

(2016) 05 SHI CK 0123
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 106 of 2005

Atul Soodan

APPELLANT

Vs

Ajit Kumar

RESPONDENT

Date of Decision : 17-05-2016

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 14

Citation : (2016) ILRHP 1394

Hon'ble Judges : Mr. Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Mr. Satyan Vaidya, Senior Advocate with Mr. Vivek Sharma, Advocate, for the Petitioners; Mr. Ajay Kumar, Senior Advocate with Mr. Dheeraj Vashishta, Advocate, for the Respondent No. 1; Mr. Dhananjay Sharma and Mr. Ankit Aggarwal, Advocates vice Mr. Sanjee

Final Decision : Disposed Off

Judgement

mr. Sureshwar Thakur, J.(Oral)—Since Common Questions Of Fact And Law Stand Raised For Consideration In Both The Petitions, Hence They Are Taken Up Together For Disposal.

2. Respondent No. 1 Ajit Kumar (In Both Petitions) Instituted A Petition For Eviction From The Demised Premises Of The Petitioners Herein (In Both Petitions) Before The Learned Rent Controller (2) Nurpur, District Kangra, H.P., On Grounds As Embodied Therein. The Learned Rent Controller Had Dismissed The Petition For Eviction As Constituted Before Him By Aforesaid Ajit Kumar, Respondent No. 1. Respondent No. 1 Standing Aggrieved By The Rendition Of The Learned Rent Controller Whereby The Latter Dismissed His Petition For Eviction Constrained Him To Institute An Appeal Therefrom Before The Learned Appellate Authority-II, Kangra District At Dharamshala. The Learned Appellate Authority On A Consideration Of The Material As Constituted Before Him Reversed The Findings And Conclusions Arrived At By The Learned Rent Controller. The Purported Tenants Under Respondent No. 1 Ajit Kumar Standing Aggrieved By The

Rendition Of The Learned Appellate Authority Hence Have Come To Assail The Same Before This Court.

3. The brief facts of the case are that the respondent No. 1 Ajit Kumar is landlord of the premises as shown in the site plan ABCD in red colour abutted on the South/West : Wakf Board vacant Land. East/West : Shop of Ajit Kumar, North/West : Sita House Medicos (shop) and East/North : Chamba Road & Civil Hospital, situated in Ward No. 3, Nurpur Town, Tehsil Nurpur, District Kangra, H.P (for short "the demised premises"). The demised premises is averred to be non-residential. It is also pleaded that the shop was given to Mohinder Kumar (petitioner in CR No. 120 of 2005). Petitioners namely Jagdish (since died) Amit and Atul have been arrayed as parties on the allegations that Mohinder Kumar has further sub-letted the demised premises to them. The rent of the demised premises is settled at Rs. 800/- per month since 24.5.1990. As per respondent No. 1 Ajit Kumar the rent deed/agreement in this respect was also drawn. According to Ajit Kumar at the time of agreement Rs. 15000/- as rent advance stands also received from Mohinder Kumar. The eviction was sought by the applicant on the ground of Mohinder Kumar being in arrears of rent up to 13/14-12-1999 to the tune of Rs. 76,600/-The eviction is also sought on the ground of Mohinder Kumar further subletting it to the aforesaid namely persons. Legal notices were issued upon Mohinder Kumar, however, despite notice he neither handed over the vacant possession of the shop to respondent No. 1 nor paid any rent.

4. The petitioners herein contested and resisted the application and filed reply(s) thereto. They have taken preliminary objections of maintainability, locus standi, estoppel, cause of action and non-joinder of necessary parties. On merits para-1 and 2 of the application were admitted to be correct while the contents of para-3 were denied. It is pleaded by the respondents/petitioners herein that Punjab Wakf Board is the landlord of the demised premises. It is admitted by them that initially Mohinder Kumar was inducted as tenant in the demised premises. It is denied by them that Mohinder Kumar further sub-letted the demised premises to other persons/petitioners. It is further pleaded that at present the demised premises is in possession of respondent No. 2 therein as tenant under Punjab Wakf Board, Ambala Cantt. It is also denied that the demised premises remained closed for the last one year continuously. Accordingly to Mohinder Kumar he was in possession of the shop. He kept the shop upto March, 2000 and thereafter Jagdish Chand is in possession of the same from April, 2000. It is also admitted that Mohinder Kumar was inducted as tenant on payment of rent @800/- per month. It is pleaded that there is no relationship of tenant between respondent No. 1 Ajit Kumar and Mohinder Kumar (petitioner in CR No. 120 of 2005) since October, 1991 as Punjab Wakf Board has cancelled the lease of respondent No. 1 Ajit Kumar. Thereafter Punjab Wakf Board issued notice to Mohinder Kumar to vacate the demised premises or to become a tenant of Punjab Wakf Board. As per the petitioner Mohinder Kumar herein, he became the tenant of Punjab Wakf Board and as such, he is not in any arrears of rent. It is also pleaded that

Mohinder Kumar is not tenant of applicant but he was lessee to Punjab Wakf Board whereas Jagdish Chand is not sub-lettee but he is lease-holder of Punjab Wakf Board and so far as petitioners namely Amit Sudan and Atul Soodan are concerned they have no concern with the demised premises. Therefore they prayed that eviction petition be dismissed with costs.

5. The respondent No. 1 has filed re-joinder to the reply(s) wherein he denied the objections raised by them in their respective reply(s) and re-asserted the contents of the application.

6. On the pleadings of the parties, the following issues were framed by the learned trial Court:-

(1) Whether the applicant/landlord is entitled for recovery of Rs. 1,15,996/- as arrears of rent with interest as alleged ? OPA.

(2) Whether the respondent No. 1 has sub-let the demised premises to respondents No. 2 to 4, as alleged, if so, its effect? OPA.

(3) Whether the applicant has no locus standi to file the present application ? OPR.

(4) Whether the applicant is estopped by his act and conduct from filing the present application ? OPR.

(5) Relief.

7. On an appraisal of the evidence, adduced before the learned Rent Controller, the learned Rent Controller dismissed the petition filed by the applicant therein/ respondent No. 1 herein. In an appeal preferred therefrom before the learned Appellate Authority by respondent No. 1 herein, the learned Appellate Authority reversed the findings and conclusions recorded by the learned Rent Controller.

8. The learned Senior counsel for the petitioners has contended with force of the predominant or paramount owner of land whereupon subsequent to its allotment by it in favour of Ajit Kumar, the latter thereupon raised construction which he let out initially to one Mohinder Kumar who subsequently let out the same to one Jagdish Chand (since died) yet when allotment of land to one Ajit Kumar by the Predominant owner i.e. Punjab Wakf Board standing rescinded or revoked by the latter under letters of rescission comprised in RW-2/A of 14.8.1999 which rescission thereunder of allotment of land to Ajit Kumar stood succeeded by its making an allotment of the same land Under Ex. RW-2/B in favour of Mohinder Kumar where after the Punjab Wakf Board proceeded to make its allotment to Sh. Jagdish Chand under a lease deed constituted in Ex.RA rendered the espousal of the aforesaid Ajit Kumar to claim eviction of both Mohinder Kumar and Jagdish Chand from the structure built by him on the land allotted to him to face ouster as tenably done by the learned Rent Controller. The learned counsel for the petitioners herein have proceeded to canvass of in sequel to allotments by the Punjab Wakf Board of the land whereupon the demised premises exist to

Mohinder Kumar and thereafter to Jagdish Chand allotments whereof stood preceded by the predominant owner cancelling its allotment to Ajit Kumar besides when on its allotments respectively to Mohinder Kumar and thereafter to Jagdish Chand both the latter attorning to the predominant owner in as much as to the Punjab Wakf Board as displayed in Ex. R-1 to R-20, Ex. RW-3/B and Ex. RA is a stark and apparent display of Ajit Kumar holding no title in any capacity nor holding any locus standi to institute a petition for eviction of both Mohinder and Jagdish Chand from the structure raised by him on the land as stood allotted to him by Punjab Wakf Board. Before proceeding to test the strength of the submission addressed before this Court by the learned counsel for the petitioners on anvil of the aforesaid allotments by Punjab Wakf Board in favour of Mohinder Kumar and subsequently in favour of Jagdish Chand preceding whereto the predominant owner had cancelled the allotment of land made by it to Ajit Kumar, it is of utmost significance to garner from the apposite record qua its initial allotment in favour of Ajit Kumar by the Punjab Wakf Board interdicting him from raising any structure thereupon or prohibiting him from inducting therein Mohinder Kumar. For determining the aforesaid facet an advertence to the lease deed aforesaid executed inter-se the Punjab Wakf Board the predominant owner and Ajit Kumar is imperative. The Rent note inter-se both the aforesaid is comprised in Ex. RW-3/C. A perusal thereof underscores the factum of the predominant owner in as much as the Punjab Wakf Board making therein the allotment of land in favour of Ajit Kumar. A further incisive perusal thereof displays of the terms and conditions embodied therein unveiling the prime factum of the allottee of Punjab Wakf Board namely Ajeet Kumar standing interdicted to raise any construction thereupon except with the approval of the building plan by the authorities concerned, besides his standing prohibited to sublet the premises. Apparently the foisting of by RW-3/C of the afore-referred initial mandate upon Ajit Kumar whereby he stood restrained to raise any construction on the land depicted in the rent deed Ex. RW-3/C has sequelled infraction at the instance of the allottee namely Ajit Kumar by his omitting to display by cogent material comprised in sanction standing accorded by the competent authorities preceding to his raising a structure thereupon, of hence the structure as stands raised on the land adumbrated in the rent deed executed inter-se him and the predominant owner being wholly illegal besides unauthorized. Also with the mandate foisted in the rent deed aforesaid executed inter-se Ajit Kumar and the predominant owner against his subletting the premises or his transferring tenancy qua the land referred therein in favour of any other person also as manifested by the apposite averments cast in the apposite application for eviction preferred by him before the learned Rent Controller wherein by his seeking the eviction of the petitioners herein, his hence acquiescing qua theirs occupying the premises as his tenants to hence its standing infracted at his instance or its standing contravened at his instance. Consequently, with the aforesaid interdiction standing cast upon Ajit Kumar under the rent note against his subletting of construction if any of as stood unauthorisedly raised upon the land allotted to him when also stands

contravened at his instance would not give him any leverage to oust the subsequent allottees of the land hitherto allotted to him especially when the apposite subsequent allotments of land hitherto allotted by the Punjab Wakf Board to Ajit Kumar, stood preceded by the predominant owner rescinding the allotment of land made by it to Ajit Kumar.

9. The learned Senior Advocate for respondent Ajit Kumar has contended of the apposite subsequent allotments by Punjab Wakf Board after cancellation under RW-2/A of allotment of land by it to Ajit Kumar to initially Mohinder Kumar under Ex. RW-3/B and subsequently to Jagdish Chand under Ex. RA holds no evidentiary vigour as both the aforesaid exhibits stand not proved hence are inadmissible besides irrelevant. However, the aforesaid contention addressed before this Court by the learned counsel for Ajit Kumar stands stripped of its efficacy for the simple reason of the apposite subsequent allotments made by the predominant owner to Mohinder Kumar and subsequently to Jagdish Chand standing proved by RW-2 and RW-3 the officials of Punjab Wakf Board. Since proof from the apposite quarter stands adduced at the instance of Mohinder Kumar and Jagdish Chand for succoring besides fastening validity to the aforesaid exhibits where under the Punjab Wakf Board allotted land hitherto initially allotted to Ajit Kumar and its apposite subsequent allotments standing preceded by the predominant owner cancelling under Ex. RW-2/A its previous allotment to Ajit Kumar. Necessarily hence Exhibits RW-2/A, RW-2/B and Ex. RX hold probative vigour and sinew, in aftermath the recitals recorded therein hold formidable evidentiary clout. At this stage having dwelt upon the legal efficacy of Exhibits aforesaid where under the predominant owner proceeded to make apposite subsequent allotments after cancellation of the initial allotment of land to Ajit Kumar, to Mohinder Kumar and thereafter to Jagdish Chand enjoins this Court to adjudicate their effect vis-à-vis the espousal made before this Court by the learned counsel for Ajit Kumar of given the manifestations in Ex. AW-2/A of Mohinder Kumar accepting himself to be tenant under Ajit Kumar hence empowering him to seek his eviction from the structure raised by him upon the land allotted to him by Punjab Wakf Board besides also estopping the subsequent allottees of Punjab Wakf Board both Mohinder Kumar and Jagdish Chand to deny the title of Ajit Kumar also baulking them to repudiate his concert to seek their eviction on the anvil of the aforesaid subsequent allotments to them of land hitherto allotted to Ajit Kumar by the Punjab Wakf Board. Before proceeding to analyse the legal profundity of the aforesaid submission of the learned Senior counsel for Ajit Kumar the prime factum as already referred herein above of his standing interdicted to raise without permission of the competent authorities any building on the land allotted to him by the predominant owner also his standing interdicted to sublet the premises is not to be either slighted or overlooked especially when there exists palpable evidence in display of the structure raised by Ajit Kumar on the land allotted to him by Punjab Wakf Board standing raised at his instance with his obtaining a prior approval of the competent authority rendering the construction raised on the land allotted to him by Punjab Wakf

Board to stand bereft of any legality. Also with the aforesaid Ajit Kumar transgressing the mandate foisted upon him by Punjab Wakf Board while allotting land to him embodied in his standing interdicted to induct tenants thereon transgression whereof has occurred on his subletting the structure raised on the land allotted to him by Punjab Wakf Board to Mohinder Kumar, is also a prime factum which throughout is entailed to be borne in mind qua the effect marshaled by Mohinder Kumar accepting the factum of his occupying the disputed premises as a tenant under Ajeet Kumar. Be that as it may the submission as addressed before this Court by the learned counsel for Ajit Kumar rests upon the factum of Mohinder accepting him to be his landlord, he contends of thereupon the latter standing estopped to deny his title, also obviously he contends of the rendition of Appellate Authority holding tenacity. However while making the aforesaid submission before this Court the learned counsel for respondent Ajit Kumar has remained oblivious to the factum of the predominant owner or the entity holding absolute title of the demised premises after lawfully cancelling the allotment of land made by it in favour of Ajit Kumar had proceeded to thereafter record allotments in favour of Mohinder Kumar and subsequently in favour of Jagdish Chand. His remaining oblivious to the impact of the aforesaid apposite subsequent allotments which allotments under the afore-referred exhibits stand construed herein above to stand proven in accordance with law is of his taking to depend upon Ex.AW-2/A for anchoring his claim of the petitioners herein standing liable to attorn to him also theirs standing estopped to deny his title whereas with probative sinew standing imputed to the exhibits aforesaid constituting allotments of land made in favour of Mohinder Kumar and thereafter to Jagdish Chand preceding whereof the predominant owner lawfully cancelled the allotment of land to Ajit Kumar would obviously extirpate the force of the aforesaid address made before this Court by the learned Senior counsel for respondent No. 1 Ajit kumar. Further enfeeblement to the address made before this Court by the learned counsel for respondent Ajit Kumar stands gathered from the factum of Mohinder Kumar under R-1 to R-20 attorning to Punjab Wakf Board, factum whereof when coagulated with Ajit Kumar raising construction upon the land allotted to him by Punjab Wakf Board without prior thereto seeking approval from the competent authorities hence infracting the apposite condition as stood foisted upon him under the apposite rent deed executed inter-se him and Punjab Wakf Board when obviously renders the construction to be wholly unauthorized also thereupon with the subsequent allotments to Mohinder Kumar and thereafter to Jagdish Chand by Punjab Wakf Board of land hitherto allotted to Ajit Kumar allotments whereof to the subsequent allottees occurred on the predominant owner lawfully rescinding the prior allotment made by it to Ajit Kumar would make the apposite subsequent allotments to take within their mandate also would facilitate theirs encompassing the structure raised thereupon by respondent No. 1 Ajit Kumar unless there was a vivid display in the apposite allotments aforesaid made by Punjab Wakf Board in favour of Mohinder Kumar and thereafter in favour of Jagdish Chand of the structure as existing thereupon standing excluded from the clout of the apposite allotments made by Punjab

Wakf Board in their favour. However when allotments of land made by Punjab Wakf Board in favour of Mohinder Kumar and thereafter in favour of Jagdish Chand omit to either enunciate or portray of the structure as raised on the land hitherto allotted to Ajit Kumar standing excluded from the allotment of land made by the predominant owner in their favour. In sequel the allotments of land made in favour of Mohinder Kumar and thereafter in favour of Jagdish Chand by the predominant owner preceding whereto allotments thereof to Ajit Kumar stood lawfully cancelled would efficaciously denude also would deprive Ajit Kumar to claim any title on the unlawful structure raised by him on the land allotted to him by Punjab Wakf Board. As a concomitant thereof the execution of any rent note inter-se Ajit Kumar respondent No. 1 and Mohinder Kumar comprised in Ex.AW-2/A would in its entirety lose its probative strength or vigour also its efficacy would stand wholly effaced. In sequel, the learned senior Advocate for respondent No. 1 Ajit Kumar cannot with any vigour contend before this Court on anvil thereof of his holding any right or locus standi to seek eviction therefrom of either Mohinder Kumar or Jagdish Chand especially when for reasons aforesaid both aforesaid were the allottees from the predominant owner in as much as the latter whereof recorded the apposite allotments in their favour only on its prior thereto lawfully rescinding the hitherto allotment recorded by it in favour of Ajit Kumar. At this stage the learned counsel for respondent No. 1 Ajit Kumar contended with force while relying upon a judgment of Hon'ble Apex Court reported in (2006) 3 SCC 91 *Bansraj Laltaprasad Mishra v. Stanley Parker Jones*, relevant paragraphs 11 to 16 whereof stand extracted hereinafter:-

"11. It is not in dispute that on 1-5-1971 an agreement was entered into. What the defendant tried to establish was that prior to the date of agreement one Shamsher Khan had put the defendant in possession and therefore the subsequent agreement with the plaintiff-appellant was really of no consequence. This aspect was dealt by the learned single Judge in detail. It was held that the concept of constructive possession was clearly applicable even if the defendants' case of Shamsher Khan having put him in possession is accepted. Illustrations were given to buttress the interpretation given. The learned single Judge was of the view that the word "possession" in Section 116 also includes constructive possession. Unfortunately the Division Bench has not dealt with this aspect. It would be relevant at this point of time to take note of what is stated in Section 116 of the Evidence Act. The same reads as follows:"estoppel of tenant; and of licensee of person in possession - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given. "

12. The "possession" in the instant case relates to second limb of the Section. It is couched in negative terms and mandates that a person who comes upon any

immovable property by the license of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such license was given.

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

10. The learned counsel for respondent No. 1 also relies upon a judgment reported in (2002) 7 SCC 614, *Rita Lal v. Raj Kumar Singh*, which propounds a view at par with the view propounded in the former judgment of Hon"ble Apex Court, relevant portion whereon stands extracted hereinafter:-

"[6] There is a very clear admission made by the respondent of the title of the appellant in his deposition made on oath in judicial proceedings. Not a word he has stated in the pleadings showing how and under what circumstances the statement came to be made and how does the respondent wriggle out of a clear admission made in his deposition" So also the respondent does not furnish any explanation worth being considered, muchless accepted, as to how his signatures appear at more than one places, that is, on every page of the rent note dated 10th February, 1997 he cannot escape the consequences flowing from execution of rent note. The tenant having been inducted by the landlord so long as he remains in possession cannot deny the title of his landlord in view of the rule of estoppel contained in Section 116 of the Evidence Act. Recently in *Vashu Deo v. Balkishan*, (2002) 2 SCC 50, we had an occasion to sum up the law as to estoppel of tenant and as to eviction by title paramount and we have held :

"The rule of estoppel between landlord and tenant enacted in Section 116 of the Evidence Act has three main features : (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an individual case."

".....the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by a paramount title-holder." The trial Court rightly formed the opinion that no triable issue was raised."

11. An incisive reading of judgments supra does while expostulating the apposite legal principle on anvil whereof the learned Senior Advocate for respondent Ajit

Kumar espouses of tenants standing estopped to deny the title of the land lord also theirs expounding the principle of occurrence of phrase "possession" in Section 116 of Indian Evidence Act debarring a tenant which the learned counsel for the respondent Ajit Kumar contends, is the capacity wherein Mohinder Kumar and Jagdish Chand hold possession of the apposite premises of both standing estopped to deny the title of Ajit Kumar or to negate his holding possession thereof as its landlord. The aforesaid renditions of the Hon"ble Apex Court relied upon by the learned counsel for respondent No. 1 Ajit Kumar to on its anvil build an argument anchored upon Ex. AW-2/A of it communicative of Mohinder Kumar acquiescing to attorn to Ajit Kumar the latter holding a right to move an eviction petition against Mohinder Kumar besides against Jagdish Chand for hence ousting them from the shops raised by him on the land allotted by the predominant owner to him. However, the submission made at this stage by the learned counsel for respondent Ajit Kumar to on the anvil of judgments supra propounding the principle on the anchor of section 116 of the Indian Evidence Act of the tenant standing estopped to deny the title of the landlord is merely a frail attempt to oust the tenacity of the reasoning which occurs in the herein above apt portions of the judgment of this Court whereby this Court has proceeded to oust the claim by Ajit Kumar of his holding title to the demised premises as its landlord. Consequently, with Ajeet Kumar not holding the capacity as a predominant owner qua the premises at contest rather when he stands de-facilitated by the apposite conditions of the rent note to induct sub-lettees whereas in infraction thereof he proceeded to induct Mohinder Kumar and Jagdish as tenants therein negates besides nullifies his claim of his extantly holding tenancy to the demised premises moreso when the infraction in the manner aforesaid of the apposite mandate foisted upon him under the apposite rent deed executed inter-se him and Punjab Wakf Board has a nullificatory effect of his rights as a tenant therein preeminently the predominant owner after cancelling the allotment of land made by it in his favour, proceeded to make the apposite subsequent allotments in favour of Mohinder Kumar and Jagdish Chand. Even otherwise dehors the factum of the vigour, if any, the principle of estoppel holds yet for it to give empowerment to the espousal of the learned counsel for Ajit Kumar of its offering him leverage to canvass before this Court of Mohinder Kumar and Jagdish Chand standing estopped to deny his title, the sine qua non for its attraction would occur only on a palpable display of Ajit Kumar holding title as a predominant owner of the demised premises whereas when title thereof stands uncontrovertedly foisted in the Punjab Wakf Board also when Ajit Kumar for reasons aforesaid infracting the apposite terms and conditions of the apposite rent deed executed inter-se him and Punjab Wakf Board wherein he stood interdicting to induct sub-lettees has proceeded to do so also besides the occurrence of his thereby infracting the aforesaid mandate of apposite rent deed there occurring an infraction on his part of its mandate of his without seeking an approval of the authorities concerned raising construction on the land allotted to him, as a natural corollary when construed in entwinement with the indispensable canon for attracting qua Ajit Kumar the principle of estoppel

enshrined in Section 116 of the Indian Evidence Act also the compatible principle constituted therein of both Mohinder and Jagdish standing estopped to deny the title of respondent No. 1 Ajit Kumar qua the demised premises, for the reasons afore stated standing un-satiated saps the strength of his contention to seek its attraction qua him besides its compatible attraction qua Mohinder and Jagdish nor also hence both Mohinder and Jagdish stand baulked on its anvil to counter the eviction petition instituted qua the demised premises against them by Ajit Kumar.

12. The learned counsel for the petitioner has placed reliance upon the judgment of Hon''ble Apex Court reported in (1987) 4 SCC 424, D. Satyanarayana v. P. Jagdish, relevant paragraph 4 stands extracted hereinafter:-

"[4] The rule of estoppel embodied under Section 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. During the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. See : Bilas Kunwar v. Desraj Ranjit Singh, ILR (1915) 37 All 557 : (AIR 1915 PC 96) and Atyam Veerraju v. Pechetti Venkanna (1966) 1 SCR 831 : (AIR 1966 SC 629). The general rule is however subject to certain exceptions. Thus a tenant is not precluded from denying the derivative title of the persons claiming through the landlord. See : Krishna Prosad Lal Singha Deo v. Baraboni Coal Concern Ltd. AIR 1937 PC 251. Similarly, the estoppel under Section 116 of the Evidence Act is restricted to the, denial of the title at the commencement of the tenancy. From this, the exception follows, that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the title of the landlord came to an end or that he was evicted by a paramount title holder or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title-holder. In order to constitute eviction by title paramount, it has been established by decisions in England and in India, that it is not necessary that the tenant should be dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or to a suit in ejectment. If the tenant however gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule. When the tenancy has been determined by eviction by title paramount, no question of estoppel arises under Section 116 of the Evidence Act. See : Adyanath Ghatak v. Krishna Prasad Singh AIR 1949 PC 124. The principle must equally apply when the tenant has attorned under a threat of eviction by the title paramount and there comes into existence anew jural relationship of landlord and tenant as between them. The law is stated in 27 Halsbury's Laws of England, 4th Edn., Para 238 :

"238. Eviction under title paramount. - In order to constitute an eviction by a person claiming under title paramount, it is not necessary that the tenant should be put out of possession, or that proceedings should be brought. A threat of eviction is sufficient, and if the tenant, in consequence of that threat, attorns to the claimant, he may set this up as an eviction by way of defence to an action for rent, subject to his proving the evictor's title. There is no eviction, however, if the tenant gives up possession voluntarily." Quite recently, this Court in *Mangat Ram v. Sardar Meharban Singh*, (1987) 1 Scale 964 : (AIR 1987 SC 1656 at 1), 1660), to which one of us was a party, observed :

"The estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor has since come to an end."

13. The relevant portion of the judgment which stands extracted herein above embodies therein a alike principle of the tenants standing estopped by the principle ingrained in Section 116 of the Indian Evidence Act from denying the title of the landlord qua the premises which he/they occupy/occupies as a tenant/tenants even when the landlord holds even a defective title thereto. However, an exception to the attraction of the principle of estoppel encapsulated in Section 116 of the Indian Evidence Act is carved therein of inapplicability or unworkability of the rule of estoppel on a tenable invocation whereof any tenant standing debarred to deny the title of his land lord, in as much as tenant holding the capacity to deny the title of his land lord when his tenancy is under threat of eviction by title paramount whereupon he as a corollary for reiteration holds leverage to foist a contention of the landlord where under he occupies the demised premises as a tenant holding no legally worthwhile title qua it hence defacilitated him to seek his eviction therefrom even without surrendering its possession to its hitherto purported landlord. However perse the afore-referred extracted portion of the judgment of Hon"ble Apex Court for their attraction qua the espousal before this Court by the learned counsel for respondent No. 1 Ajit Kumar warranted display on record of the indispensable sine qua non of the latter holding title as landlord qua the demised premises wherein contrarily both Mohinder Kumar and Jagdish under respective subsequent allotments made in their favour by the paramount owner hold it in the capacity of theirs being the lawful lessees under the paramount owner. Conversely when respondent No. 1 Ajit Kumar was incapacitated by the apposite provisions enshrined in the apposite lease deed recorded in his favour by the paramount owner to sublet it, his infracting the said condition when weighed with the paramount owner to cancel the allotment of land recorded in his favour by it besides obviously when he at the time of institution of eviction petition was obviously neither its paramount owner nor a lessee under the latter besides was interdicted by the apposite condition to sub lease it in favour of either Mohinder Kumar or of Jagdish Chand, as a corollary his begetting infraction of the afore-referred mandate constituted in the apposite rent deed executed inter-se him and Punjab

Wakf Board while causing a nullificatory effect upon his capacity of his holding the land allotted to him by the predominant owner has a sequelling effect of his not holding any legal capacity or any locus standi qua it nor hence he can stake a claim for ouster of Mohinder Kumar and Jagdish Chand from the demised premises. The attraction at his instance of the rule of estoppel against the petitioners for hence baulking them from denying his title qua it is wholly rudderless rather the exceptions carved out in the judgment relied upon by the petitioners is workable besides swings in favour of the petitioners for recording a firm inference of respondent Ajit Kumar holding no capacity to institute an eviction petition against the petitioners herein for seeking their eviction from the demised premises. In aftermath with a sine qua non embodied in the herein above afore-referred apt judgments for hence the espousal made before this Court by the learned counsel for respondent No. 1 warranting acceptance or its standing countenanced would occur only when Ajit Kumar holding title as its paramount owner of the contentious premises whereas with his undisputedly not holding it as paramount owner rather the paramount owner thereof being Punjab Wakf Board which however has lawfully rescinded the apposite allotment to him even prior to the eviction petition standing instituted at his instance where after it recorded its apposite subsequent allotments in favour of Mohinder Kumar and Jagdish Chand hence when obviously indispensable sine qua non for its attraction qua the petitioner besides its compatible attraction qua the respondents stands un-satiated he holds no legal leverage to succor any espousal of the principle of estoppel enshrined in Section 116 of the Indian Evidence Act operating against the petitioners herein his purported tenants in the contentious premises for hence their standing precluded to deny his title he stands foisted with a title to claim their ouster therefrom.

14. Further more even though the learned counsel for the respondent Ajit Kumar has proceeded to canvass before this Court of prior to the paramount owner recording allotments of the demised premises its cancelling the hitherto lease deed recorded in favour of respondent No. 1 Ajit Kumar warranted its receiving possession of the demised premises from Ajit Kumar whereupon alone it could proceed to record allotments under the apposite conveyances in favour of Mohinder Kumar and thereafter in favour of Jagdish Chand. However the aforesaid submission holds no vigour in face of construction if any raised by Ajit Kumar upon the land allotted to him standing raised at his instance without his prior thereto as enjoined upon him under the apposite conveyance of the demised land in his favour of his obtaining permission from the competent authority rendering it to be wholly unauthorized besides when he extantly does not hold possession thereof rather possession thereof is held by the petitioners herein under lawful conveyances recorded in their respective favour by the paramount owner incapacitates the respondent Ajit Kumar to stake a claim for delivery of possession to him by the petitioners herein of the construction raised upon the demised land conveyed in his favour by the paramount owner nor can he entail upon the Punjab Wakf Board the predominant owner of the demised

premises to before recording apposite subsequent allotments in favour of Mohinder Kumar and Jagdish Chand for hence purportedly validating the subsequent apposite allotments besides for empowering them to deny his title of his being on the anvil of his being not its predominant owner ensure retrieval its possession from him especially when it stands mandated in the aforesaid extracted paragraphs of the judgments of the Hon"ble Apex Court of the purported tenants in the demised premises even if theirs withholding delivery of its possession to the purported landlord theirs yet holding leverage to deny his title as its purported landlord especially when they received its title from the paramount owner moreso when the effect if any of AW-2/A stands hence wholly effaced. Also the learned counsel for respondent Ajit Kumar cannot contend thereupon of the apposite subsequent allotments of land by the predominant owner whereupon a structure stands raised standing deprived of their legal efficacy besides of theirs being a mere paper transaction especially when for the reasons aforesaid letters of allotments of land by the predominant owner to Ajit Kumar has been concluded to be lawfully rescinded under Ex. RW-2/A whereupon three shops stand raised by the respondent Ajit Kumar besides the apposite subsequent allotments all stood concluded to stand proved in accordance with law hence when each of the exhibits aforesaid are relevant as well admissible in evidence their probative tenacity gets enhanced.

15. Even on the anvil of the judgment reported in (2006) 3 SCC supra, the relevant paragraphs whereof stand extracted herein above the counsel has yet contended of the principle enshrined therein yet remaining workable in favour of respondent Ajit Kumar, nonetheless the afore-referred discussion anvilled upon the judgment to Hon"ble Apex Court report in (2002) 7 SCC supra carving an exception therein of the operation of rule of estoppel against the tenant denying the title of his landlord on upsurgings emanating on the hitherto landlord of the contesting parties losing title qua it at the commencement of the tenancy or during its currency under a lawful conveyance thereof to some other owner. Necessarily when the said exception carved therein qua the tenants standing estopped to deny the title of the landlord is workable only on satiation of Ajit Kumar holding title as paramount owner to the contentious premises whereas the apposite capacity qua the contentious premises stands held by the Punjab Wakf Board necessarily when the apposite predominant owner alone stood bestowed with a right to invoke the rule of estoppel against any of the contesting parties denying its title to the demised premises whereas the predominant owner effacing the capacity of Ajit Kumar as a tenant by its after cancelling allotment of land made by it in favour of Ajit Kumar its proceeding to subsequently make lawful conveyances in favour of Mohinder Kumar and Jagdish Chand. For reiteration there occurring a palpable by the evidence on record of rule of estoppel as stands invoked by the learned Appellate Authority for securing findings in favour of respondent Ajit Kumar standing aroused from sheer misappreciation of facts besides by sheer mismaneuvering of law, necessarily it warrants interference.

16. A wholesome analysis of the evidence on record portrays that the appreciation of evidence as done by the learned Appellate Authority suffers from a gross perversity and absurdity or it can be said that the learned Appellate authority in allowing the appeal filed thereat by the respondent No. 1 Ajit Kumar has committed a legal misdemeanour. In view of above, the petitions are allowed and the impugned order stands quashed and set aside. All pending applications stand disposed of accordingly.