

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.64/2005

# !	SMT. KAMLA RANI & ORS.	.....	Petitioners
	VERSUS		
\$	M/S. TEXMACO LTD.	.....	Respondents

CM(M) No.65/2005

# !	SMT. SHANTI DEVI & ORS.	.....	Petitioners
	VERSUS		
\$ ^	M/S. TEXMACO LTD. & ANR.	.....	Respondents

CM(M) No.67/2005

# !	SHRI RAMESH CHAND (DECEASED) THROUGH HIS LRS.	.....	Petitioners
	VERSUS		
\$	M/S. TEXMACO LTD. & ANR.	.....	Respondents

CM(M) No.69/2005

# !	SHRI SIRI CHAND	.....	Petitioners
	VERSUS		
\$	M/S. TEXMACO LTD.& ANR.	.....	Respondents

CM(M) No.92/2005

SHRI KALEY SINGH
(SINCE DECEASED). Petitioners
! THROUGH HIS LRS.
SH. SUBHASH CHANDER

VERSUS

\$ M/S. TEXMACO LTD.& ANR.
Respondents

CM(M) No.101/2005

SHRI HORI LAL (NOW DECEASED)..... Petitioners
! THROUGH LRS.

VERSUS

\$ M/S. TEXMACO LTD. & ANR. Respondents

through: Ms.Aanchal Mullick for
Ms.A.C.Bhasin, Adv. for petitioner

Mr.Pradeep Kumar, Adv. for
respondents

RESERVED ON : 22-01-2007

% DATE OF DECISION: 29-01-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Yf

: **PRADEEP NANDRAJOG, J.**

1. Since common questions arise for consideration in the 6 abovementioned petitions filed under Article 227 of the Constitution of India, they are being disposed of by a common order.

2. Facts in brief, pertaining to the 6 petitions are that a company named M/s. Birla Cotton Spinning and Weaving Mills Ltd. filed eviction petitions invoking Section 14(1)(i) and Section 22 of the Delhi Rent Control Act, 1958 alleging that the premises in question were allotted to the respondent (predecessor-in-interest of some respondents) for residential purposes as a service tenant exclusively by virtue of their being in the service and employment of the said company.

3. That it was a term of allotment that within 4 days of superannuation or cessation of employment, vacant possession would be re-delivered to the company. That, in spite of cessation of employment, vacant possession was not handed over.

4. It was further alleged that by and under a scheme of arrangement sanctioned by Hon'ble Mr. Justice H.L. Anand of

this Court, the entire assets of M/s. Birla Cotton Spinning and Weaving Mills Ltd. stood transferred to M/s. Texmaco Ltd. and therefore said company was the successor-in-interest of M/s. Birla Cotton Spinning and Weaving Mills Ltd.

5. The petitions were finally pressed under Section 14(1)(i) for the reason due to orders passed by the Supreme Court, manufacturing operations had to be closed down by the company and therefore obviously, requirement of the premises for employees of the company, a ground available under Section 22, ceased to exist.

6. After recording evidence, learned Addl. Rent Controller allowed the eviction petitions which are a subject matter of CM(M) 64/2005 and CM(M) 92/2005. The eviction petitions which are subject matter of the other 4 CM(Ms) were dismissed.

7. Appeals filed by the respondents against whom eviction orders were passed were dismissed by the learned Addl. Rent Control Tribunal. The 4 appeals filed by the company against the 4 dismissal orders have been allowed by the learned Rent Control Tribunal.

8. Under-noted is the data pertaining to the date of the

original order, the fate of the eviction petition and the date of the appellate order.

<i>Sr.No.</i>	<i>CM(M)</i>	<i>Date of order of ARC</i>	<i>Whether allowed or dismissed</i>	<i>Date of order of Tribunal</i>
1	64/2005	17/2/04	Allowed	16/10/04
2	65/2005	12/11/03	Dismissed	06/11/04
3	67/2005	12/11/03	Dismissed	06/11/04
4	69/2005	12/11/03	Dismissed	06/11/04
5	92/2005	23/11/02	Allowed	16/10/04
6	101/2005	04/01/03	Dismissed	06/11/04

9. The defence set up in all the petitions was that allotment was not due to the allottee being an employee of M/s. Birla Cotton Spinning and Weaving Mills Ltd. That the allottee was a tenant independent of his status as employee of the company. That the eviction petitions were not filed under a proper authorisation. That M/s. Texmaco Ltd. was not successor-in-interest of M/s. Birla Cotton Spinning and Weaving Mills Ltd.

10. Whereas all defences were rejected in the eviction petitions which are a subject matter of CM(M) 64/2005 and CM(M) 92/2005 and as a consequence, the learned Addl. Rent Controller passed an order of ejectment, which order has been upheld in appeal by the tribunal, eviction petitions filed

which are subject matter of CM(M) Nos. 65/2005, 67/2005, 69/2005 and 101/2005 were dismissed by the learned ARC, inter alia, on the ground that authority of the person who had instituted the petition for eviction was not proved.

11. Said authorisation was held as proved in the other 2 eviction petitions which were allowed and are a subject matter of CM(M) 64/2005, CM(M) 92/2005.

12. The eviction petitions which were dismissed were filed under the signatures of one Shri P.C.Chhajer.

13. A perusal of the decisions in the various cases where the learned Addl. Rent Controller has held that authority of Shri P.C.Chhajer was not established to file the eviction petitions shows that the learned trial court has been influenced by the fact that the Executive Director of the company who had executed the power of attorney in favour of Shri P.C.Chajjer pursuant to the board resolution dated 10.7.1978 whereunder it was resolved that Shri P.C.Chajjer be authorised to file the eviction petitions and sign the petition and verify the pleadings had not appeared in the witness box and notwithstanding that the power of attorney was duly notarised, the notary public was also not examined. Thus, it

was held that recourse could not be had to Section 85 of the Indian Evidence Act, 1872.

14. Copy of the notarised power of attorney was otherwise accepted as a document. It was assigned an exhibit mark in various eviction petitions.

15. The learned appellate court has taken a contrary view, being that where a document is executed before and authenticated by a notary public, production of the duly authenticated and notarised document raises a presumption that the document was duly executed and authenticated.

16. In the eviction petitions which were allowed, respondents (in the eviction petition) laid a challenge to the authority of the person concerned who had instituted the petition as also signed and verified the pleadings. Defence was held as not established.

17. As noted above, the said appeals were dismissed by the learned tribunal.

18. I may note, a fact not disputed by the learned counsel for the petitioners that M/s. Birla Cotton Spinning and Weaving Mills Ltd. was the perpetual lessee of a parcel of land on which a Spinning and Weaving Mill stood erected. On

the land allotted to the company, residential quarters were built for the staff. It is also not in dispute that either the petitioners (before me) or the predecessor-in-interest of the petitioners were employees of the said mill.

19. In WP(C) No.4677/1985 M.C.Mehta Vs. Union of India the Supreme Court directed closure of the mill on account of the reason that Master Plan for Delhi did not permit the industrial user in question. The mill was required to shift out of Delhi. Under orders of the Supreme court 68% of the land had to be handed over to DDA and the remaining 32% vested in the company.

20. It is also not in dispute that employment of the said persons was duly established at the trial with the testimony of the employees of the company as also production of written record being attendance/paysheets of the employees in question.

21. The same evidenced deduction of a monthly rent.

22. The scheme of transfer of M/s. Birla Cotton Spinning and Weaving Mills Ltd. and M/s. Texmaco Ltd. as approved by Hon'ble Mr.Justice H.L.Anand of this court was duly proved. Certified copies of the scheme of arrangement and orders

passed by this court were proved and were given exhibit marks.

23. A two fold contention was urged before me. Firstly, that the structures in question fell on the part of the land which had to be handed over to DDA and therefore Texmaco Limited was not the owner thereof and hence could not maintain the eviction petition. Second point urged was that since the Executive Director of the company who executed the power of attorney in favour of the employee who had signed and verified the petition as also instituted the eviction petition was not produced as a witness, therefore the power of attorney which was relied upon as constituting the authorisation remained an unproved document.

24. On the first issue raised, suffice would it be to note that eviction as finally pressed was under Section 14(1)(i) of the Delhi Rent Control Act, 1959. The legislative provision is that where the premises were let out to a tenant for use as a residence by reason of his being in the service or employment of the landlord, service or employment ceasing, entitles the landlord to a decree for ejectment.

25. Ownership is not relevant for the reason a person may

be a landlord without being an owner.

26. A company may take a premises on a 30 year lease from the owner with a permission to induct its employee as a tenant/sub-tenant. Such an employee to whom the said permission is allotted would be a tenant under his company and the allotment would be pursuant to his employment. Such an allottee cannot resist the eviction, if otherwise grounds are made out.

27. Even otherwise, under the directions of the Supreme court, 68% land has to be handed over to DDA for being maintained as open areas. DDA has not become the owner of the said land. Ownership would vest in DDA when possession is handed over.

28. It would be the obligation of the company to evict its tenants including heirs of the tenants and hand over possession to DDA.

29. But, I rest my decision on firmer grounds. A tenant who accepts a person as his landlord is estopped from questioning the title of his landlord.

30. The petitioners are therefore estopped from questioning the title of M/s. Texmaco Ltd. for the reason either they or

their predecessor-in-interest were inducted as a tenant by the predecessor-in-interest of M/s. Texmaco Ltd.

31. On the second issue raised, namely, authority of the person who has signed and instituted the eviction petition, the controversy between the parties stood resolved by the Tribunal in the context of Section 85 of the Indian Evidence Act, 1872. The same reads as under :-

"85. Presumption as to powers-of-attorney.-

The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, (Indian) Consul or Vice-Consul, or representative of the (Central Government), was so executed and authenticated.

32. It is not in dispute that the notarised power of attorney in favour of the person who had signed and verified the eviction petition as also who had filed the same was produced at the trial and copy thereof was assigned an exhibit mark. The only question which arises for consideration is, whether in absence of the notary public being produced as a witness or the executant thereof being not produced as a witness to prove the same, was the document proved as per law.

33. Authentication by a notary public is a solemn act performed by the notary public whose duty is to ensure that

the executant is the person before him and is identified to his satisfaction. Once a document is authenticated by a notary public, it will be presumed that the document was duly executed and was in order. The use of the expression '*shall presume*' shows that the section is mandatory and the court has to presume that all necessary requirements for the proper execution of the power of attorney were duly fulfilled before the notary public. As observed in AIR 1984 363 M/s. E.C. & E. Co. Ltd. Vs. M/s. J.E. Works, if 2 conditions are satisfied, firstly the power of attorney being executed before a notary public and secondly it being authenticated by a notary public, a presumption would arise under Section 85 about the executant of the power of attorney.

34. Onus would thus lie on the opposite party to prove to the contrary.

35. It is well settled that authentication would mean more than mere execution. Where proof of authentication surfaces, benefit of Section 85 has to be granted.

36. No negative evidence has been brought on record, none has been shown to me by the petitioners.

37. The purpose of Section 85 of the Evidence Act appears

to be that a duly executed and authenticated power of attorney can be proved under Section 85 without undue expenses to be incurred by producing the executant thereof or the original board resolution.

38. The reason is obvious. Banks, insurance companies and multinational companies empower officers to institute and file suits on their behalf. Large number of suits are filed by these organisations. If the original board resolution or the executant of the power of attorney has to submit itself/himself before the court as a *sine qua non* to prove the power of attorney, practical difficulties would arise and unnecessary expenses would be incurred by the organisations to prove the document in the afore-noted manner.

39. I am in full agreement with the view taken by the learned Rent Control Tribunal that the authority of the person who had signed and verified the petition as also instituted the eviction petition stood duly proved by means of production of the authenticated and notarised power of attorney bearing the seal of the notary public.

40. Decision of the Supreme Court reported as AIR 1997 SC 3 Union Bank of India Vs. Naresh Kumar is additionally relied

upon by me. The said decision states that where a suit has been filed on behalf of a corporate body and is duly prosecuted by the person who had filed the suit, a presumption would arise that the person concerned was authorised to do so.

41. A lame duck argument was sought to be urged, being that pursuant to the scheme of arrangement sanctioned by this court, it was directed that the scheme of arrangement has been sent to the Registrar of Companies who will issue the necessary certificate regarding thereto. Since there was no proof that the scheme of arrangement was sent to the Registrar of Companies and no certificate issued by him was proved, it cannot be held that M/s. Texmaco Ltd. was the successor-in-interest of M/s. Birla Cotton Spinning and Weaving Mills Ltd.

42. I am afraid, this issue was not raised before the Trial Judge or the appellate court. It relates to a question of fact. I cannot permit the petitioners to raise the said issue before me for the first time.

43. I find no merits in the petitions.

44. The same are dismissed.

45. No costs.

January 29, 2007
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PRADEEP NANDARAJOG
JUDGE