ichak, P.S. Sadar, District Hazaribagh. Having his shop at Sunderbagh Tand, Raja Bangla, Main Road, Ramgarh, P.O., P.S. & District Ramgarh.

..... Petitioner.

-Versus-

Ayub Khan, S/o Late Khalil Khan, resident of Dusadh Tola, Ramgarh Cantt., P.O.& P.S. Ramgarh, District Ramgarh.

.....Respondent.

With
W.P.(C) No.850 of 2023

Md. Pravez @ Sugnu, S/o Safique, Village Naisarai, P.O. & P.S. Ramgarh, District Ramgarh. Having his shop at Sunderbagh Tand, Raja Bangla, Main Road, Ramgarh, P.O., P.S. & District Ramgarh.

..... Petitioner.

-Versus-

Ayub Khan, S/o Late Khalil Khan, resident of Dusadh Tola, Ramgarh Cantt., P.O.& P.S. Ramgarh, District Ramgarh.

.....Respondent.

With
W.P.(C) No.1096 of 2023

Md. Ashraf, S/o Md. Anwar Sah, Village Golpar, Purani Mandap, P.O. & P.S. Ramgarh, District Ramgarh. Having his shop at Sunderbagh Tand, Raja Bangla, Main Road, Ramgarh, P.O., P.S. & District Ramgarh.

..... Petitioner.

-Versus-

Ayub Khan, S/o Late Khalil Khan, resident of Dusadh Tola, Ramgarh Cantt., P.O.& P.S. Ramgarh, District Ramgarh.

.....Respondent.

With
W.P.(C) No.1211 of 2023

Lala Khan @ Zafir Khan @ Zafiruddin Ahmad, S/o Hazi Razauddin, Village Golpar, Purani Mandap, P.O. & P.S. Ramgarh, District Ramgarh. Having his shop at Sunderbagh Tand, Raja Bangla, Main Road, Ramgarh, P.O., P.S. & District Ramgarh.

..... Petitioner.

-Versus-

Sairun Nisha, W/o Abdul Satar, D/o Late Taj Mohammad, Village Koiri Tola, P.O. & P.S. Ramgarh, District Ramgarh.

.....Respondent.

With
W.P.(C) No.1249 of 2023

Md. Nashim, S/o Late Abbu Wakar, Village Naisarai, P.O. & P.S. Ramgarh, District Ramgarh. Having his shop at Sunderbagh Tand, Raja Bangla, Main Road, Ramgarh, P.O., P.S. & District Ramgarh.

..... Petitioner.

-Versus-

Ayub Khan, S/o Late Khalil Khan, resident of Dusadh Tola,
Ramgarh Cantt., P.O.& P.S. Ramgarh, District Ramgarh.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioners : Mr. Pradip Modi, Advocate
Mr. Sarvendra Kumar, Advocate
[In W.P.(C) No.314 of 2023]
Mr. Prashant Pallav, Advocate
Mrs. Monalisa Singh, Advocate
Ms. Shivani Jaluka, Advocate &
[In rest of the cases]
For the Respondent-State : Mrs. Surabhi, A.C. to A.A.G.II
For Private Respondents : Mr. A. K. Sahani, Advocate
Mr. Ajit Kumar, Advocate

Order No.45

Date: 20.12.2024

1. The present batch of writ petitions have been preferred for quashing the common order dated 06.12.2022 passed in J.B.C.R. No.22 of 2020, J.B.C.R. No.14 of 2020, J.B.C.R. No.17 of 2020, J.B.C.R. No.23 of 2020, J.B.C.R. No.12 of 2020, J.B.C.R. No.25 of 2020, and J.B.C.R. No.19 of 2020, whereby the Commissioner, North Chotanagpur Division, Hazaribagh- respondent no.2 has set aside the orders dated 14.10.2019 passed by the Deputy Commissioner, Ramgarh- respondent no.3 in Eviction Appeal No.26 of 2019, Eviction Appeal No.28 of 2019, Eviction Appeal No.24 of 2019, Eviction Appeal No.18 of 2019, Eviction Appeal No.25 of 2019, Eviction Appeal No.29 of 2019 & Eviction Appeal No.16 of 2019 and has restored the orders dated 11.02.2019 passed in Eviction Suit No.20 of 2018 & Eviction Suit No.19 of 2018; orders dated 19.01.2019 passed in Eviction Suit No.07 of

2018 & Eviction Suit No.17 of 2018; orders dated 09.02.2019 passed in Eviction Suit No.15 of 2018 & Eviction Suit No.41 of 2018; and the order dated 19.01.2019 passed in Eviction Suit No.10 of 2018 by the House Rent Controller-cum-S.D.O., Ramgarh-respondent no.4. Further prayer has been made for quashing and setting aside the said orders passed in Eviction Suit No.20 of 2018, Eviction Suit No.19 of 2018, Eviction Suit No.07 of 2018, Eviction Suit No.17 of 2018, Eviction Suit No.15 of 2018, Eviction Suit No.41 of 2018 & Eviction Suit No.10 of 2018 by the respondent no.4, whereby the petitioners were directed to pay arrears of rent to the respondent no.5 (respondent-Sairun Nisha in JBCR No.25 of 2020) and to vacate the respective shops which were in their possession.

2. The factum of the case, as stated in the writ petitions, is that the petitioners have constructed their respective shops over the land situated at Mouza Ramgarh Cantt., P.S. Ramgarh, P.S. No. 82 under Khata No. 26, plot no. 748, total area 1.44 acres (hereinafter referred as the said land) and are in possession of the said shops for the last 25-30 years. Guduwa Sheikh was the Khatiyani raiyat of the said land who died in the year 1926 living behind one son namely Sahdul Mian and three daughters, namely, Fatima Khatoon, Rahiman Khatoon and Bhuini Khatoon. Guduwa Sheikh had orally partitioned his entire land including the said land among his legal heirs in the

year 1921 i.e. prior to his death and the said land was in exclusive possession of his son, namely, Sahdul Mian. Subsequently, Sahdul Mian died leaving behind two legal heirs, namely, Ashraf Miyan and Taj Mohammad.

3. One Ayub Khan-respondent no.5 filed eviction suits before the respondent no. 4 for eviction of the petitioners (except the petitioner Lala Khan) from their respective shops on the ground of default in making payment of rent, personal necessity etc. claiming that legal heirs of the recorded tenant had executed powers of attorney dated 29.08.2013, 04.09.2013 and 19.07.2018 in his favour. Sairun Nisha filed Eviction Suit no.41 of 2018 against the petitioner Lala Khan. The petitioners appeared in the said suits and filed their respective reply to the show cause notices denying tenant-landlord relationship between them and the respondent no.5/legal heirs of the recorded tenant. The respondent no.4 allowed the eviction suits in favour of the respondent no.5 as well as Sairun Nisha holding that there was oral tenancy between the petitioners and the legal heirs of the recorded tenant. It was further held that the respondent no.5 was the powers of attorney holder of the said legal heirs and hence, the petitioners were liable to pay monthly rent to him. The petitioners were defaulters in making payment of rent since January 2014. It was also held that the respondent no.5 as well as Sairun Nisha had bonafide personal necessity of the

premises in question for which the petitioners were held liable to be evicted under section 19(i)(b)(c)(d) of the Jharkhand Building (Lease, Rent & Eviction) Control Act, 2011 (in short 'the Act, 2011'). The respondent no.4 further directed the petitioners to pay arrears of rent.

4. Aggrieved thereby, the petitioners preferred their respective appeals before the respondent no. 3 under section 36 of the Act, 2011 vide Eviction Appeal No. 26 of 2019, Eviction Appeal No.28 of 2019, Eviction Appeal No.24 of 2019, Eviction Appeal No.18 of 2019, Eviction Appeal No.25 of 2019, Eviction Appeal No.29 of 2019 & Eviction Appeal No.16 of 2019 and the said appeals were dismissed by the respondent no.3 vide orders dated 14.10.2019 remanding the matter to the respondent no. 4 to pass fresh order after hearing the parties taking into consideration maintainability of the said eviction suit under section 4 of the Act, 2011. Aggrieved by the said orders, the respondent no.5 filed revision cases being J.B.C.R. No.22 of 2020, J.B.C.R. No.14 of 2020, J.B.C.R. No.17 of 2020, J.B.C.R. No.23 of 2020, J.B.C.R. No.12 of 2020 and J.B.C.R. No.19 of 2020 as well as Sairun Nisha filed revision case being J.B.C.R. No.25 of 2020 before the respondent no.2 under section 37 of the Act, 2011, which were allowed vide separate orders dated 10.09.2020 by setting aside the orders dated 14.10.2019 passed in the said eviction appeals and affirming the orders

passed by the respondent no.4 in Eviction Suit No.20 of 2018, Eviction Suit No.19 of 2018, Eviction Suit No.07 of 2018, Eviction Suit No.17 of 2018, Eviction Suit No.15 of 2018, Eviction Suit No.41 of 2018, Eviction Suit No.10 of 2018. The petitioners, thereafter, filed writ petitions being W.P.(C) No. 3427 of 2020, W.P.(C) No. 3931 of 2020, W.P.(C) No. 3474 of 2020, W.P.(C) No. 3444 of 2020, W.P.(C) No. 3983 of 2020, W.P.(C) No. 3468 of 2020 and W.P.(C) No. 3135 of 2020, which were disposed of by common order dated 13.06.2022, directing the respondent no.2 to rehear the said revision cases filed by the respondent no.5 as well as Sairun Nisha. Finally, the respondent no.2 vide impugned order dated 06.12.2022 again allowed the aforesaid revision cases and set aside the orders dated 14.10.2019 passed by the respondent no.3 in respective appeals of the petitioners and restored the orders passed by the respondent no.4 in the aforesaid eviction suits.

Submission on behalf of Petitioner-Basant Vishwakarma

5. The learned counsel for the petitioner submits that respondent no. 5 is not the landlord as defined u/s 2(g) of the Act, 2011 as he is neither the owner of the premises in question nor he was ever entitled to receive rent from the petitioner. In fact, the petitioner had categorically denied the alleged rent agreement dated 27.08.2008 and had stated that

he had never paid any rent to the respondent no.5 or to any other person after execution of "Panchnama" Sale Deed dated 13.07.2005 with Razia Khatoon, wife of Late Taj Mohammad and thus the burden was upon the respondent no. 5 to establish the Landlord-Tenant relationship between the parties, however, he failed to discharge the said burden by adducing any cogent evidence. It is further submitted that the respondent no.5 in the eviction suit had nowhere mentioned any ground under which he was seeking eviction of the petitioner, rather he had merely mentioned the provision of law that the eviction suit was being filed under Section 19 of the Act, 2011. However, the respondent no.4 observed in the order dated 11.02.2019 passed in Eviction Suit No.20 of 2018 that same was filed under Section 19(1) (b), (c) and (d) of the Act 2011. Further, no evidence was led by the respondent no.5 showing that the condition of the building had deteriorated owing to the acts of the petitioner.

6. The learned counsel for the petitioner puts reliance on the judgment of the Hon'ble Supreme Court rendered in the case of ***Rajendra Tiwary Vs. Basudeo Prasad reported in (2002) 1 SCC 90***, wherein it has been held that for granting the relief in the suit under the Act, 2011 it is *sine qua non* that there should exist landlord-tenant relationship between the plaintiffs and the defendant.

7. It is further submitted that the respondent no. 5 filed Eviction Suit no.20 of 2018 against the said petitioner on the basis of powers of attorney dated 29.08.2013, 04.09.2013 and 19.07.2018 executed by legal heirs of the recorded tenant and on bare perusal of the same, it would appear that the same was given to the respondent no.5 to negotiate with prospective purchasers for sale of the mentioned property. The power of attorney nowhere mentions that several shops/garages of different tenants are established on the said property and the respondent no.5 is empowered to take recourse of their eviction. As such, the respondent no.5 cannot claim himself to be the landlord of the said land as per Section 2(g) of the Act 2011.
8. As per Section 4 of the Act, 2011, the tenancy agreement must be in writing and if the tenancy was created prior to the year 2011 without any written agreement, then either of the parties should inform the concerned Collector giving particulars of tenancy within two years. However, in the present case the provision of section 4 of the Act, 2011 has not been complied which creates serious doubt over the tenancy.
9. It is also submitted that Razia Khatoon-widow of Taj Mohammad had sold 3 decimals land of her share out of the land appertaining to Khata no.26, plot no.749, measuring total area of 1.44 acres to the petitioner-Basant Vishwakarma

by executing a "Panchnama" sale deed on non-judicial stamp paper on 13.07.2005 after receiving consideration of Rs.25,000/- and, thereafter, the said petitioner renovated his shop/garage by putting asbestos sheet roof on "Kutcha" wall of the same which he was running since 1989 in the name of Basant Auto Works without any hindrance made by any of the alleged legal heirs.

10. It is further submitted that the "Panchnama" sale deed dated 13.07.2005 executed by Razia Khatoon in favour of the petitioner-Basant Vishwakarma was filed by him during the trial and the same was a vital piece of evidence to establish that the relationship of tenant-landlord, if any, had come to an end after execution of the said "Panchnama" sale deed as well as the petitioner had been occupying the said property as its owner since 13.07.2005, however such vital piece of evidence was ignored by the respondent no.4. The respondent no.2 also did not take note of the said "Panchnama" sale deed after remand of the case by this Court, thereby failed to take into consideration a vital piece of evidence so as to demolish the story set up by the respondent no.5.
11. It is also submitted that the respondent no. 5 had filed the eviction suits in his personal capacity and as such the same were liable to be dismissed on this score alone. In support of the said contention the learned counsel for the petitioner puts

reliance on a judgment of the Full Bench of Allahabad High Court rendered in the case of ***Syed Wasif Husain Rizvi Vs. Hasan Raza Khan & 6 others, reported in 2016 SCC Online All 175***, wherein it has been held that when a writ petition under Article 226 of the Constitution is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or claim personal to him but acts as an agent of the donor of the instrument. The petition which is instituted, is always in the name of the principal who is the donor of the power of attorney and through whom the donee acts as his agent.

Submissions on behalf of the petitioners- Md. Basir, Pravesh Vishwakarma, Md. Parvez, Md. Ashraf, Lala Khan and Md. Nashim:

12. According to learned counsel for the petitioners, the respondent no.2 has erred in observing that the petitioners have failed to bring on record any document establishing their title since suits were filed under the Act, 2011 in which the question of title is merely incidental. It is a settled principle of law that while deciding a suit for eviction of a tenant, the primary issue that is to be looked into is the existence of landlord-tenant relationship between the parties and the question of title of the respective parties with respect to the suit premises is not relevant having regard to the width of the definition of the terms 'landlord' and 'tenant' as given

in clauses (g) and (l), respectively, of section 2 of the Act, 2011.

13. It is further submitted that the respondent no.4-House Rent Controller-cum-Sub Divisional Officer, Ramgarh miserably failed to frame and decide the issue relating to the existence of landlord-tenant relationship between the petitioners and the respondent- Ayub Khan. It is also submitted that not even a single document was brought on record by the said respondent which could establish the existence of tenancy between him and the petitioners. Further, the respondent has nowhere stated in the examination or cross-examination, regarding execution of any rental agreement or issuance of any rent receipt. Despite this fact, the respondent no.4 came to a conclusion that the petitioners were the tenants of the said respondent. In fact, the said respondent examined himself as witness and could not bring any independent witness in support of his case. The present case has also been brought by the said respondent for eviction on the ground of bonafide necessity of the suit premises for which the landlord is required to show that he/she is the owner of the suit premises and the same is required either for his/her necessity or for any of his/her family members dependent upon them and they have no other reasonable suitable accommodation. However, the present eviction suits (except Eviction Suit no.41 of 2018)

have been brought by the power of attorney holder of the legal heirs of the recorded tenant whereas Explanation I to the clause (c) of section 19 (1) of the Act, 2011 excludes agents from the meaning of landlord. Therefore, the case of the respondent- Ayub Khan seeking eviction of the petitioners from the suit premises on the ground of bona fide necessity fails on this sole ground.

14. Learned counsel for the petitioners puts reliance on the judgment of a co-ordinate Bench of this Court rendered in the case of ***Ranjay Kumar Vs. The State of Jharkhand & Ors. [W.P.(C) No.6050 of 2022]***, wherein the Court by considering Section 33 of the Act, 2011 has held that the evidence has to be recorded during trial of the suit under the said Act.

Argument on behalf of the respondent no.5 with respect to the petitioner-Basant Vishwakarma

15. The learned counsel for the respondent no. 5 submits that the present writ petition is not maintainable in view of concurrent findings of facts recorded by the respondent no.4 on the basis of the pleadings of the parties coupled with both oral and documentary evidences adduced by them which has been affirmed twice by the revisional authority. It is further submitted that the petitioner- Basant Vishwakarma has deliberately suppressed the fact that as far back as on 22.12.1994, he entered into a tenancy agreement with Razia

Khatun, the then land-lady and mother of Sairun Nisha (one of the power of attorney executors of the Respondent No.5) agreeing to pay rent of Rs.100/- per month in respect of the shop-in-question and on the basis of such agreement the relationship of landlord and tenant created between the parties. The said agreement was duly notarised by the Notary Public, Ramgarh on 05.01.1995. It is also submitted that on 27.08.2008, the petitioner- Basant Vishwakarma again entered into a tenancy agreement with Sairun Nisha, daughter of Taj Mohammad for a period of 24 months i.e. for the period from 27.08.2008 to 27.08.2010 agreeing to pay a sum of Rs.2,500/- per month as rent. The petitioner had admitted in the cross-examination that there was execution of a rental agreement in the year 1994 between him and Razia Khatoon. Thus, the fact that the petitioner became tenant on the basis of said rental agreement cannot be questioned. The "Sada Panchnama" which is said to be a sale deed dated 13.07.2005 is a frivolous and manufactured document, which would be evident from the fact that subsequent to the alleged "Panchnama", a rental agreement dated 27.08.2008 was executed between the said petitioner and Sairun Nisha who granted the Power of Attorney in favour of the respondent no.5. It would further be evident that from Para-4 of the deed of Power of Attorney that the Respondent No.5 was delegated power to file any case and to

take all steps before the concerned court or the authority on behalf of the owners of the land.

16. It is also submitted that transfer of an immovable property valued more than Rs.100/- cannot be made through unregistered document. The so-called "Panchnama" dated 13.07.2005 is an unregistered document showing consideration amount of Rs.25,000/-, which is inadmissible in law. The thumb impression said to be of Razia Khatoon appearing on the said "Panchnama" sale deed is forged one and the said document does not bear the signature of the petitioner which has been rightly negated by the respondent no.4. The petitioner has tried to mislead the Court by placing reliance upon such forged and doubtful document in support of his false claim.
17. It is further submitted that the respondent No.5 comes within the purview of the definition of 'landlord' defined under the Act, 2011 and, thus, the submission made on behalf of the petitioner that the actual owner of the premises in question was entitled to bring an eviction suit, is against the settled principle of law. Moreover, pursuant to an order as contained in Memo No. 332 dated 13.04.2023 issued by the respondent no.4, the order of eviction has been executed by two Magistrates deputed thereunder and the premises in question has been handed over to the landlord on 18.04.2023 itself.

Argument of respondent no.5 in other cases:

18. The learned counsel for the respondent no. 5 submits that the respondent no. 5 had brought eviction suits against the petitioners being the Powers of Attorney Holder of the legal heirs of the recorded tenant and the said powers of attorney contains specific clause i.e. Clause (4) which empowers the said respondent to file suit for the said land in the concerned court. In fact, the respondent no.5 comes within the definition of "landlord" as defined under section 2(g) of the Act, 2011. Moreover, the petitioners had entered into the rent agreements with Sairun Nisha with respect to the suit premises and had paid monthly rent for some time, however, subsequently stopped paying rent.
19. Learned counsel further puts reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Radha Devi Vs. Deep Narayan Mandal & Others, reported in (2003) 11 SCC 759***, wherein it has been held that the Bihar Buildings (Lease, Rent & Eviction) Control Act was a special Act providing for speedy disposal of eviction suit on certain grounds enumerated therein. It has further been held that under the said Act, eviction suit was required to be tried under summary procedure and to succeed in the same, the landlord was required to prove contract of tenancy between her and the tenant and also the ground on which the eviction was sought. It has also been held that in such a suit, the

Rent Controller was not required to go into the serious question of title, otherwise the purpose of the Act would stand frustrated.

20. Heard the learned counsel for the parties and perused the materials available on record.

21. For better appreciation of the matter, factual matrix as has been stated in the present batch of writ petitions, is being reproduced hereunder in tabular chart:-

W.P.(C) No. 314 of 2023	J.B.C.R No. 22 of 2020, order dated 6.12.2022	Eviction Appeal No.26 of 2019, order dated 14.10.2019	Eviction Suit No.20 of 2018, order dated 11.02.2019	The petitioner-Basant Vishwakarma constructed a shop/garage over the said land and has been running his car repairing shop since 1989
W.P.(C) No. 79 of 2023	J.B.C.R No. 14/2020, order dated 6.12.2022	Eviction Appeal No. 28 of 2019, order dated 14.10.2019	Eviction Suit No.19 of 2018, order dated 11.02.2019	The petitioner-Md. Basir claimed that he constructed a shop/garage over the said land and is in possession of the same for more than 25 years
W.P.(C) No. 665 of 2023	J.B.C.R No. 17 of 2020, order dated 6.12.2022	Eviction Appeal No.24 of 2019, order dated 14.10.2019	Eviction Suit No.7 of 2018, order dated 19.01.2019	The petitioner-Pravesh Vishwakarma claimed that he had constructed a shop/garage over the said land in which he has been doing car repairing work for the last 30 years
W.P.(C) No. 1211 of 2023	J.B.C.R No. 25 of 2020, order dated 6.12.2022	Eviction Appeal No.29 of 2019, order dated 14.10.2019	Eviction Suit No.41 of 2018, order dated 09.02.2019	Petitioner-Lala Khan claimed that Pradeep Belthariya had constructed a shop over the said land in the year 1981 and the petitioner being his servant is in possession of the same for more than 32 years
W.P.(C) No. 850 of 2023	J.B.C.R No. 23 of 2020, order dated	Eviction Appeal No.18 of 2019, order dated	Eviction Suit No.17 of 2018, order dated	Petitioner-Md. Pravez @ Sugnu claimed that he had constructed a car repairing

	6.12.2022	14.10.2019	19.01.2019	shop over the said land and has been running it for more than 20 years
W.P.(C) No. 1096 of 2023	J.B.C.R No. 12 of 2020, order dated 6.12.2022	Eviction Appeal No.25 of 2019, order dated 14.10.2019	Eviction Suit No.15 of 2018, order dated 09.02.2019	Petitioner-Md. Ashraf claimed that mechanic shop over the said land was built by his father in the year 2000 and since then the petitioner/his father is in possession of the same.
W.P.(C) No. 1249 of 2023	J.B.C.R No. 19 of 2020, order dated 6.12.2022	Eviction Appeal No.16 of 2019, order dated 14.10.2019	Eviction Suit No.10 of 2018, order dated 19.01.2019	Petitioner- Md. Nashim runs a tyre shop over the said land and he is in possession of the same for more than 25 years.

22. The thrust of the argument of the learned counsel for the petitioners is that the petitioners have been carrying on their respective businesses on the said land since long by constructing shops/garage over it without any disturbance from any corner. As such they have acquired title over the respective land on the ground of adverse possession. The respondent nos.2 and 4 have failed to appreciate the fact that there was no landlord tenant relationship between the petitioners and the owner of the premises.

23. Further contention of learned counsel for the petitioners is that though the respondent no. 5 claims himself to be the power of attorney holder of the landlord/landlady, however, he filed the aforesaid eviction suits in his personal capacity and as such, the said suits were not maintainable.

24. To appreciate the question of maintainability of the present suits as has been raised by the learned counsel for the petitioners, this Court has perused the judgment of the Hon'ble Supreme Court rendered in the case of ***Kasthuri Radhakrishnan Vs. M. Chinniyan, reported in (2016) 3 SCC 296***, wherein the Hon'ble Supreme Court has held as under: -

"36. The law relating to power of attorney is governed by the provisions of the Powers of Attorney Act, 1982. It is well settled therein that an agent acting under a power of attorney always acts, as a general rule, in the name of his principal. Any document executed or thing done by an agent on the strength of power of attorney is as effective as if executed or done in the name of principal i.e. by the principal himself. An agent, therefore, always acts on behalf of the principal and exercises only those powers, which are given to him in the power of attorney by the principal. Any act or thing done by the agent on the strength of power of attorney is, therefore, never construed or/and treated to have been done by the agent in his personal capacity so as to create any right in his favour but is always construed as having done by the principal himself. An agent, therefore, never gets any personal benefit of any nature. Applying the aforesaid principle, this Court in [Suraj Lamp and Industries (P) Ltd. (2) v. State of Haryana, (2012) 1 SCC 656] held in paras 20 and 21 as under: (SCC pp. 666-67)

"20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77] this Court held : (SCC pp. 90 & 101, paras 13 & 52)

'13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the

principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.'

An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

This was followed by this Court in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706."

25. Thus, the law is well settled that an agent always acts on behalf of the principal and exercises only those powers which are given to him in the power of attorney by the principal. Any act or thing done by the agent on the strength of power of attorney is, therefore, never construed or/and treated to have been done by the agent in his personal capacity so as to create any right in his favour, but is always construed as having been done by the principal himself. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a

matter between the donor and the donee of power of attorney.

26. In the present case, the respondent no. 5 is the power of attorney holder of the owner of the premises who has been empowered to do various works including the work to look after the said premises and to file any case on behalf of the owner of the said premises. Therefore, though the said eviction suits except Eviction Suit No.41 of 2018 (filed by Sairun Nisha) were filed by the respondent no.5- Ayub Khan in his name, the same were filed in a fiduciary capacity under the power given in the deed of powers of attorney. Thus, the question of maintainability as raised by the petitioners is not legally sustainable and the same is hereby rejected.
27. So far as the case of petitioner-Basant Vishwakarma is concerned, he has claimed that the land in question had been sold to him by Razia Khatoon, wife of Late Taj Mohammad by way of "Panchnama" dated 13.07.2005 after making payment of Rs.25,000/- and as such, according to him, there was no landlord-tenant relationship between him and the legal heirs of Guduwa Seikh after 13.07.2005.
28. It is further claimed that though the said "Panchnama" was not registered, the possessory right of the petitioner under the said document was bound to be protected. In support of the said contention, the learned counsel appearing on behalf of the petitioner- Basant Vishwakarma has relied upon the

judgment of the Hon'ble Supreme Court rendered in the case of ***Ghanshyam Vs. Yogendra Rathi, reported in (2023)7 SCC 361***, wherein it has been held that legally an agreement for sale may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of contract and being lawfully in possession, acquires possessory title, which is required to be protected in view of Section 53-A of the Transfer of Property Act, 1882.

29. To counter the said argument made on behalf of the petitioner-Basant Vishwakarma, the respondent no. 5 has contended that the suit premises in question had been leased to the petitioner by way of lease agreement dated 22.12.1994 executed between the him and Razia Khatoon and thereafter on 27.08.2008, a fresh lease agreement was also executed between him and Sairun Nisha (daughter of Razia Khatoon) for 24 month i.e. for the period from 27.08.2008 to 27.08.2010 in which monthly rent was fixed at Rs.2,500/- per month. Thus, there was landlord-tenant relationship between the said petitioner and Sairun Nisha. Since the alleged "Panchanama" was not registered, the petitioner is debarred from enforcing the said document in view of Section 53A of the Transfer of Property Act, 1882. It is further contended that the respondent no.5 being the

power of attorney holder of Sairun Nisha has every right to evict the petitioner- Basant Vishwakarma from the said premises on the ground of non-payment of rent as well as personal necessity.

30. To appreciate the rival contentions of the parties, this Court perused the lower court records, which were called for from the court of respondent no.4 vide order dated 27.07.2023. It is evident from cross examination of the petitioner-Basant Vishwakarma recorded in the proceeding before the respondent no.4 that he had admitted the fact that an agreement was executed between him and Razia Khatoon in the year 1994. The "Panchnama" which has been heavily relied upon by the petitioner-Basant Vishwakarma is an unregistered document that too without any signature made by him.
31. Here, it would be appropriate to mention relevant provisions of the Registration Act, 1908. Section 17 of the said Act reads as under:-

"17. Documents of which registration is compulsory —

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and

upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by Government; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Explanation—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

32. Section 49 of the Registration Act, 1908 reads as under:-

"49. Effect of non-registration of documents required to be registered.

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument."

33. In the case of ***Shankar & Others Vs. Surendra Singh Rawat (Dead) through Legal Representatives & Another, reported in (2021) 20 SCC 425***, the Hon'ble Supreme Court has held as under:-

"12. In this case too, the title of the respondent-plaintiffs was not in question. The appellants raised alternative defences of title pursuant to unregistered sale document and also of adverse possession. It was not the case of the appellants that they were tenants. The civil court rightly found that an unregistered sale deed could not confer title. The plea of adverse possession is a plea in desperation, since the plea of title pursuant to a sale document defeats the plea of adverse possession."

34. In the case of ***K.B. Saha & Sons (P) Ltd. Vs. Development Consultant Ltd. reported in (2008) 8 SCC 564***, the Hon'ble Supreme Court has held as under:-

"34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

35. Thus, it is now well settled that if a document which is required to be registered but not registered, is not admissible into evidence under Section 49 of the Act, 1908. Thus, the claim of the petitioner- Basant Vishwakarma that the premises under his possession was sold to him by Razia Khatoon in the year 2005 is not legally sustainable. Moreover, the respondent no.5 had placed a new rent agreement executed in the year 2008 between Sairun Nisha and the petitioner-Basant Vishwakarma in the said eviction proceeding before the respondent no.4, which was executed after the said "Panchnama" as relied by the said petitioner. In the said agreement, the petitioner and Sairun Nisha have made their respective signature/thumb impression. During examination-in-chief as well as in cross-examination, the respondent no.5 has specifically stated the fact that a rent agreement was executed in the year 2008, however, the petitioner failed to controvert the said claim of the respondent no.5.
36. Another argument of the learned counsel for the petitioner-Basant Vishwakarma is that powers of attorney were executed only to negotiate with any prospective purchaser for sale of the property in question and it was nowhere mentioned in the same that there were shops/garage of

several tenants over the said property for which respondent no.5 was empowered to take recourse of eviction.

37. Since in the present batch of cases, the general powers of attorney were executed by the legal heirs of recorded tenant, whereby several powers related to the said land were given to the respondent no.5 including the power to institute any case in the Court through his signature and to file affidavit on their behalf and that all the works done by him was deemed to be done by the said legal heirs of the property in question, this Court does not find any substance in the contentions of the petitioners that the respondent no.5 was not empowered to institute the said eviction suits against them.
38. So far as the case of the petitioner-Md. Ashraf is concerned, he has claimed that his father has been running a shop over the land in question for more than 30 years and he has also been running the same for four years. The respondent no. 5 in his examination-in-chief had claimed that in the year 2000, the said land was given to the said petitioner for running a garage over the same on payment of monthly rent of Rs.3,000/- which was subsequently enhanced to Rs.6,000/-, however, the petitioner failed to pay the rent since 2016. During cross-examination, Md. Ashraf had admitted that he had no document of title pertaining to the said land. He had further stated that, in fact, his father had the knowledge as to whether he was running the shop as an owner or tenant.

Thus, the petitioner-Md. Ashraf himself was unaware of the real fact and his father who was knowing the real fact was not examined in the case so as to controvert the claim of the respondent no.5 that the premises in question was initially let out on monthly rent of Rs.3000/-.

39. So far as the cases of the petitioners, namely, Md. Basir, Pravesh Vishwakarma and Md. Nashim are concerned, the respondent no.5 has put much reliance upon the agreements dated 09.09.2017 and 27.09.2017, whereby the respective petitioners had received Rs. 30,000/-, Rs. 30,000/- and Rs.15,000/- from the respondent no.5 for vacating the premises over which they were running their shops/garage. The said petitioners have questioned the authenticity of the said agreements, however they have admitted that they had received the said amounts which were paid to them on account of closure of the committee run by them along with respondent no.5 and many other persons. Though the petitioners have claimed that the said agreements do not contain the fact that they are tenants of the landlord, however, on bare perusal of contents of the said agreements, it is evident that the same contain the narration that the petitioners were running shops/garages over on the said land on rent. The petitioners have not disputed their respective signatures put on the said agreements. Since the petitioners themselves had admitted that they were running shops/

garages on rent, there is no question of doubting the authenticity of the said agreements. Even if no rent agreement or rent receipt was filed by the respondent no.5 before the respondent no.4, the self-admission of the petitioners that they are tenants of the respective premises, is sufficient to establish the tenant-landlord relationship between the petitioners and the owner of the said land.

40. So far as the case of the petitioner- Lala Khan is concerned, he has claimed that though he has no right upon the said land, but one Pradeep Beltharia is the owner of the said land and the said petitioner being the servant of Pradeep Beltharia is in possession of the same. The petitioner in support of the said claim, however, failed to bring on record any evidence before the concerned courts below. In the said case, Sairun Nisha had produced a rent agreement executed between her and Lala Khan on 31.07.1999 to establish the landlord-tenant relationship between the parties. The petitioner-Lala Khan has, however, disputed his signature made on the said agreement. In the case of petitioner-Md. Pravez, the respondent no.5 had also produced before the respondent no.4 a rent agreement executed between Sairun Nisha and Md. Pravez on 27.07.2013. The said petitioner in his cross examination had also disputed his signature made on the said agreement. However, both the petitioners-Lala Khan and Md. Pravez had failed to file any application before the respondent

no.4 for sending the deed of agreements to the handwriting expert.

41. In the case of ***Rahimal (dead) by LRS and Another Vs. Dy. Director of Consolidation & Others, reported in (2002) 10 SCC 94***, the Hon'ble Supreme Court has held as under:-

"3. Learned counsel appearing for the appellants urged that from the very inception the appellants have challenged the compromise memo on the ground that it did not bear their signatures and, therefore, the Deputy Director of Consolidation on his own initiative ought to have given an opportunity to them to get their purported signatures on the compromise memo examined by a handwriting expert. We do not find any merit in the contention. It was for the appellants to have requested the Deputy Director of Consolidation for getting their signatures examined by a handwriting expert. No such prayer was made either by the appellants or by their counsel to the Deputy Director of Consolidation. Further, the appellants failed to point out any infirmity in the compromise memo. The Deputy Director of Consolidation, after looking into the original compromise memo found that there was nothing to doubt the genuineness of the compromise. The aforesaid finding recorded by the Deputy Director of Consolidation affirmed by the High Court, is a finding of fact and cannot be assailed in this appeal."

42. This Court is of the view that once the respondent no.5 as well as Sairun Nisha had brought the rent agreements on record, the burden had shifted to the petitioners- Md. Pravez and Lala Khan to prove that their signatures were forged, however, they failed to discharge the said burden.
43. Another argument of the learned counsel for the respective petitioners is that since the provisions of section 4 of the Act, 2011 has not been complied in the present batch of cases, there is a serious doubt over the factum of tenancy.

44. This Court has perused section 4 of the Act, 2011, which reads as follows:-

4. Tenancy Agreement to be in writing

(1) Notwithstanding anything contained in section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), no person shall, after the commencement of this Act let or take on rent any building except by an agreement in writing.

(2) Where in relation to a tenancy created before the commencement of this Act, and where no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to the tenancy including the amount of rent and the period of tenancy; and deposit a copy thereof before the Controller concerned within two years as described in Sec 13C of this act.

Provided that where the landlord and the tenant fail to present jointly a copy of the tenancy agreement under this sub-section, such landlord and tenant shall separately file the particulars about such tenancy with the Controller concerned in such form and in such manner and within two years as may be prescribed

45. The aforesaid provision provides that the tenancy agreement must be in writing and a copy of the same should be sent to the House Rent Controller within two years as described in section 13C of the Act, 2011. Nonetheless, the same does not provide the consequence of non-compliance of the same. This Court is of the view that since the landlord-tenant relationship between the petitioners and the owner of the premises in question has sufficiently been proved in the present case, the petitioners cannot be allowed to take the ground of non-compliance of section 4 of the Act, 2011 as their defence.
46. In view of the aforesaid discussions, this Court does not find any reason to interfere with the common order dated

06.12.2022 passed by the Commissioner, North Chotanagpur Division, Hazaribagh in J.B.C.R. No.22 of 2020, J.B.C.R. No.14 of 2020, J.B.C.R. No.17 of 2020, J.B.C.R. No.23 of 2020, J.B.C.R. No.12 of 2020, J.B.C.R. No.25 of 2020, and J.B.C.R. No.19 of 2020.

47. These writ petitions being devoid of merit are, accordingly, dismissed.

(Rajesh Shankar, J.)

Sanjay/AFR