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

\+ **RCR 31/2009 & CM 6929/2009**

TAGORE EDUCATION SOCIETY REGD. ..... Petitioner
Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. P.K. Seth, Advocate

versus

KAMLA TANDON & ANR. ..... Respondents
Through: Mr. Harish Malhotra, Senior Advocate with Mr. Rajender Aggarwal, Advocate

Reserved on: May 13, 2009

% Date of Decision: July 10, 2009

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

MANMOHAN, J

1. Present petition has been filed under Section 25B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as "DRC Act") challenging the orders dated 17th July, 2007, 19th September, 2008 and 13th April, 2009 passed by Additional Rent Controller (in short 'ARC') in eviction petition being E No. 342/07/06 & M-13/08.

2. By order dated 17th July, 2007, ARC granted petitioner-tenant leave to defend restricted to one issue, namely, whether tenanted property was let out for residential purpose or for composite purpose and/or even if it was let out for composite purpose, whether the dominant purpose was residential or not. Subsequently, by order dated 19th September, 2008, ARC allowed respondents-landlords' eviction petition after relying upon a judgment of Supreme Court in ***Satyawati Sharma (Dead) By LRs v. Union of India & Anr.*** reported in ***(2008) 5 SCC 287***. Thereafter, by order dated 13th April, 2009, ARC dismissed petitioner's review application holding that petitioner could not urge those grounds which had been specifically rejected by ARC while granting restricted leave to defend.

3. Mr Sudhir Nandrajog, learned Senior Counsel for petitioner submitted that respondents-landlords' eviction petition was not maintainable in view of the specific bar under Section 14(6) of DRC Act as respondents-landlords had filed the present eviction petition prior to a period of five years having elapsed from the date of said acquisition of the tenanted premises by respondents-landlords. In this context, Mr. Nandrajog referred to clause 10 of the Conveyance Deed dated 4th March, 2005, executed between the respondents-landlords and erstwhile owners of the tenanted premises, which reads as under :-

> *"10. It is further declared that as a result of these presents and subject to the conditions and*

covenants stated herein above, the Purchaser(s) from the date mentioned here above will become owner of the said property.....”

4. Mr. Nandrajog relied upon a judgment of this Court in ***Gurbachan Singh Awla Vs. Rajinder Singh & Anr.*** reported in ***85 (2000) DLT 334*** wherein it has been held as under :-

“6. Learned counsel for the Petitioner drew my attention to the conveyance deed dated 24th October, 1996 which specifically mentions in the penultimate paragraph that the "transfer shall be deemed to have come into force with effect from the date of registration of this deed". This is quite contrary to what has been stated in the eviction petition. It is not clear when the conveyance deed was registered but even if it is taken to have been registered on the date of its execution that is, 24th October, 1996, in view of Section 14(6) of the Act, it appears that an eviction petition under Clause (e) of the proviso to Section 14(1) of the Act could not have been filed for a period of five years from October, 1996. Learned counsel for the respondents did contend that the conveyance relates back to 18th November, 1992. Prima facie, this does not appear to be so, but this is something which will have to be determined by the learned Additional Rent Controller.

7. Under the circumstances, I think it would have been appropriate for the learned Additional Rent Controller to have granted leave to the Petitioner to contest the eviction petition because there does appear to be a substantial doubt about the date of the transfer of the property in favour of the respondents and, therefore, the maintainability of the eviction petition.”

5. Mr. Nandrajog further submitted that ARC had completely misunderstood and misread the ratio of Supreme Court’s judgment in ***Satyawati Sharma*** (supra). He submitted that Supreme Court in aforesaid judgment had only struck down the words *“let out for residential purposes”* in Section 14(1)(e) of DRC Act. But, according to him, it has nowhere been held by the Apex Court that even if premises are let out for commercial purposes, then on a bona fide need of the owner for only

residential purpose, an eviction order in respect of the said premises let out for commercial purpose could be passed.

6. He lastly submitted that petitioner had been a tenant in the tenanted premises since 1966 and respondents did not require the said premises for their own bona fide need.

7. On the other hand, Mr. Harish Malhotra, learned Senior Counsel for respondents-landlords submitted that petitioner-tenant could not urge two out of the three submissions, namely, bar of Section 14(6) of DRC Act as well as bona fide need of respondents-landlords as the said two arguments had been rejected by ARC vide order dated 17th July, 2007, which order had attained finality as it had not been challenged by the petitioner. Since Mr. Malhotra extensively referred to the order dated 17th July, 2007, I deem it appropriate to reproduce the relevant portion of said order, which reads as under :-

> *"4. First objection raised by the respondent is with respect to the maintainability of the petition. It was stated that because of the bar u/s 14(6) of DRC Act according to which the petition u/s 14(1)(e) cannot be maintained where a landlord has acquired any premises by transfer unless a period of five years has elapsed from the date of said acquisition. As contended by respondent merely passing of compromise decree does not confer any title in favour of the petitioner. Since no Sale Deed was executed in pursuance of the decree of specific performance and the Conveyance Deed was executed in the year 2005 therefore by virtue of said Conveyance Deed the petitioners have become owners only in 2005 and the period of five years w.e.f. 2005 has not elapsed therefore instant petition as argued is not maintainable.*
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> *5. On the other hand it was contended by petitioner that rights with respect to the property in question were devolved upon the petitioner no. 1 alongwith Dr. R.L. Tandon on the basis of Agreement of Sell dated 19.09.1980 since in the compromise decree the*

possession of the petitioner alongwith late Dr. R.L. Tandon on the First Floor of the property was admitted to be in part performance of the Agreement to Sell and petitioners were given the rights to deal with the said property as absolute owners and to recover rent from the respondent. Thus, after the said compromise decree was passed on 17.1.00, the petitioners have become owner/landlord of the said premises w.e.f. 19.09.1980 with respect to the property in question and consequently by operation of law the respondent became the tenant of the petitioner w.e.f. 19.09.1980. However the record particularly the application u/o 23 Rule 3 on the basis of which the compromise decree was passed does not support the above said contention of petitioners. In terms of the said application irrevocable Power of Attorney (General) as well as (Special), Will, Indemnity Bond, the application for substitution/mutation affidavits, no objections certificate etc. were executed by the previous owner as well as the original documents of title of the property were also agreed to be handed over to the petitioners at the time of making the payment while recording the statement before the court on said application and the petitioners were to deal with all the concerned authorities relating to the completion of all the formalities for getting the property recorded absolutely in their names in the records of various authorities such as Land and Development Office, MCD etc. including mutation/conversion into free hold registration of requisite documents etc. It was also made clear in the said application that the previous owner would be entitled to withdraw the entire rent up to the date of the application and thereafter the petitioner would be entitled to deal with the property in any manner and also to claim the rent. The abovesaid makes it clear that no right as such had devolved upon the petitioners w.e.f. 19.09.1980 i.e. the date of execution of Agreement to Sell besides the fact that mere Agreement to Sell does not confer ownership. Albeit as intended by the parties the ownership rights and the consequent rights inclusive of the right to claim the rent had been devolved upon the petitioners on 17.01.00 when the compromise decree as such was passed in favour of the petitioners and all the said documents namely GPA, SPA, Indemnity Bond, Will etc. were executed in favour of the petitioners. Further had it also been the case of petitioners themselves that ownership was transferred in their name in 1980 then they would not have withdrawn the previous petition filed since the five years time had not elapsed w.e.f. 2000, however I am in humble disagreement with the contention of I.D. Cl. for respondent also that the ownership rights transferred in favour of petitioners only after the execution of Conveyance Deed in their favour. In terms of the contents of compromise decree, as discussed above, all the rights had devolved upon the petitioners inclusive of the right to claim the rent from the respondent at the time of passing of the compromise decree therefore it

cannot be said that the acquisition of the property by the petitioners was only after the execution of Conveyance Deed. I.d. CL. for petitioner has relied upon 1987 LRI 526 SC Shanti Sharma vs. Ved Prabha. Though the facts of the said case are distinguishable from the facts of the instant case but help can be taken from the said authority with respect to the preposition of law. It was observed the "Owner u/s 14(1)(c) had not been used in absolute sense and would include persons who had taken plot of land from Government, DDA or on lease and built a structure on the same. Owner is one who is something more than the tenant." On the basis of irrevocable Power of Attorney, passing of compromise decree and the other set of documents as well as in terms of the relinquishment of the rights by the previous owner in favour of the petitioners in the year 2000 itself followed by Conveyance deed in their favour, petitioner had become the owner as well as the landlord qua the respondent with respect to the property in question, therefore the objection of respondent that petition has been filed within 5 years of the acquisition of the property by the petitioner is not tenable.

6. The next contention of the respondent is with respect to the dependency of the number of family members of the petitioner, petitioner no. 2 as stated is not residing with the petitioner no. 1 as well as grand daughter namely Reema who is stated to be residing somewhere in Noida but neither the specific address is given for the grand daughter of petitioner no. 1, nor it is pointed out if the Petitioner No. 2 is not residing with Petitioner No. 1, which is the alternative accommodation available with him whereas the documents like ration card, passport etc., have been placed on record by the petitioners in which their address is mentioned as 24, Ring Road, Lajpat Nagar-IV, New Delhi- 110024, considering the number of family members of the petitioners who are dependent upon them for the purpose of residence as well as considering their status whereby they require the accommodation commensurate to their status and also as per the specific requirements given in the petition, they definitely require much more accommodation than what is available to them at the moment. The respondent has also not pointed out any other alternative accommodation available with the petitioners therefore their need to claim the property in question for the purpose of residence cannot be said to be not genuine."

8. Mr. Malhotra pointed out that, in fact, respondents-landlords had challenged the conditional leave to defend by filing a revision petition being CRP No. 153/2007, which was

disposed of by a learned Single Judge of this Court in the presence of learned Counsel for petitioner-tenant. The said order dated 4th February, 2008 is reproduced hereinbelow for ready reference :-

> *"Present : Mr. Harish Malhotra, Sr. Adv. with Ms. Namita Chaudhary, Advocate for the petitioner.*
> *Mr. R.S. Endlaw, Advocate for the respondent*
>
> *CRP No. 153/2007*
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> *The order impugned in this civil revision petition is an order passed on the application for seeking leave to defend filed by the respondent-tenant. Leave to defend has been granted only on a limited question that is with regard to the purpose of letting. According to the respondent the purpose of letting was residential-cum-commercial whereas according to the petitioner the purpose of letting was residential. This is a relevant issue for determination of a petition under Section 14(1)(e) of the Delhi Rent Control Act. Learned counsel for the respondent possibly cannot have and does not any objection to the early disposal of the eviction petition, particularly, considering the fact that the petitioner is an 85 years old lady. In the interest of justice this petition is disposed of with a direction to the learned Additional Rent Controller to dispose of the eviction petition within four months. Neither party shall ask for or be granted any adjournment in the matter.*
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> *Copy of this order be sent to the concerned Court along with the record. Parties may appear before the Additional Rent Controller on 18.2.2008. Dasti."*

9. In any event, Mr. Malhotra submitted that respondents-landlords had purchased the tenanted property on the basis of an agreement to sell dated 19th September, 1980 and as there was a dispute with the erstwhile owner, present respondents-landlords had filed a suit for specific performance. During pendency of the said proceedings, on 17th January, 2000 a compromise decree was passed wherein it was agreed that from the date of the said compromise application, petitioner would

become tenant of the respondents. Mr. Malhotra referred to paragraph 14 of the compromise application filed by the respondents-landlords and the erstwhile owner, which is reproduced hereinbelow :-

> *"14. Tagore Educational Society (Registered), the tenant in the portion of the suit-property compromising, inter alia, the ground floor and the garage with servant quarters block on the mezzanine and the first floor, has, from the date of this application, become the tenant under the plaintiffs, and the plaintiffs would be substituted in place of the original defendant and/or the present defendants, in all proceedings and for all intents and purposes, including pending litigations."*

10. Consequently, according to Mr. Malhotra, respondents became landlords of the tenanted premises, at least with effect from 17th January, 2000 and as the eviction petition had been filed on 5th May, 2006, bar of Section 14(6) of DRC Act did not apply.

11. Mr. Malhotra further submitted that petitioner-tenant in the present proceedings had not taken any ground with regard to bona fide need of respondents-landlords and in any event petitioner could not raise this issue in the present proceedings as order dated 17th July, 2007 granting restricted leave to defend, had not been challenged by petitioner-tenant. Without prejudice to the aforesaid, he referred to various paragraphs of eviction petition to show that respondents-landlords had specifically mentioned in the eviction petition that tenanted premises were required by them for their bona fide need.

12. Mr. Malhotra further submitted that as the tenanted

premises could only be utilised for residential purpose by virtue of perpetual lease deed executed between the President of India and the erstwhile owner, there was no question of tenanted premises being utilised for residential-cum-commercial purpose. In this connection, he referred to Clause I(v) and (vi) of Perpetual Lease Deed, which are reproduced hereinbelow:-

> *"I. The Lesse doth to the intent that the burden of the covenants may run with the said land and may bind any permitted assignee thereof hereby covenant with the Lessor as follows:-*
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> *xxxxx xxxxx xxxxxx xxxxxx*
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> *(v) not to erect more than one building *single storeyed containing one residential flat or *double storeyed consisting of one or two residential flats in all, with a barsati on top, as may be approved by the Chief Commissioner, Delhi or such officer or body as the Lessor or the Chief Commissioner, Delhi may authorize in this behalf, except such outhouses and servant quarters as may be approved by the Lessor. Any servant quarters constructed by the Lessee shall not without any written permission of the Chief Commissioner, Delhi, be occupied or permitted to be occupied otherwise than by the bona-fide servants of the persons occupying the main building ;*
>
> *(vi) not without the written consent of the Chief Commissioner, Delhi, to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of *single storeyed building consisting of one residential flat or a *double storeyed building consisting of one or two residential flats in all, with a barsati on top, as may be approved for the locality or as provided in the building already erected on the said aid land;"*

13. Mr. Malhotra lastly submitted that even if tenanted premises were let out for commercial purpose, an eviction order under Section 14(1)(e) of DRC Act could be passed if respondents-landlords were able to show that premises were required by them for their bona fide residential use.

14. In rejoinder, Mr. Sudhir Nandrajog submitted that ARC could not have granted restricted leave to defend. According to him, once ARC reaches the conclusion that leave to defend application filed by tenant raises a triable issue, then the only option with ARC was to grant unconditional leave to defend. In this connection, he relied upon the following judgments :-

A) ***S.K. Dey Vs. D.C. Gagerna*** reported in ***26 (1984) DLT 438*** wherein it has been held as under :-

> *"8. It is thus manifest that while granting leave the learned Rent Controller restricted the same to pleas sought to be raised by the respondent other than that relating to the parents of the petitioner being members of the family of the petitioner and being dependent upon him for residential accommodation. Strictly speaking, therefore, no issue could be raised by the respondent on this point. However, as stated above, he did urge this ground in his written statement and even the petitioner, taking note of it, refuted the same. While reiterating the averments made by him in the eviction petition, he asserted that he and his father constituted Joint Hindu Family and unless there was a petition is must be deemed to continue as such.*
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> *9. In its recent decision in* ***Precision Steel and Engg. Works and Another*** *v.* ***Prem Deva Niranjan Deva Tayal,*** *AIR 1982 SC 1518 while dealing with the relative scope of granting leave to defend under Order XXXVII Rule 3(5) of the Code of Civil Procedure and Sub-section (5) of Section 25B of the Act, the Supreme Court observed that:*
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> *"Mere disclosure of facts, not a substantial defence is the sine qua non. Further the Court can grant conditioned leave or leave limited to the issue under Order XXXVII Rule 3(5).There is no such power conferred on the Controller under Sub-section (5) of Section 25B."*
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> *10. On a bare reading of this observation it is manifestly clear that the Controller is not competent to grant restricted leave i.e. leave limited to any particular issue. In other words, whenever the Controller is satisfied that the respondent/tenant is entitled to leave to contest on one or more of the grounds disclosed in his application for leave to defend, such leave would be deemed to be unrestricted and untrammelled by any kind of fetters and*

it would be open to the respondent/tenant to take up whatever pleas are available to him under law in his written statement. The submission made by the learned Counsel for the respondent, however, is that the aforesaid observation of the Supreme Court being in the nature of obiter dictum cannot be looked upon as a precedent to be binding on this Court or for that matter the Controller. According to him, the quest) on whether restricted leave or leave limited to any particular ground can or cannot be granted by the Controller was not before the Supreme Court and it was only incidentally that while comparing the relative scope of the provisions contained in Order XXXVII Rule 3(5) of the Code of Civil Procedure and Sub-section (5) of Section 25B of the Act that the Supreme Court expressed the aforesaid opinion. Reliance in this context has been placed on ***H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur and Others*** *v.* ***Union of India,*** *AIR 1971 SC 530, wherein it was observed by the Supreme Court that:*

"The Court was not called upon to decide and did not decide that Article 366(22) was a provision relating to covenant within the meaning of Article 363. It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment".

11. On a consideration of the matter, however, I do not feel persuaded to subscribe to the view taken by the learned Counsel for the respondent. It is for the simple reason that the Supreme Court was specifically dealing with and expounding the true ambit and scope of the provisions of Sub-section (5) of Section 25B of the Act and while interpreting the same it was natural for the Court to lay down the necessary guidelines to be followed by the Controllers and for that matter even this Court at the stage of revision, etc. while dealing with the question of leave to contest. Hence, the aforesaid observation can by no stretch of reasoning be said to be in the nature of obiter dictum."

B) ***Bhauri Devi (Deceased) Through LRs. Vs. Mahender Kumar*** reported in ***146 (2008) DLT 117*** wherein it has been held as under :-

"6. With the above background, I now take up the issue posed in the very first paragraph of this order. It may be noticed at the outset that the question raised is no longer res-integra. It came up for consideration before a Single Judge of this Court in S.K. Dey v. D.C. Gagerna 26 (1984)

DLT 438= AIR 1985 Delhi 169, wherein it was held that the Controller is not competent to grant restricted leave i.e. leave limited to any particular issue. It was further held that whenever the Controller is satisfied that the tenant is entitled to leave to contest on one or more of the grounds disclosed in his application for leave to defend such leave would be deemed to be unrestricted and untramelled by any kind of fetters and it would be open to the tenant to take up whatever pleas are available to him under law in his written statement. The learned Single Judge in taking the aforementioned view had relied upon a judgment of the Apex Court in Precision Steel & Engineering Works and Anr. v. Prem Deva Niranjan Deva Tayal, 22 (1982) DLT 458 (SC) = AIR 1982 SC 1518, wherein it has been held that the Controller is not competent to grant conditional leave or leave limited to any particular issue.

7. It is clear from the above judgments that the Controller cannot grant restricted leave to defend and once he reaches the conclusion that affidavit in support of leave to defend application filed by the tenant discloses a triable issue then the only option left with the Controller is to grant unconditional leave to defend in which event the entire defence set up by the tenant would be at large."

15. Mr. Nandrajog further submitted that petitioner could have challenged the order dated 17th July, 2007 granting restricted leave to defend only after the final eviction order had been passed. In this connection, he relied upon the following judgments in the cases of ***Achal Misra Vs. Rama Shanker Singh & Ors.*** reported in ***(2005) 5 SCC 531*** and ***Suchet Singh Vs. Chander Bal*** reported in ***18 (1980) DLT 104***.

16. As far as the issue of Additional Rent Controller's power to grant restricted leave to defend is concerned, I am of the view that a Division Bench's judgment of this Court rendered in the case of ***Chatar Sain Goel Vs. Puran Singh*** reported in ***AIR 1981 DELHI 239*** had not been cited before the two learned Single Judges who had decided ***S.K. Dey*** and ***Bhauri Devi***

(Supra). In fact, reference to Division Bench in the case of ***Chatar Sain Goel*** (supra) had been made because of divergent opinions in this Court on this issue.

17. The relevant portion of Division Bench's judgment of this Court in ***Chatar Sain Goel*** (supra) are reproduced hereinbelow for ready reference :-

> *3. As observed above, the learned Rent Controller granted permission to defend only on the plea that the landlord was not in occupation of reasonably suitable accommodation.*
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> *4. Feeling aggrieved, the tenant has filed the present revision petition. This came up for hearing before a learned Single Judge who has referred the same to a larger Bench because of divergent opinions in this Court on the question whether restricted leave can be granted and also because the question raised is of general importance. That is how the matter has come before us.*
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> *5. Section 37 of the Act controls the procedure to be followed by the Controller in disposing of the applications under the Act. Sub-section(1) lays down that no order which prejudicially affects any person shall be made by the Controller under the Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objection, if any, and any evidence he may produce in support of the same has been considered by the Controller. Sub-section (2) provides that subject to the rules that may be made under the Act, the Controller shall while holding an inquiry in any proceeding before him, follow as far as may be, the practice and procedure of a court of Small Causes, including the recording of evidence. Sub-section (3) deals with award of costs, etc. By the amending Act No. 18 of 1976, the Act was amended and, inter alia, a new chapter, III-A, containing Sections 25-A, 25-B and 25-C was added. This chapter provides for summary trial of certain applications. Section 25-B provides special procedure for the disposal of applications under Clause (e) of the Proviso to sub section (1) of Section 14. It is apparent that the purpose of introducing the provisions contained in Section 25-B was to provide for speedy trial of such applications. Keeping in view this legislative intent,*

> *we find no difficulty in holding that leave could be restricted to one or more points if other points raised by the tenant were found to be without substance. It would avoid unnecessary delay in the disposal of these applications which was the intent of the legislature in incorporating these provisions.*
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> *xxxxxxxx xxxxxxxx xxxxxxxx*
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> *8. Learned counsel for the petitioner also referred to a single Bench decision of this Court in Smt. Kundan Kaur v. Sh. K.P. Verma, (1978) 2 Ren C.R. 282. At page 290, the learned Judge has observed as under :*
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> *"There can be no doubt that so far as the Controller is concerned, once leave to defend the eviction petition is granted by him, the tenant cannot be restricted to particular pleas."*
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> *These observations, in our view, were in the nature of obiter. It may be mentioned that the application of the tenant for permission to grant leave to defend had been dismissed and an order of eviction had been passed. The tenant had come up in revision against that order. In the revision leave to defend was allowed but restricted to certain points. When the High Court could restrict leave to defend to one or more points there appears to be no reason why the Controller could not put similar restrictions. In any case, we are not inclined to accept the view taken in that case.*
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> *9. For these reasons we hold that leave to defend restricted to one or more points, when other points are without substance, can be granted."*

18. In my view, had the attention of two learned Single Judges who decided ***S.K. Dey*** and ***Bhauri Devi*** (Supra) been drawn to the specific Division Bench's judgment, they would have followed the same rather than rely upon an observation in the case of ***Precision Steel*** (supra), specifically when the issue with regard to power of Additional Rent Controller to grant restricted leave to defend was not being considered in case of ***Precision Steel***. In the case of ***Municipal Corporation of***

Delhi Vs. Gurnam Kaur reported in ***(1989) 1 SCC 101***, the Supreme Court drew a distinction between *ratio decidendi, obiter dicta, per incuriam and sub silentio*. The relevant portion of the said judgment is reproduced hereinbelow : -

> *"10. It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das case could not be treated to be a precedent. The High Court failed to realise that the direction in Jamna Das' case was made not only with the consent of the parties but there was an interplay of various factors and the Court was moved by compassion to evolve a situation to mitigate hardship which was acceptable by all the parties concerned. The Court no doubt made incidental observation to the Directive Principles of State Policy enshrined in Article 38(2) of the Constitution and said:*
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> > *Article 38(2) of the Constitution mandates the State to strive to minimise, amongst others, the inequalities in facilities and opportunities amongst individuals. One who tries to survive by one's own labour has to be encouraged because for want of opportunity destitution may disturb the conscience of the society. Here are persons carrying on some paltry trade in an open space in the scorching heat of Delhi sun freezing cold or torrential rain. They are being denied continuance at that place under the specious plea that they constitute an obstruction to easy access to hospitals. A little more space in the access to the hospital may be welcomed but not at the cost of someone being deprived of his very source of livelihood so as to swell the rank of the fast growing unemployed. As far as*

> *possible this should be avoided which we propose to do by this short order.*

This indeed was a very noble sentiment but incapable of being implemented in a fast growing city like the metropolitan City of Delhi where public streets are overcrowded and the pavement squatters create a hazard to the vehicular traffic and cause obstruction to the pedestrians on the pavement.

11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:-

> *A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the*

> *decision is not an authority on point B. Point B is said to pass sub silentio.*
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> *12. In Gerard v. Worth of Paris Ltd. (k), [1936] 2 All E.R. 905, the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith, Ltd. [1941] 1 KB 675, the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."*

19. Consequently, it is only the *ratio decidendi* which has a binding precedent force. From a reading of the ***Precision Steel***'s judgment (supra) it is apparent that the observations of the Supreme Court with regard to grant of restricted leave to defend are in the nature of *sub silentio*. Moreover, the Supreme Court in ***Escorts Ltd. Vs. Commissioner of Central Excise, Delhi-II*** reported in ***(2004) 8 SCC 335*** has observed as under :-

> *"8. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words statutes; their words are not to be interpreted as statutes.....*
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> *xxxxxx xxxxxxx xxxxxxxx*
>
> *10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."*

20. Consequently, as the two judgment's i.e. ***S.K. Dey*** and ***Bhauri Devi*** (Supra) have been passed without taking into account a specific Division Bench's judgment of this Court, they have no binding force. Even though I have reached the conclusion that restricted leave to defend can be granted, I would still consider petitioner's two arguments which had been rejected at the time of granting restricted leave to defend.

21. As far as issue of bona fide need is concerned, I am in respectful agreement with Additional Rent Controller's view that petitioner had not placed any material on record to show that respondents' need for premises was not genuine or bona fide. Moreover, the Apex Court in ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*** reported in ***80 (1999) DLT 731*** and

this Court in ***Rajender Kumar Sharma & Ors. Vs. Leela Wati & Ors.*** reported in ***155 (2008) DLT 383*** have categorically held that bald and baseless plea/averments by tenant are not sufficient and that it is the landlord's wish as to how he/she is desirous to fulfill his/her requirement.

22. In my view, while seeking eviction under Section 14(1)(e) of the DRC Act, it is not mandatory for landlord to prove that he has become absolute owner of tenanted premises. In fact, in ***Sushil Kanta Chakravarty Vs. Rajeshwar Kumar*** reported in ***2000 (2) RCJ 313*** it has been held that, "*What the Legislature intended in incorporating the word 'owner' in Section 14(1)(e) of the Act is not to use the same in the sense of absolute owner but it was used in contra-distinction with a landlord as defined who is not an owner but who holds the property for the benefit of another person. The word 'owner' occurring in Section 14(1)(e) of the Act means something more than a tenant. Let us take an example in Delhi it is of common knowledge that property is transferred and re-transferred on the basis of a power of attorney and, therefore, if the word 'owner' has to be construed in the strictest sense then a transferee on the basis of a second power of attorney of a residential house cannot seek eviction of a tenant which property has been constructed by the previous transferee and who has inducted the tenant on the basis of second power of*

attorney. That will negate the whole object of incorporating sub-clause (e) in Section 14(1) of the Act."

23. Since in the present case, the erstwhile owners had executed in respondents' favour an Agreement to Sell along with General Power of Attorney, Special Power of Attorney, Indemnity Bond, Will, respondents had become owners of the premises, if not from the date of execution of said documents, at least from 17th January 2000 when the compromise order was passed, wherein the erstwhile owners agreed that from that date the petitioner had become respondents' tenant.

24. Even, the judgment of ***Gurbachan Singh Awla*** (supra) cited by learned Counsel for petitioner offers no assistance inasmuch as it only deals with a prima facie consideration, whereas in the present case, I have considered the plea of Section 14(6) of DRC Act on merits and found no substance in it.

25. Petitioner's other argument that even if premises are let out for commercial purposes then an eviction order in respect of said premises can be passed only if landlord requires it for his commercial need, is untenable in view of the specific observations of Supreme Court in the case of ***Satyawati Sharma (Dead) by LRs v. Union of India & Anr.*** reported in ***(2008) 5 SCC 287*** which are as follows :-

> *"41. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the*

doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

42. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned Counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:

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

While adopting this course, we have kept in view well recognized rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible - ***R.M.D. Chamarbaugwalla v. Union of India*** *[AIR 1957 SC 628], and* ***Lt. Col. Sawai Bhawani Singh v. State of Rajasthan*** *[1996 (3) SCC 105].*

43. As a sequel to the above, the Explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant."

26. In view of the aforesaid observations of Supreme Court, in my opinion the ambit of Section 14(1)(e) of DRC Act has been

enlarged and a landlord is entitled to an eviction order even with regard to commercial tenancy, if landlord is able to show that he/she requires the premises bona fide for his own or for his family members need irrespective of the fact as to whether the need is for commercial or residential purpose. Accordingly, I find no merit in this plea of petitioner.

27. However, having regard to the fact that petitioner is allegedly running a school in the tenanted premises and dismissal of petitioner's petition would cause hardship to the students and the fact that respondent no. 1 is a lady over 85 years old, I grant time to petitioner till 31st May, 2010 to vacate the tenanted premises. In case petitioner does not vacate the tenanted premises on or before 31st May, 2010, respondents would be entitled, apart from other legal remedies, to file an application in this Court to obtain police aid to vacate petitioner from the said tenanted premises.

28. With the aforesaid observations, present petition is dismissed but with no order as to costs.

MANMOHAN, J

JULY 10, 2009
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