

Mohd. YamIn Vs. Mohd. Usman

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Court : Delhi

Decided On : Sep-08-1982

Reported in : ILR1983Delhi305

Judge : Yogeshwar Dayal, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 17(2)

Appeal No. : Regular Second Appeal No. 44 of 1979

Appellant : Mohd. Yamin

Respondent : Mohd. Usman

Advocate for Def. : Mr. Mohd. Ahmed

Advocate for Pet/Ap. : Mohd. Ahmed and; H.D. Triyogi, Advs

Judgement :

Yogeshwar Dayal, J.

(1) This second appeal has been filed on behalf of the defendant/appellant, Shri Mohd. Yamin against the judgment and decree dated 1st February, 1979 passed by learned Additional District Judge, Delhi reversing the judgment passed by learned Subordinate Judge 1st Class, Delhi dated 30th October, 1976.

(2) The learned Subordinate Judge 1st Class. Delhi had dismissed the suit for possession filed by the plaintiff/respondent. But on appeal by the plaintiff/respondent, the learned lower appellate court accepted the appeal and decreed the suit for possession.

(3) The plaintiff/respondent had filed a suit for possession inter alia, on the allegations that he had purchased premises No. 1535-38 situate in Gali Kotanawali Suiwalan, Bazar Chitly Qabar, Delhi from the Custodian of Evacuee property on 7th April, 1970 and sale certificate was duly issued to him by the Custodian. Property No. X/1537 is part. of the premises purchased by the plaintiff/respondent and it consists of a shop. That the defendant is an un-authorised occupant of this shop. That according to the attornment letter issued to the plaintiff, the Custodian had only shown two tenants, namely. Sh. Satya Dev Dogra and Sh. Abdul Latif. That the name of the defendant does not appear in the said attornment letter. That even according to the record of the Custodian defendant is in un-authorised occupation and not a tenant of the Custodian and the defendant being in un-authorised occupation of the premises was served with a. notice to vacate the premises in dispute and to hand over vacant possession. But the defendant gave an evasive reply and refused to hand over the vacant possession. Hence the decree for possession was prayed for by the plaintiff.

(4) The defendant/appellant contested the suit stating that the plaintiff had not purchased the disputed property. But admitted that the provisional possession of the property was given to the plaintiff. However, the defendant/appellant denied status as an un-authorised occupant of the disputed shop rather claimed himself to be a tenant. The appellant had taken the plea that he is a tenant in the disputed premises under the Custodian and later on under the Managing Officer and in any case he was lawful occupant of the property and became a tenant of the plaintiff in view of the provisions of Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. (hereinafter referred to as 'the Act'). That the plaintiff has accepted, admitted and recognised the defendant as a tenant and hence the suit of the plaintiff was not maintainable.

(5) On these pleadings the learned trial court framed the following issues : (1) Whether the plaintiff is the owner of the disputed shop (2) Whether the defendant's is in unauthorised occupation of the shop or he is a tenant under the custodian (3) Whether the suit is properly valued for the purposes of court fee and jurisdiction (4) Whether the defendant is a tenant of the plaintiff Effect (5) To what relief, if any, is the plaintiff entitled 7

(6) On Issue No. 1, the trial court found that the plaintiff/respondent had purchased the property from the Managing Officer and he is the owner of the shop in dispute. On issues No. 2 and 4, the learned trial court found against the plaintiff and in favor of the defendant/appellant and it was held that defendant was not unauthorised occupant and was a tenant in the property before its sale to the plaintiff/respondent. While deciding issues No. 2 and 4, the learned trial court placed reliance on the notice dated 6th May, 1972 (Ext. D-11) issued by the Managing Officer to the defendant I appellant and the plaintiff to attorn in favor of the plaintiff /respondent and the order dated 28th May, 1973 (Ex.D12) passed by the Authorised Chief Settlement Commissioner dismissing the revision petition of the plaintiff/respondent against the aforesaid notice of the Managing Officer dated 6th May, 1972. And it was held that defendant was a tenant under the Managing Officer for a long time before sale of the property in favor of the plaintiff. Learned trial court also placed reliance on the rent receipts issued in favor of the defendant/appellant, Ext. D-1 to Ext. D-10. Learned trial court also found that the property in dispute along with other properties was put up for auction by the Managing Officer under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Act No. 44 of 1954) and was purchased by the plaintiff/respondent and the sale certificate. Ex. Public Witness 4/1 dated 31st March, 1971 was issued in favor of the plaintiff I respondent with effect from 22nd September, 1970.

(7) Learned trial court did not place any reliance on the survey reports produced by the plaintiff from the Municipal Corporation of Delhi though the survey reports did not show the defendant as occupant of the properties bearing Municipal Number 1535 to 1538. He also did not place any reliance on the testimony of the clerk from the record room of the house tax department of the Municipal Corporation of Delhi. Learned trial court noticed that this witness had brought the

municipal record to state that the defendant has not been shown a tenant in the municipal records in regard to the property in dispute in the survey conducted by his department. The copies of the Inspection book were however, not exhibited by the learned trial court and the learned trial court noticed that the records brought by the witness (Public Witness -6) was not prepared by the witness and the register brought by the witness is unbelievable because many entries have not been made in the columns nor the signatures of the landlord or the tenants have been obtained. The witness also could not identify the signatures of the person who had gone to conduct the survey. Learned trial court also noticed that the survey register relating to the year 1960-61 does not bear the page numbers and in the register relating to the year 1963-64 columns 6 to 9 were all blank and it was noticed that turn this year, there is no entry relating to shop No. 1537 at all. therefore, the learned trial court declined to place any reliance on the testimony of the clerk of the (corporation.

(8) On appeal by the plaintiff, the learned Additional District Judge took the view that the receipts Exts. D-1 to D-10 were issued in favor of defendant from January, 1971 to September, 1971 showing the payment or rent by the defendant in the office of the Regional Settlement Commissioner. Learned Additional District Judge held that all the rent receipts. Exts. D-1 to D-10 were issued after the property in question had been put to public auction and for the period after the plaintiff had been declared to be the owner of the property. The defendant could not produce even a single receipt nor could he produced any evidence that he ever paid any rent to the Custodian or the Managing Officer before this property was put to sale by public auction. Regarding Ext. D-11 and Ex. D-1 2, the learned Additional District Judge held that the notice for attornment dated 6th May. 1972 was issued after the sale of the property and thus was issued by a person who had no jurisdiction to deal with the property. He also took the view that order of the Authorised Chief Settlement Commissioner dated 28th May. 1973 Ex. DI 2 was also without jurisdiction and is null and void in the eyes of the law and thus. of no evidenciary value.

(9) Learned lower appellate court however, after excluding Exts. D-1 to D-10 and Exts. D-11 and D-12 and on consideration of the other evidence took the view that

she defendant had failed to prove that he was an authorised occupant or tenant of the Custodian or the Managing Officer.

(10) Mr. Mohd. Ahmed, learned counsel for the defendant /appellant submitted that out of the rent receipts Exts. D-1 to D-10 at least rent receipt dated 30-1-1971 was turn the period August to December. 1970 and was issued before the issue of the sale certificate dated 31st March. 1971. It was also pointed out that rent receipt Ex. D-9 is dated 30-1-1971 and it was payment turn the rent for December, 1970 and again rent receipt Ex. D-8 is of March. 1971 for the rent for January, 1971 and Ex. D-7 is a rent receipt dated 10th March, 1971 towards the rent of February. 1971 and was issued before the issue of the sale certificate. It was also submitted that the rent receipts Exts. D-7 to D-10 are expressly for payment towards rent. He also submitted that the notice dard 6th May, 1972 issued by the Managing Officer directing the appellant to attorn to the plaintiff was issued within the jurisdiction of the Managing Officer and it related to an order for delivery of possession which is incidental to the power to sell the property under Section 17(2) of the Act. It was also submitted that the order of the Authorised Chief Settlement Commissioner dated 28th May. 1973 (Ex. D-12) was also admissible in evidence. It was submitted that the plaintiff had himself gone in revision against the order of the Managing Officer dated 6th May, 1972. He took his chance but when the judgment of the Authorised Chid' Settlement Commissioner went against him, he cannot be permitted to say that the order is without jurisdiction. It was submitted that both the notice dated 6th May. 1972 (Ex. D-11) as well as the order of the Authorised Chief Settlement Commissioner dated 28th May, 1973 (Ex. D-12) were orders passed under the Displaced Persons (Compensation and Rehabilitation) Act which were final under Section 27 of the Act and could not be called in question before any civil court under Section 36 of the said Act.

(11) It is clear that finding of the learned lower appellate court while reversing the finding of the trial court, is really based on evidence after ignoring E.s. D-11 and D-12. If Exts. D-11 and D-12 are inadmissible then the finding of the lower appellate court will not be finding of fact which cannot be interferred with in the second appeal. Question of relationship of landlord and tenant is a question of fact and if finding is given on no evidence or his (inding is based on inadmissible evidence, or

if the finding is arrived at by ignoring the evidence on the legal assumption that was inadmissible in evidence, then such a finding of fact will be vitiated and the High Court in second appeal will be entitled to re-examine and interfere with that finding.

(12) Thus, the question whether the finding of the learned lower appellate court on Issues 2 and 4 really turns on the correctness or otherwise of the decision of the learned lower appellate court. Ex. D-II and D-12 are the orders without jurisdiction and thus inadmissible in evidence. By this finding the learned lower appellate court refused to take into account these two documents. Before I go to the question of inadmissibility of Ex. D-II and Ex. D-12, it will be useful to notice the contents thereof. Ex. D-11 reads as under: Government Of India Ministry Of Labour, Employment And REHAB. (DEPARTMENT Of REHABILITATION) Office Of The Regional Settlement Commissioner (Central) No. MO(P)I-XIX/Auc/RS/D/1800 Jamnagar House, New Delhi, Dated the 6-5-1972. Subject: Provisional possession of property No. X /1535- 38(New) Delhi sold on 7-4-1970. Whereas it has been decided to give possession of the above property to Shri Mohd. Usman son of Sh. Mohd. Ismail the auction purchaser of the property. You are hereby directed to pay rent to him and deal otherwise with him direct with effect from 22-9-1970. You are further advised in your own interest to pay arrears of the previous period immediately in this office to avail yourself of the protection from adjustment in terms of the provisions contained in section 29 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 read with the relevant notification in this behalf, failing which you may render yourself liable to eviction. Copy to : 1. M.O. (Rent) for information and necessary action. 2. Shri Mohd. Usman r/o H. No.X/1592 (New Mohalla Saiwalan for information, monthly rent of the occupants are as under : Name of Occupants Monthly rent Sri. Mohd. Yamin Rs. 151- p.m. Managing Officer.

(13) The order dated 28th May, 1973 (Ex.D-12) was passed by the Authorised Chief Settlement Commissioner on a revision being filed by the plaintiff against the afore-said notice dated 6th May, 1972 whereby the Managing Officer had directed the appellant as a tenant, to attorn in favor of the purchaser. The Authorised Chief Settlement Commissioner noticed that after issuing of the sale certificate to the

plaintiff, on 31st March, 1971, on 3rd September, 1971, a letter (Ex. Public Witness 6/1) .was issued to the auction purchaser by the Managing Officer whereby Sh. Sat Dev Dogra and Sh. Abdul Latif were directed to attorn as tenant of the plaintiff. Learned Authorised Chief Settlement Commissioner also noticed that the defendant/appellant, Sh. Mohd.Yamin had along with Sh. Sat Dev Dogra been making various representations against sale and when no letter was issued to Mohd. Yamin, he represented regarding the similar tenancy certificate and it was decided that as a valid rent receipt had been issued by the office of the Regional Settlement Commissioner to Shri Mohd. Yamin as far back as 1969 and that no damage charges have been levied, but lease/rent had been charged, it was only proper that Sh. Mohd. Yamin should also be attorney as a tenant in the property and it was accordingly that the Managing Officer had issued the Attornment Letter dated 6th May, 1972. The Authorised Chief Settlement Commissioner in this order observed as under:

'.. . It has also been observed above that after the issue of the Sale Certificate S/Shri Sat Dev Dogra and Abdul Latif had been attorney as tenants. As at that time Shri Mohd. Yamin was left over, the deficiency was only made good by Shri Mohd. Yamin being attorney. who actually should have been attorney at the time the other two tenants mentioned above had been attorney. Evidently, there is sufficient evidence on which the respondent Shri Mohd. Yamin has been attorney and there can be really no quarrel with it. It has been argued that Attornment Letters are issued after the issue of the Sale Certificate and the same procedure was followed in the present case also. After the two tenants had been attorney, it was found that the third tenant, the present respondent Shri Mohd. Yamin, had also to be attorney, which was accordingly done. Shri Mohd. Yamin has been a tenant holding receipts of rent in his favor and there is no question- of Shri Mohd. Yamin being an unauthorised occupant. The respondent has been paying rent regularly and receipts for rent issued by the Department for several years are in his possession'.

5. I have considered the arguments advanced by the Counsel for petitioner as well and I find that in the face of the arguments advanced by the respondent's counsel, there is no merit in the petitioner's case. The lawful occupants are not only Shri Sat

Dev Dogra and Abdul Latif as mentioned by the petitioner's counsel. but also the respondent Sliri Mohd. Yamin.. There is no question of the Managing Officer having become functus officio, as it is the procedure that the attornments are done after the Sale certificate is granted so that the subsequent owner of the property should know who the authorised tenants in his property are. 6. In the result, I do not find any merit in the grievance of the petitioner and this petition would therefore stand dismissed.'

(14) The question thus arose, whether this order could have been passed by the Managing Officer and what is the effect of the order passed by the Authorised Chief Settlement Commissioner on 28th May, 1973 which was passed on the revision petition being filed by the plaintiff/respondent himself. There is no doubt that property in dispute was an acquired evacuee property within the meaning of Section 12 of the Act and these properties were being managed by the Managing Officer under the Act as part of the compensation pool. Section 17 of the Act gave powers to the Managing Officer for the purpose of securing, administering, preserving, managing or disposing of any property in the compensation pool entrusted to him or it and generally for the purpose of satisfactorily discharging any of the duties imposed on him or it by or under this Act and may. for any such purpose as aforesaid. do all acts and incur ail expenses necessary or incidental thereto. These powers are conferred by Section 17 of the Act. The relevant part of Section 17 is in sub-section (1) and (2) which arc reproduced hereunder : -

'17(1)All managing officers or managing corporations shall perform such functions as may be assigned to them by or under the general superintendence and control of the Chief Settlement Commissioner. (2) Subject to the provisions of this Act and the rules made there under, a managing officer or man aging corporation may take such measures as he or it considers necessary or expedient for the purpose of securing administering, preserving, managing or disposing of any property in the compensation pool entrusted to him or it and generally for the purpose of satisfactorily discharging any of the duties imposed on him or it by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.'

(15) Once it is recognised that the Managing Officer had the power to sell the property to the plaintiff, it goes without saying that the sale would be incomplete unless actual possession is delivered to the purchaser and if actual possession is not possible, symbolic possession is delivered to the purchaser. It was in this light that the first order dated 3rd September, 1971 was issued by the Managing Officer directing Sh. Sat Dev Dogra and Sh. Abdul Latif to attorn to the plaintiff. This order was issued after sale certificate dated 31st March, 1971 had been granted to the plaintiff purchaser and similarly the second notice directing the defendant also to attorn to the plaintiff was issued on 6th May, 1972 after the sale certificate had been issued Shri Gulab 1... Ajwani, Authorised Chief Settlement Commissioner, New Delhi, in his order dated 28th May, 1973 has noticed. 'There is no question of the Managing Officer having become functus officio, as it is the procedure that the attornments are done after the Sale Certificate is granted, so that the subsequent owner of the property should know who the authorised tenants in his property are.'

(16) It is clear that the sale to the plaintiff was done by the Managing Officer in exercise of the power-; under the aforesaid Section 17(2) of the Act because it includes the powers of disposing of any property. But sub-Section (2) further authorises the Managing Officer generally for the purpose of satisfactorily discharging any of the duties (namely, of sale or disposing of and for that purpose to do all acts necessary or incidental thereto. To my mind, the words, 'to do all acts necessary or incidental thereto' are very important in this context. Once the Managing Officer has power of sale, and for satisfactorily discharging the power or duty to sell, the delivery of possession actually or symbolic is certainly an act necessary or incidental to the power or duty to sell. Just as the Managing Officer had issued the notice dated 3rd September, 1971 (Ex. Public Witness 6/I) which is not challenged by the plaintiff as being without jurisdiction, he could also issue the notice dated 6th May, 1972 (Ex. D-11) because all that this notice Ex.D-11 purports to do is to do complete the symbolic delivery of possession. As I have noticed earlier, the delivery of possession symbolically or otherwise was an act necessary or incidental to the power of sale.

(17) Another aspect of the matter is that Sections 27 and 36 of the Act provide as under :

'27. Save as otherwise expressly provided in this Act, every order made by any officer or authority under this Act, including a managing corporation, shall be final and shall not be called in question in any court by way of an appeal or revision or in any original suit, application or execution proceeding.'

'36. Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Central Government or any Officer or authority appointed under this Act is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.'

(18) Under Section 27 of the Act, every Order made by the Managing Officer is final and can be called in question by way of appeal or revision and cannot be called in question in any original suit or by way of any appeal or revision in any court. This provision is subject to the overall jurisdiction of the High Court in exercise of constitutional powers under Articles 226 and 227 of the Constitution and no party, in any case not the plaintiff, invoked that power of the High Court for quashing it. Again Section 36 of the Act bars the jurisdiction of civil court to go into any question which any officer or authority under the Act was empowered to determine. The plaintiff being aggrieved by the order of the Managing Officer dated 6th May, 1972 rightly took recourse to the filing of revision for 'challenging that order before the Chief Settlement Commissioner. When the Authorised Chief Settlement Commissioner dismissed his revision petition, he did not challenge that order before the Central Government or the High Court under Articles 226 and 227 of the Constitution and therefore, the order of the Authorised Chief Settlement Commissioner dated 28th May, 1973 also become final. Once it is held that order of the Managing Officer dated 6th May, 1972 was within his jurisdiction, the order of the Authorised Chief Settlement Commissioner was also within the jurisdiction of the said authority. Once these two orders were passed within jurisdiction, they were relevant piece of evidence and were thus, admissible in evidence and could

not have been ignored by the learned lower appellate court. Thus, the finding of learned lower appellate court by ignoring these two material documents as irrelevant is vitiated and this Court is entitled to re-appraise the evidence again in the light of these two documents.

(19) Section 27 of the Act confers finally to the orders passed by the Authorities under the Act. Section 36 of the Act bars jurisdiction of civil court to go into any matter which the Central Government or any officer or authority under the Act was empowered to decide. Thus, the civil court cannot challenge the correctness or otherwise of the decision of the Authorities under the Act. The authority under the Act found that the appellant was an authorised occupant and was a tenant like Sh. Sat Dev Dogra and Sh. Abdul Latif. These findings are binding on civil court in the present proceedings also and -the civil court cannot de novo make an enquiry and hold that the appellant was not a tenant.

(20) I have, however,' again gone into the material on record and I am in complete agreement with the findings of the learned trial court. No reliance could be placed upon the Municipal records alone or to rely on the fresh evidence which was sought to be produced by the plaintiff by examining Sh. S.B. Lal, Public Witness -4 and Sh. V.S. Bhatnagar, PW-6, officials of the department of Custodian when they deposed contrary to the aforesaid two decisions of the Authorities under the Act. The evidence of Sh. S.B. Lal regarding contents of report of Field Inspector and the alleged statement before Sh. Bishan Lal of the defendant was held inadmissible. The report was not signed by any Officer and the alleged statement of Sh. Mohd. Yamin had not been recorded in the presence of the witness. The defendant was justified in not producing earlier rent receipt in view of the aforesaid two orders Ex. D-11 and Ex. D-12.

(21) The Defendant I appellant, however, filed an application in this Court under the provisions of Order 41 Rule 27 read with Order 42 Rule I and Section 151 of the Code of Civil Procedure stating inter alias that in view of the aforesaid two decisions of the Authorities under the Act. the defendant did not file other receipts issued by the Ministry of Rehabilitation, Office of the Regional Settlement Commissioner which were in his possession before trial court and by way of

additional evidence he sought to produce the receipts dated 3-6-68, 3-8-68. 10-3-69, 8-8-69. 6-9-69, 3-12-69 and 2-9-70 which were the original rent receipts for various period much before the auction sale issued by the aforesaid department in favor of the defendant/appellant. The receipts appear to be genuine. However. I need not go into the question of admissibility of this evidence at this stage as I am of the firm view that die aforesaid two orders dated 6th May, 1972 and 28th May. 1973 completely clinch the issue. Mr. Harnam Dass, learned counsel for the plaintiff/respondent, however brought to my notice the following decisions to show that the orders dated 6th May, 1972 (Ex. D-11) and 28th May, 1973 (Ex. D-12) were without jurisdiction. The decisions relied upon were : Smt. Shanti Devi and another v. Sh. Mela Ram, 1971 All R C J 378, Sukhdev Raj Nanda v. P. D. Ahuja 1973 R L R 526 un-reported decision of Prithvi Raj, J. in Ahmed Ali & another v. The Union of India & others, Civil Writ No. 7311966 decided on 18th December. 1972(3)-and Kundan Lal v. U.O.I, etc. 1980 R L R 759.

(22) In the case of Smt. Shanti Devi (supra) the question was whether the appellant was a licensee or a tenant and Sachar, J. took the view that the word 'rent' in the receipts has to be read in the context of the allotment that was made to the allottee and if so read it did not lead to the conclusion that the property was leased out and not merely allotted. This is not the question raised ' in any of the courts nor before me. The question raised in the trial court, learned lower appellate court and before me is whether the appellant was authorised occupant or not for the purpose of Section 29 of the Act. thereforee, this decision is of no use to the respondent.

(23) The case of Sukhdev Raj Nanda (supra) is a Division Bench judgment of Prakash Narain (as His Lordship then was) and Safeer, JJ. and here again the Division Bench took the view that use of the word 'rent' in a receipt issued by the Custodian of Evacuee Property is not enough to confer the status of "tenant" on occupant. It will be noticed that in this case also, there were no orders like Ex. D-11 and Ex. D-12.

(24) It will be noticed that the case of Ahmed Ali & another (supra) came up before the High Court in exercise of the jurisdiction under Articles 226 and 227 of the

Constitution and in fact observations of Prithvi Raj, J. in this case go against the respondent/plaintiff. It will be noticed that at page 28 of the judgment, Prithvi Raj, J. noticed a decision of a Division Bench of Punjab & Haryana High Court in Re: Lila Krishan and other v. Union of India and others 1970 P.L.R. 719. In the case of Lila Krishan and other (supra) the appellant purchased urban land in Hissar which was sold by public auction by rehabilitation authorities under the Act. The land was in unauthorised occupation of respondents 3 and 4. Rehabilitation authorities issued the sale certificate in favor of the appellants where after the Settlement Officer directed Tehsildar, Hissar, to deliver possession to the appellants. The said respondents objected to it. The Deputy Chief Settlement Commissioner directed that proceedings for dispossession of the respondents be dropped as the property had gone out of the compensation pool and that the rehabilitation authorities were not left with any jurisdiction to deal with the property or to dispossess the said respondents who were in possession of the same. The appellants filed a writ petition asking for the issuance of a writ of mandamus requiring the authorities to deliver possession of the land. The writ, however, was dismissed by a learned Single Judge of the Punjab & Haryana High Court. The appellants filed Letters Patent Appeal in which a Division Bench of that Court observed that the language of section 19(2) of the Act clearly shows that it relates to evacuee property or any other immovable property forming part of the compensation pool on the date the action for dispossession was taken, the authorities under the Act had no jurisdiction to do so. It was further observed that the property ceased to be evacuee property and went out of the compensation pool when it was sold and that title having been conferred on the auction-purchaser by the issue of the sale certificate, the rehabilitation authorities ceased to have any jurisdiction under the Act in respect of the said property. Prithvi Raj, J. observed as under:

'FROM a perusal of annexure 'E' the order passed by the Managing officer, I find that respondent No. 5 applied to the Department on 21st October, 1964, that the tenants occupying the property be asked to attorn in his favor. The only act that was within the competence of the Managing Officer was to issue a letter to the occupants of the property stating that in future they should attorn to the auction-purchaser but the Managing Officer possessed no power to call upon the petitioners to appear before him to show how they were in occupation of the

property in question.'

In my view, this decision also does not help the respondent/plaintiff.

(25) Reliance was also placed on the case of Kundan Lal (Supra) on behalf of the respondent on the jurisdiction of civil court to go into the question of correctness or otherwise of the order of the Managing Officer dated 6th May, 1972 and of the Authorised Chief Settlement Commissioner dated 28th May, 1973. But I am afraid, the ratio of that decision does not assist the plaintiff/respondent to the controversy before us in view of the peculiar facts of that case. Here no question arose of the provisions of the Act being not complied with or statutory Tribunal having acted contrary to the fundamental provisions of judicial proceedings.

(26) There is another aspect of the matter also. The plaintiff being dis-satisfied with the notice dated 6th May, 1972 (Ex. D-11) issued by the Managing Officer himself challenged it before the authorities under the Act. The plaintiff took a chance of getting favorable order from the Authorised Chief Settlement Commissioner and he is thus estopped from challenging the jurisdiction if the result of the revision petition went against him. (See : Mukund Ram Tanti v. S. 1. Raza, Air 1962 Patna. 338.

(27) I am, therefore, constrained to reverse the findings of the learned lower appellate court on Issues 2 and 4 and restore the findings of the learned trial court. In view of the Section 29 of the Act, the appellant will be deemed to be a tenant of the plaintiff. therefore, Section 50 of the Delhi Rent Control Act comes to the rescue of the appellant and the jurisdiction of the civil court is barred and suit for possession was not maintainable and was rightly dismissed by the learned trial court. Result is that the appeal is accepted and the decision of the learned lower appellate court dated 1st February, 1979 is set aside and the judgment of the learned trial court dated 30th October, 1976 is restored and the suit filed by the plaintiff against the defendant/appellant is dismissed.