

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2550 of 2013

ORDER:

This is a Civil Revision Petition under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, (for short 'the Act') by the unsuccessful appellant/tenant, assailing the orders dated 04.03.2013 of the learned Rent Appellate Authority-cum-Senior Civil Judge, Nizamabad made in R.C.A.No.1 of 2010, whereby the said learned Appellate Authority while dismissing the said appeal had confirmed the order dated 31.12.2009 of the learned Rent Controller, Nizamabad passed in RC.no.8 of 2007 filed under Section 10(2)(i), 20(2)(ii)(a), 10(3)(a)(1)(b) and 12(1)(a) of the said Act by the landlords/respondents herein for eviction from the premises viz., RCC roofed mulgi bearing no.7-10-961 situate at Station Road in Ward No.7, block no.10 of Nizamabad.

2. I have heard the submissions of the learned counsel for the revision petitioner and the learned counsel for the respondents. I have perused the material record.

3. The parties shall hereinafter be referred to as 'the revision petitioner/tenant' and 'the respondents/landlords', for convenience and clarity.

4. To begin with, it is necessary to refer to the pleadings of the parties.

4.1 The case of respondents/landlords, in brief, is this:

The respondents/landlords are the owners of the subject mulgi, having purchased the same under a registered sale deed bearing document no.13419 of 2005 from Syed Fazlur Rahman Hashmi, who in his turn, had purchased the same under document no.6475 of 2004 from the original owner B. Chandra Mohan Rao. The subject mulgi was constructed more

than 50 years back. The revision petitioner/tenant obtained the subject mulgi on lease from the vendor of the respondents/landlords in the year 2004 on a monthly rent of Rs.900/- under an oral agreement of lease. The said monthly rent is payable on or before 5th of every succeeding calendar month under a valid receipt. The said rent is exclusive of electricity charges payable by the revision petitioner/tenant. The revision petitioner/tenant is carrying on business under the name and style of M/s. Rajesh Mobile Point. The respondents/landlords came to know that the revision petitioner/tenant was irregular in payment of rents. Even prior to the purchase, the respondents/landlords in the month of October 2005 orally informed the revision petitioner/tenant that they are intending to purchase the subject mulgi and on that the revision petitioner/tenant stated no objection for the same. Having purchased the subject mulgi in December 2015, the respondents/landlords orally informed the revision petitioner/tenant about their purchase and requested the revision petitioner/tenant to pay the rents from January 2006 to them. On 03.01.2006 the respondents/landlords sent a letter under a certificate of posting to the revision petitioner/tenant asking him to pay rents from January 2006 to the respondents/landlords. However, the revision petitioner/tenant had failed to pay the rents to the respondents/landlords till date. Therefore, the revision petitioner/tenant committed wilful default in payments of rents to the respondents/landlords and had failed to pay the rents from January 2006 till the date of the institution of the Rent Control Case, that is, upto May, 2007. The 1st respondent used to do business. He had suffered losses in his said business. He is now intending to start his own business in the schedule mulgi. At present he is not doing any business. Therefore, the respondents/landlords require the subject mulgi for the 1st respondent's proposed business. Even prior to the purchase, the respondents/landlords and also elders by names Farooq, Siddiq Ahmed Hakeem saab and Mirza Villayat baig informed the revision petitioner/tenant orally about the intending purchase and made a request for vacating the property and the revision petitioner/tenant agreed for the same. However, the revision petitioner/tenant had failed to vacate the property as

agreed to. Further, the building became very old and, therefore, the building requires immediate repairs and alterations. Unless the revision petitioner/tenant vacates the subject mulgi in its occupation, it is not possible to affect repairs to the building. The revision petitioner/tenant obtained four mulgies from Bapuji Vachanalaya complex, R.P Road, Nizamabad for its business and is presently carrying on the business in the said mulgies. Thus, on the grounds of wilful default, *bona fide* personal requirement of the respondents/landlords, requirement of the building for affecting immediate repairs and unauthorised sublease, the respondents/landlords are entitled to seek eviction of the revision petitioner/tenant. Therefore, on 03.05.2007, the respondents/landlords issued a legal notice stating the said facts and demanding the revision petitioner/tenant to pay the arrears of rent in a sum of Rs.92,800/-. The revision petitioner/tenant having received the notice had sent a reply with false allegations. Hence, the petition is filed for eviction.

4.2 The case of the revision petitioner/tenant, in brief, is this:

The averments about the purchase of the subject mulgi by the respondents/landlords are true and correct. The subject mulgi is constructed about 50 years back is denied. This revision petitioner/tenant is a tenant of the property from the year 2004 is denied. This revision petitioner/tenant is a tenant in the adjacent mulgi since last 25 years. Having first taken the adjacent mulgi from B. Chandra Mohan Rao on lease on a rent of Rs.900/- per month, the revision petitioner/tenant had taken subject mulgi also on lease on a monthly rent of Rs.500/-, three or four years subsequent thereto and had established Rajesh Mobile Point in the subject mulgi. Thus, the total rent payable for the two mulgies was Rs.1,400 /- (Rs.500/- + Rs.900/-) per month. The lease is an oral lease. Later the monthly rent was enhanced to Rs.2,200/-. This revision petitioner/tenant is having telephone connection and other documents to prove his possession as a tenant since a long time. The revision petitioner/tenant is paying monthly rents regularly without committing any defaults as per the mutual understanding with the original owner Chandra Mohan Rao. There is no practice of passing receipts for the monthly rents paid. The averment that the revision petitioner/tenant is

irregular in payment of rents is false. Though the original owner sold the subject mulgi to Syed Fazlur Rahman Hashmi in the year 1988, the said Syed Fazlur Rahman Hashmi obtained a registered sale deed only in the year 2004. The said Syed Fazlur Hashmi used to collect rents from the revision petitioner/tenant right from 1988 onwards. As he used to be in dire need of money, he used to insist the revision petitioner/tenant to pay the rents in advance as the rents from the demised premises was the only source of livelihood for him. As and when he used to make such demands, the revision petitioner/tenant used to pay him huge amounts. Initially, the revision petitioner/tenant had paid Rs.60,000/-; and after about one year he had further paid Rs.40,000/-; and, by the end of the year 2002, the revision petitioner/tenant had paid Rs.2,00,000/- to the said Syed Fazlur Rahman Hashmi. As and when the revision petitioner/tenant used to demand receipts, he used to postpone saying that the receipts would be issued after registration of property in his name by the original owner. Out of mutual trust and belief between the said Syed Fazlur Rahman Hashmi and the revision petitioner/tenant, no insistence was being made for passing of receipts. The said Syed Fazlur Rahman Hashmi obtained a sale deed in his favour in the year 2004 and by the time he sold away the property to the present respondents/landlords, he was ready to pass the receipt. However, at that time, the cruel stroke of destiny had snatched him away and he had died due to his involvement in an accident at Malapalli Road, Nizamabad. The said amount of Rs.2,00,000/-, which was paid by the revision petitioner/tenant to the said Hashmi remained with him. After the death of the said Hashmi and after the respondents/landlords had purchased the property and after prorogue, this revision petitioner/tenant had informed the respondents/landlords about such payment to Hashmi. The respondents/landlords having accepted the same instead of passing a receipt had made the revision petitioner/tenant to believe that they are having Rs.2,00,000/- as advance, and had filed this eviction case. After purchasing the property in the year 2005, the respondents/landlords are receiving rents regularly without passing any receipts. Thus, the relationship of the revision/petitioner continued with the landlords as and when ownership

changed. The allegations that the respondents/landlords gave prior information about their intended purchase of the property and the further allegations are false. After purchase of the property, the respondents/landlords came to the revision petitioner/tenant and then the revision petitioner/tenant was taken by surprise when he was informed about the purchase by them. However, after verification, the revision petitioner/tenant started paying rents to the respondents/landlords. A letter dated 03.01.2006 informing about the purchase by the respondents/landlords was sent under certificate of posting to this revision petitioner/tenant demanding to pay rents from January 2006 is false. No such certificate of posting slip is submitted to the Court. Rents were paid upto February 2008. Therefore, the allegation that rents were not paid is false. The revision petitioner/tenant is not aware of any business which the 1st respondent used to do and his business, if any, ending in losses and his intention to start business in the subject mulgi. However, the said allegations are only invented. If really the respondents/landlords intended to do business and required the premises for occupation, they ought to have taken vacant possession from their vendor. But, they did not do so. While the tenancy of the revision petitioner/tenant is continuing in the demised premises, the respondents/landlords purchased the property from the owner and there is no evidence that they took consent of this revision petitioner/tenant before such purchase. Whenever any property is in the occupation of the tenant is sold by the owner/landlord, the said fact should be informed to the tenant, who is in possession of the property, and an option to purchase shall be given to the tenant in occupation. The purchase of the property by the respondents/landlords is illegal, arbitrary and against Rule of law. No request was ever made for vacating the property. There are two suits viz., OS.no.70 of 2007 and 133 of 2007 pending between the parties to the knowledge of the respondents/landlords. This revision petitioner/tenant is not the owner of any mulgies at Bapuji Vachanalaya Complex as alleged in the petition. When a notice was issued, a suitable reply was sent. When the rents, sent by money orders were not received, this revision petitioner/tenant

had invoked Section 8 of the Act for depositing the rents and has been depositing the rents to the credit of the said Rent Control Case. This revision petitioner/tenant is ready to pay the rents. There is no cause of action. This revision petitioner/tenant did not commit any defaults much less wilful defaults. The petition on the ground of recovery of possession for repairs, alterations and additions is not maintainable and the said provision of law is not applicable to the case on hand, as on one hand the respondents/landlords are seeking eviction on the ground of *bona fide* personal requirement and on the other they are saying that the building requires repairs. The said contentions are mutually incompatible. When there is an advance of Rs.2,00,000/- with the previous landlord/owner, the question of default much less wilful default does not arise. The petition may be dismissed.

5. At the time of enquiry before the learned Rent Controller, the 1st respondent/landlord and the supporting witnesses of the landlords were examined as PWs1 to 3. The Proprietor of the revision petitioner/tenant concern and the supporting witnesses were examined as RWs1 to 3. Exhibits A1 to A19 and B1 to B6 were marked.

6. On merits, the learned Rent Controller had allowed the petition and ordered eviction of the revision petitioner/tenant on the grounds of wilful default in payment of rents for the period from 2006 till March, 2007, subsequent wilful defaults in payments of rents and *bona fide* personal requirement of the respondents/landlords. However, the learned Rent Controller had not accepted the other grounds for eviction viz., the tenant securing alternative accommodation, the requirement of the subject mulgi by the respondents/landlords for affecting repairs and unauthorised sub-lease. Be it noted that though the revision petitioner/tenant raised a contest that there is no jural relationship, the said contention was also *inter alia* negated.

6.1 In the appeal preferred by the revision petitioner/tenant, the learned appellate authority had ordered eviction on the grounds of *bona fide*

personal requirement and subsequent wilful defaults in payment of rents after having held that the respondents/landlords could not establish the wilful defaults in payment of rents for the period from January 2006 till March 2007.

7. Having been aggrieved of the said orders, the revision petitioner/tenant had preferred this revision.

8. The case of the revision petitioner/tenant and the submissions made on its behalf are as follows:

The revision petitioner/tenant is carrying on its business in the subject mulgi since about more than 40 years and that it is an irony that the previous owners/landlords sold the property and the property changed hands more than three times without intimation to the revision petitioner/tenant though he is ready and willing to purchase the said premises in which he is a tenant since a long time. The revision petitioner initially was a tenant in the subject mulgi under the original owner/landlord B. Chandra Mohan Rao. Subsequently, the revision petitioner continued as a tenant in the subject mulgi under the ownership of the subsequent purchaser Syed Fazlur Rahman Hashmi, who purchased from Chandra Mohan Rao under exhibit A2 (copy of the registered sale deed dated 23.07.2004). The present respondents/landlords purchased the subject mulgi from the said Syed Fazlur Rahman Hashmi under a registered sale deed dated 09.12.2005, the original of exhibit A1. By the time of the said purchase, the revision petitioner/tenant is continuing in the subject premises as a tenant and is ready and willing to purchase the property. The Court below having held that there is no wilful default in payments of rents as on the date of the institution of the Rent Control Case had erroneously ordered eviction on the ground of subsequent wilful default ignoring the fact and the evidence that Rs.2,00,000/- as advance was lying with Syed Fazlur Rahman Hashmi, the vendor of the respondents/landlords, and that therefore, the question of default in payment of rents much less wilful default does not arise for consideration. The court below ought to have seen that the revision petitioner/tenant is not only regular in payment of rents but had also paid a

huge amount as advance rents on the demand of the vendor of the respondents/landlords and that there was no practice of passing of rent receipts from the inception. Even though eviction was sought on four grounds, two grounds were rejected by the learned Rent Controller and eviction was ordered only on the grounds of wilful defaults and *bona fide* personal requirement. The learned appellate authority negated the contentions of the respondents/landlords on both the grounds of wilful default in payment of rents prior to the institution of the RCC and *bona fide* requirement but, had erroneously confirmed the eviction order passed by the learned Rent Controller on the ground of subsequent wilful default in depositing the rents to the credit of the Rent Control Case filed for deposit of rents under Section 8 of the Act. The Courts below ought to have noted that either before the purchase or after the purchase, no intimation is given in writing by the respondents/landlords to the revision petitioner/tenant and that exhibit A4, the certificate of posting, cannot be considered to accept the same as a proof for delivery of the letter as the certificate only evidences posting but not delivery of the letter, which is posted. The courts below ought to have seen that the revision petitioner/tenant did not receive any such letter which is said to have been posted under the certificate of posting. The appellate authority erroneously accepted the ground of subsequent wilful default and wrongly ordered eviction even though there is no attornment of the tenancy in favour of the respondents/landlords. The Courts below ought to have seen that when eviction is sought on the ground of wilful default, burden of proof is on the landlords and that the landlords had failed to establish wilful defaults in payments of rents. The Court below ought to have seen that none of the legal representatives of the vendor of the respondents/landlords was examined to prove the defaults and attornment of tenancy by the said vendor Syed Fazlur Rahman Hashmi. When all the ground urged for eviction are disbelieved, the appellate authority ought not to have granted the relief of eviction on the ground of subsequent wilful defaults in payment of rents as the procedure contemplated under Section 11 of the Act is not followed. The appellate authority had failed to see that the provisions of law are not followed while seeking eviction. The courts below failed to appreciate the

facts correctly and the legal position in proper perspective while accepting the ground of wilful default in payment of rents and ordering eviction.

9. *Per contra*, the learned counsel for the respondents/landlords supported the orders of the learned Rent Controller and the appellate authority, whereby eviction of the revision petitioner/tenant was ordered on the grounds of *bona fide* personal requirement of the respondents/landlords and subsequent wilful defaults in payments of rents. He had further pointed out that the learned Rent Controller had ordered eviction also on the ground of wilful defaults in payments of rents prior to the institution of the Rent Control Case for eviction and had urged that the respondents/landlords are entitled to seek eviction on the other grounds namely wilful defaults in payment of the rents prior to the institution of the case as held by the Rent Controller, requirement of the building for immediate repairs and denial of jural relationship at the time of enquiry, though in the counter the purchase of the subject mulgi by the respondents/landlords from the Syed Fazlur Rahman Hashmi is admitted as true and correct besides pleading about the payment of rents to them. He, therefore, prayed for confirming the order of eviction on all the grounds.

10. I have given earnest consideration to the facts and the submissions.

10.1 Dealing first with the aspect of denial of jural relationship by the revision petitioner/tenant, it is pertinent to note that the respondents/landlords would contend that the revision petitioner/tenant has taken the subject mulgi from their vendor Syed Fazlur Rahman Hashmi and that his tenancy was attorned to them and he is continuing as a tenant under them and hence, there is jural relationship. However, the revision petitioner/tenant contends that he was a tenant even under B. Chandra Mohan Rao, the original owner, and that he is continuing as a tenant in the subject mulgi for the last 25 years as on the date of the filing of his counter and that he was not informed about the purchase by the respondents/landlords from the said Hashmi and that the tenancy was not attorned and that in view of the defence in his counter there

is no jural relationship. The admitted fact is that by the date of the purchase by the landlords/respondents herein, the revision petitioner/tenant is in possession of the subject mulgi as a tenant. Therefore, the question is as to whether the revision petitioner/tenant had knowledge of such purchase of the subject mulgi from Syed Fazlur Rahman Hashmi by the respondents/landlords and whether there is jural relationship. It is pertinent to recall that the following facts are admitted in the counter of the tenant:

'The original owner is one B. Chandra Mohan Rao. From him, the vendor of the respondents/landlords Syed Fazlur Rahman Hashmi had purchased the subject mulgi under the registered sale deed dated 23.07.2004. From the said Hashmi, the present respondents/landlords had purchased the subject mulgi under a registered sale deed dated 09.12.2005 (exhibit A1). The said Syed Fazlur Rahman Hashmi obtained a sale deed in his favour in the year 2004 and by the time he sold away the property to the present respondents/landlords, he was ready to pass the receipt. However, at that time, the cruel stroke of destiny had snatched him away and he had died due to his involvement in an accident at Malapalli Road, Nizamabad. The said amount of Rs.2,00,000/-, which was paid by the revision petitioner/tenant to the said Hashmi remained with him. After the death of the said Hashmi and after the respondents/landlords had purchased the property and after prorogue, this revision petitioner/tenant had informed the respondents/landlords about such payment to Hashmi. The respondents/landlords having accepted the same instead of passing a receipt had made the revision petitioner/tenant to believe that they are having Rs.2,00,000/- as advance, and filed this eviction case. After purchasing the property in the year 2005, the respondents/landlords are receiving rents regularly without passing any receipts. Thus, the relationship of the revision/petitioner continued with the landlords as and when ownership changed. The allegations that the respondents/landlords gave prior information about their intended purchase of the property and the further allegations are false. After purchase of the property, the respondents/landlords came to the revision petitioner/tenant and then the revision petitioner/tenant was taken by surprise when he was informed about the purchase by them. However, after verification, the revision petitioner/tenant started paying rents to the respondents/landlords. A letter dated 03.01.2006 informing about the purchase by the respondents/landlords was sent under certificate of posting to this revision petitioner/tenant demanding to pay rents from January 2006 is false. No such certificate of posting slip is submitted to the Court. Rents were paid upto February 2008.'

The revision petitioner/tenant in his counter categorically admitted that the averments in paragraph 1 of the petition of the respondents/landlords to the

effect that the subject mulgi is purchased by them are true and correct. In the cross examination, the Proprietor of the revision petitioner/tenant concern as RW1, had admitted his counter contents and also had stated that his counter was prepared as per his instructions and his having knowledge of the contents of the counter. Therefore, the Courts below held that the contention sought to be raised during the enquiry before the learned Rent Controller regarding lack of jural relationship is contrary to the admissions in the counter and, therefore, the said contention that there is no jural relationship, cannot be countenanced. Though the learned counsel for the revision petitioner sought to contend that only the purchase is admitted, but, not the factum of attornment of tenancy, it is to be noted that the above extracted and highlighted contentions in the counter of the revision petitioner/tenant make it manifest that the revision petitioner/tenant is aware of the purchase of the subject mulgi by the respondents/landlords under a registered sale deed. Further, according to the revision petitioner/tenant's version in the counter, the respondents/landlords came to him and he was surprised on coming to know about the purchase of the property by them and that on verification he had started paying rents to them and that he had paid rents upto February 2008. Therefore, the revision petitioner/tenant could not have raised all the above said contentions in his counter unless there is attornment of tenancy and his knowledge of the fact that the respondents/landlords are the landlords having purchased the property. Therefore, even if the contention of the revision petitioner/tenant that the letter of the landlords sent by certificate of posting informing about the purchase of the property by the landlords is not received by the tenant is to be accepted for a moment, yet the said contention is not going to make a difference, in view of the admissions in the Counter, the evidence, the facts and circumstances of the case. Therefore, the decision in **Nagareddy Rajagopala Reddy v. Oriental Fire and General Insurance Co. Ltd.**^[1] relied upon in support of the proposition that there is no presumption in law that communication sent under certificate of posting is duly served on the addressee is not helpful to the revision petitioner/tenant as the said letter said to have been sent by certificate of posting even if kept out

of consideration does not advance the case of the revision petitioner/tenant any further in view of the discussion and reasons assigned supra in regard to the attornment of tenancy and the entitlement of the landlords/respondents herein to seek eviction.

10.2 It is apt to refer to infra the relevant legal position on this aspect.

In **M.Suryanarayana Raju v. Korukonda Appa Rao**^[2], the facts disclose that the plaintiff therein had claimed to have purchased the property under a registered sale deed and that the respondent therein had stated that the tenancy was not attorned in favour of the said plaintiff and that therefore, the plaintiff is not entitled to maintain the suit for the arrears of rent against him. In that back ground, having considered the provisions of law and the ratios in the relevant precedents, this Court held as follows:

“For all these reasons, I have to conclude that neither under the provisions of the Transfer of Property Act nor under the provisions of A.P. Rent Control Act there is any provision for attornment of the tenancy by the tenant in favour of the transferee and such transferee would automatically become the landlord of the tenant on the same existing terms and conditions.”

Further, in the decision in **Shankaramma v. Mohammed Abdul Hameed**^[3], a Division Bench of this Court had held that a transferee of the landlord's rights steps into the shoes of transferor/landlord with all the rights and liabilities in respect of subsisting tenancy and that Section 109 of the Act makes it clear that the landlord can transfer his property in favour of a third party during the subsistence of the lease and that the consent of the tenant is not necessary to transfer the property in favour of a third party and that in the light of the provisions of the Transfer of Property Act and the case law, the attornment automatically follows on transfer of property on the same terms and conditions on which the transferor entered into lease agreement with the tenant unless there is a contract to the contrary and that the transferee of a landlord is thus entitled to collect rent as of right and is a landlord and that since the attornment is not necessary under Section 109 of the Act, the tenant cannot dispute the right of transferee to maintain a suit for eviction or to claim rent. Therefore, from the legal position obtaining, the purchasers from the

original owner/original landlord can maintain the petition for eviction. Therefore, the pleadings of the parties and the evidence brought on record sufficiently establish that there is jural relationship and, hence, the concurrent findings of the Courts below on the said aspect do not call for interference.

10.3 Be it now noted that the decision in **Vasant Rao Ankilkar v. Nalini Bai Joshi**^[4] wherein this Court held that the eviction petition that was initiated by the person collecting the rents from the tenant on behalf of the owner of the premises landlord without obtaining the consent of the landlord is not maintainable, is not helpful to the revision petitioner/tenant in view of the facts of the instant case. Similarly the decision in **Omar Khasim v. Dabburi Madhusudhana Rao**^[5] is also not helpful as the facts of the cited case would show that in that case the purchaser of the property from the previous landlord during the pendency of the eviction petition furnished the names differently in the notice issued to the tenant a month later of the deposition in the case. The decision in this cited case turned on the facts of the case.

11. As already noted, both the Courts below had ordered eviction on the ground of subsequent wilful default in payment of rents. The revision petitioner/tenant having filed RC.no.10 of 2007, on the ground that rents sent by money order were not received, had obtained permission to deposit rents to the credit of the said case. The copy of the said petition in the said Rent Control Case is exhibited as exhibit A19. According to the defence, the revision petitioner/tenant is continuing to deposit rents to the credit of the said Rent Control Case regularly and there are no defaults subsequent to the filing of this eviction case. The learned Rent Controller having adverted to the facts, the evidence and the submissions in the written arguments of the parties, had noted that the revision petitioner/tenant is not regular in depositing rents to the credit of the said RC. A perusal of the material record would show that the rents for 14 months for the period from 01.04.2007 to 31.05.2008 were deposited on 04.02.2009; and rents for 10 months for the period from 01.06.2008 to 31.03.2009 were deposited on 18.07.2009; and the

rents for the period from 01.04.2009 to 31.07.2009 were deposited on 30.07.2009; and the rents for the period from 01.08.2009 to 30.09.2009 were deposited on 31.08.2009. Thus, the rents for 14 months, 10 months, 4 months and 2 months were deposited by way of four challans in lump sum in four spells. Thus the said deposits made by the revision petitioner/tenant to the credit of the Rent Control Case would make it manifest that the revision petitioner/tenant was depositing rents not regularly every month, but, once in few months. The tenancy between the parties is a month to month tenancy is not in dispute. Section 10(2)(i) of the Act which deals with the payment of rent in the absence of any agreement in regard to payment of rent lays down that the payment of rent has to be made by the last date of the month next following that month for which rent is payable. As a result, the Courts below had concurrently held that the revision petitioner/tenant had committed subsequent wilful defaults in payment of rents by not depositing the rents regularly to the credit of the Rent Control Case and is, therefore, liable for eviction in the absence of any explanation much less valid explanation for the said defaults and belated lump sum deposits of rents. In the decision in **J.M. Benedict v. Mithileswari jaiswal**^[6] this Court held that mere initiation of proceedings under sub section (5) would not absolve the tenant from the consequences of default in payment of rent and that the tenant will have to explain the failure for the period for which he had deposited under Section 8(5) of the Act. A similar view was also expressed in **Adapa Santharam v. Sait**

N. Manik Chand^[7]. The law is well settled that default committed by the tenant even after the filing of eviction petition can be taken as a ground for eviction. This view of this Court gets reinforced from the decision in

N. Ananda Rao v. P. Naga Anjeswara Rao^[8]. No explanation at all is forthcoming for the belated once in a while deposits or lump sum deposits of rents to the credit of the Rent Control Case. It is next contended on behalf of the revision petitioner/tenant that the delay in deposit of rents may not be viewed as a wilful default in view of the provisions of Sections 5

and 8 of the Act. The contention is devoid of merit. In **Mohammed Izhar Ali**

Vs. Smt. Olive Founseca (died) per L.Rs. and Ors.^[9] a reference was made to a full bench of this Court after formulating the following questions:

(1) When Section 8 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 is directory, can Rule 5 of the Rules framed for working out the said provisions be treated as mandatory?

(2) Whether deposit of rent into Court is sufficient compliance and can be treated as payment to the landlord?

(3) Whether failure to deposit rent challans into court automatically amounts to wilful default?

(4) Whether Rule 5 of the Rules goes contra to the provisions of Section 10(2)(i) and proviso of the Act?

Having considered the relevant provisions of the sections of law in the Act and the Rules under the Act and also the ratios in the decisions, the Full Bench of this Court held as under:

49. Therefore, the reference has to be and is answered accordingly in the following terms:

(1) Though Section 8 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 is directory and optional, a tenant taking advantage and benefit of the said provision has to strictly and mandatorily comply with the procedure prescribed under Rule 5 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Rules, 1961.

(2) While deposit of rent in terms of the provisions of the Act and the Rules amounts to valid tender of rent to the landlord, the failure to comply with Sub-rule (3) of Rule 5 requiring delivery of a copy of the challan for the deposit of rent in the office of the Controller or the appellate authority, as the case may be, so as to enable the Controller or the appellate authority to cause maintenance of proper accounts under Sub-rule (5) and give notice of deposit to the person or persons concerned within seven days of such delivery of copy of the challan in one or the other of the modes specified in Rule 16 (paying within a reasonable time the prescribed fee as per Rule 17 for service of such notice, if the tenant himself did not serve such notice directly on the landlord or the advocate appearing for the landlord) under Sub-rule (4), amounts to wilful default in making valid payment or lawful tender of the rent by the tenant to the landlord;

(3) Sub-rule (1) and/or Sub-rule (3) of Rule 5 of Rules do not prescribe any time limit for depositing rent after obtaining permission for such deposit from Rent Controller under Section 8(5) of the Act. A perusal of Sub-rules (2) and (3) of Rule 5 of Rules, however, shows that after obtaining permission a tenant has to deposit rent every month and as required under Sub-rule (3)

of Rule 5 of the Rules shall deliver rent challan in the office of Rent Controller or appellate authority as the case may be. A perusal of Section 10(2)(i) of the Act would show that in the absence of any agreement, rent has to be paid by the last day of month next following that for which rent is payable or if there is agreement of tenancy within 15 days after expiry of time fixed in the agreement. This indicates some guidance as to reasonable time for deposit of rent. Thus, where a tenant obtains an order to deposit rent, same shall be deposited at least by the last day of the month following that for which rent is payable and rent challan shall be delivered in the office of Controller within a reasonable time so that Rent Controller can take necessary action for service of notice of deposit under Sub-rule (4) of Rule 5 of the Rules within seven (7) days of such delivery. In the absence of compliance in so depositing rent and delivering challan in the office of Controller, tenant shall be deemed to have committed wilful default, as per conclusions on question Nos.1 and 2 above.

(4) There is no conflict between Section 10(2)(i) and Section 10(2) proviso on one hand and Rule 5 on the other.

On a plain consideration of the legal position obtaining it is obvious that the tenant who obtains an order to deposit rents into Court shall deposit each month's rent at least by the last day of the month following that month for which rent is payable and shall deliver the challan in the office of the Controller within a reasonable time so that Rent Controller can take necessary action for service of notice of deposit under Sub-rule (4) of Rule 5 of the Rules within seven (7) days of such delivery. And, in the absence of compliance in so depositing rent and delivering challan in the office of Controller, tenant shall be deemed to have committed wilful default. Having regard to the aforesaid reasons and the legal position obtaining, this Court finds itself in agreement with the findings of the Courts below that the revision petitioner/tenant is liable for eviction on the ground of subsequent wilful defaults in payments of rents.

12. This takes us to the ground of default in payment of rents prior to the institution of the Rent Control Case. As already noted, there is no concurrent finding on this aspect as the learned appellate authority reversed the finding of the learned Rent Controller on this aspect. The case of the respondents/landlords is that the rents are not paid from January 2006 till the filing of the eviction petition. The period of default urged is from January

2006 to May 2007. The respondents/landlords purchased the property in the month of December 2005 is undisputed. Therefore, they are entitled to claim rents from January 2006 onwards from the revision petitioner/tenant cannot be disputed. However, before the learned Rent Controller, the revision petitioner/tenant sought to establish that he had paid rents to the former landlord Syed Fazlur Rahman Hashmi till March, 2007. Nonetheless, as noted supra from the contents of the Counter, it is the case of the revision petitioner/tenant that after purchasing the property in the year 2005, the respondents/landlords are receiving rents regularly without passing any receipts and that after the purchase of the property, the respondents/landlords came to the revision petitioner/tenant and then the revision petitioner/tenant was taken by surprise when he was informed about the purchase by them and that however, after verification, the revision petitioner/tenant started paying rents to the respondents/landlords and that the rents were paid upto February 2008. Admittedly, no receipts evidencing such payment of rents are produced. At the same time, the revision petitioner/tenant contends that rents were paid without obtaining receipts. In the cross examination, RW1, the proprietor of the revision petitioner/tenant concern, had stated that he has been paying rents to the vendor of the respondents/landlords but not to them. Even according to the tenant's version when the rent for the month of April 2005 was sent by Money Order in May 2005 the same was refused to be received. The respondents/landlords got issued a legal notice on 03.05.2007 and a reply was issued by the revision/petitioner tenant on 25.05.2007. The contention of the revision petitioner/tenant that the rents were paid without obtaining receipts inspite of refusal of money order and the exchange of notices cannot be countenanced. Though reliance was placed on the decision in **Venukonda Radha Krishna v. Pulivarthi Ramanaiah**^[10] in support of the proposition that the burden of proof in regard to the plea that the tenant had committed wilful default to pay the rents lies on the landlord in a case where the landlord purchased the demised mulgi from the previous landlord and had orally informed the tenant about such purchase, the said proposition is not helpful to the revision petitioner/tenant in the case on hand

as the admissions in the counter of the revision petitioner/tenant lay bare that the revision petitioner/tenant is having knowledge of the purchase of the property by the landlords/respondents. It is apt to recall that in the counter it is contended that after verification rents were paid regularly and that the rents were paid upto February 2008. The revision petitioner/tenant as already noted could not produce any evidence whatsoever either about payment of rents till March 2007 to the previous landlord Syed Fazlur Rahman Hashmi and the subsequent rents to the present respondents/landlords. Even assuming that the letter sent under certificate of posting is not received as being contended by the revision petitioner/tenant, still the tenant, who is having knowledge about the purchase of the property by the respondents/landlords, cannot be heard to say that he had paid the rent to the previous landlord or that he had paid rents without obtaining receipts. When once the landlords established that the rents were not paid and defaults were committed in payments of rents, the onus of proof on the landlord stands discharged and the onus shifts to the tenant to rebut the said evidence and establish the reasons, if any, in support of the defence that the defaults, if any, are not wilful. In the case on hand without any proof it is merely sought to be contended that the rents were paid without obtaining receipts; thus no explanation whatsoever was offered for the defaults in payments of rents. Therefore, as rightly held by the learned Rent Controller, there is sufficient material on record to hold that the revision petitioner/tenant committed wilful defaults in payment of rents even for the period prior to the institution of the eviction petition and, therefore, on that ground also, he is liable for eviction.

In the facts and circumstances of the case, the finding of the Appellate authority to the contra on the ground that there is no written document of attornment of tenancy till the exchange of notices in May 2007 is not well founded for all the reasons assigned on the various aspects of the matter. Hence, while setting aside the said finding of the learned appellate authority this Court holds that the respondents/landlords had sufficiently established the ground of wilful defaults in payment of rents even prior to the institution of the rent control eviction case.

13. Coming to the aspect of *bona fide* personal requirement of the schedule mulgi for the intended business of the 1st respondent/landlord, it is to be noted that both the Courts below had accepted the said ground as one of the valid grounds for ordering eviction. PW1 had asserted his pleaded case that he suffered losses in his existing business and, therefore, he intended to start his own business in the subject mulgi which was purchased in December 2005 under the original of the exhibit A1 registered sale deed. It is also the case of the respondents/landlords that even prior to the purchase, the respondents/landlords had approached the RW1, the proprietor of the revision petitioner/tenant concern along with two elders and made a request to vacate the property and that the tenant had agreed for the same. The Courts below having examined the evidence recorded concurrent finding of fact that there is no other suitable alternate mulgi or non-residential premises in the occupation of the respondents/landlords and that the contentions of the revision petitioner/tenant that the landlords are in occupation of the other non-residential premises is not established as required under facts and law. It is to be noted that mere availability of any accommodation would not disentitle the landlords from seeking eviction as the expression 'reasonably suitable accommodation' is the pivot of the provision and the aspects of the quality, size and suitability cannot be out of consideration while considering the requirement of the mulgi for the intended business of the respondents/landlords. Even if the landlords are in possession of a non-residential mulgi, which is not reasonably suitable and is not going to serve the purpose of the need of the landlords, they can seek eviction of the non residential mulgi in the occupation of the tenant as aspects of quality, size and suitability of the mulgi cannot be put out of consideration. The revision petitioner/tenant could not show that the findings of the Courts below suffered from any legal infirmity. It is also contended on behalf of the revision petitioner/tenant that the landlord who requires *bona fide* the building in the occupation of the tenant, which is in a dilapidated condition, cannot simultaneously seek eviction on the twin grounds viz., (i) that the building requires demolition and reconstruction; and (ii) *bona fide*

personal occupation on such demolition and reconstruction. In

Harischandra Vidyarthi v. Meenakshi Shah^[11] after considering various precedents including the decision of the Supreme Court, this court held as follows: -

Having regard to the legal provisions and the relevant case law, the following principles emerge.

(1) The A.P (Lease, Rent and Eviction) Control Act, 1950 confers on the landlord the right to seek eviction of a tenant the building for the bona fide purpose of starting business, and also on the ground that the building is immediately required for repairs etc., or demolition and reconstruction. (2) Likewise, the landlord has a right to seek eviction of the tenant on any of the other grounds under Section 10(2), 10(3) and also simultaneously on the ground mentioned in Section 12 of the Act. (3) In an eviction petition, founded on different grounds, as mentioned above, even if the landlord fails to prove the ground of wilful default, sub-letting, bona fide requirement for self-occupation, still the landlord is entitled to an order of eviction if he satisfies the Rent Controller that he bona fide requires the building for repairs etc., or demolition and reconstruction. Any eviction order is subject to the landlord giving an undertaking that on completion of the repairs etc., or reconstruction, the building will be offered to the tenant, who delivered possession in pursuance of an order of eviction under Section 12(1). The premises to be offered and reoccupied by the tenant need not be identical in dimensions, but must be as nearly equal to as practicable. (4) The condition of giving an undertaking under Section 12(2) need not be imposed when eviction is ordered on the ground other than demolition and reconstruction. IN such an event, the law contemplates that the landlord who pleads and proves any of the grounds mentioned in 10(2) and 10(3) has to succeed on these grounds alone, and it is immaterial whether the landlord effects repairs or demolishes the building. (5) When an application is filed under Section 10(3)(b)(ii), even if bona fide requirement is proved for self-occupation of commencing business, the landlord should fail if he is in occupation or deemed to be in occupation of a building owned by him. In such an event, the purpose of self-occupation is legally bona fide. However, if the landlord is in occupation of a tenant building, the same is not a bar for seeking eviction under Section 10(3)(b)(iii).”

The settled legal position, which applies to the case on hand on all fours, is sufficient to hold that the legal contention raised before this court by the learned counsel for the tenant is devoid of merit as from the settled legal position it is clear that under the provisions of the said Act, the landlord has a

right to seek eviction of a tenant of the building for *bona fide* purpose of starting business and also on the ground that the building requires demolition and reconstruction simultaneously. However, in the instant case, the Courts below having rejected the contention of the respondents/landlords that the building requires repairs did not accept the said ground as a ground for ordering eviction of the revision petitioner/tenant. Having regard to the aforesaid reasons, this Court finds that the findings of the learned Rent Controller and the appellate authority that the landlords/respondent herein established *bona fide* personal requirement is legally sustainable. Accordingly this Court holds that the landlords/respondents herein are entitled to seek eviction of the revision petitioner/tenant from the subject mulgi on the ground of *bona fide* personal requirement.

14. Dealing finally with the other grounds of eviction viz., requirement of the subject mulgi for affecting repairs and unauthorised sub-lease, it is to be noted that the Courts below had recorded concurrent findings and had held that on the said grounds the respondents/landlords are not entitled to seek eviction. Having examined the facts and the evidence brought on record, this Court is satisfied that there is no infirmity in the said well reasoned concurrent findings calling for interference.

15. On an over all examination of the case facts and the evidence brought on record in juxtaposition, this Court finds that the Courts below had considered the facts correctly and the evidence in proper perspective and that therefore, the Courts below are justified in ordering eviction of the revision petitioner/tenant from the subject case mulgi. Viewed thus, this Court finds that the respondents/landlords are entitled to seek eviction of the revision petitioner/tenant from the subject mulgi on the grounds of wilful default in payments of rents prior to and subsequent to the institution of the eviction petition and *bona fide* personal requirement and that the revision petition is devoid of merit and is liable for dismissal.

16. In the result, the Civil Revision Petition is dismissed.
There shall be no order as to costs.

The revision petitioner/tenant is granted six (06) months time from the date of the receipt of a copy of this order to vacate and handover the vacant possession of the subject mulgi to the respondents/landlords. On the failure of the tenant to do so, the landlords are at liberty to obtain possession of the subject mulgi in accordance with the procedure established by law.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

M.SEETHARAMA MURTI, J

11.07.2016

Vjl

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- [\[1\]](#) 2009 (5) ALD 131
 - [\[2\]](#) 1997 (1) Law Summary 409
 - [\[3\]](#) 2006 (1) ALT 103
 - [\[4\]](#) [1996] 3 ALT 507
 - [\[5\]](#) 2007 (1) ALT 655
 - [\[6\]](#) 2002(2) ALD 787
 - [\[7\]](#) 1995(3) ALD 795
 - [\[8\]](#) 1997 (3) ALD 732
 - [\[9\]](#) AIR2008AP196=2008(4)ALD254=2008(4)ALT147
 - [\[10\]](#) 2009(2) ALT 537 = 2009 (1) ALD 646
 - [\[11\]](#) ALT-2001-2-206