HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.2411 & 2668 of 2013

COMMON ORDER:

These two Civil Revision Petitions, under Section 22 of Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short ' the Rent Control Act') are filed by the petitioner/respondent No.3, aggrieved by the Common Judgment, dated 28.08.2012, passed in R.C.A.Nos.5 and 6 of 2011 by the Principal Senior Civil Judge, Kakinada, whereby and whereunder, the lower appellate Court allowed both the appeals by setting aside the common order, dated 11.07.2011, passed in R.C.C.Nos.39 and 43 of 2006 passed by the Rent Controller – cum – Principal Junior Civil Judge, Kakinada, negating permission to deposit the rent into the Court under Section 9 of the Rent Control Act, while ordering eviction of tenant from the schedule property.

The parties to these Revisions hereinafter will be referred as petitioners and respondent, as arrayed in R.C.C.No.43 of 2007 on the file of Rent Controller – cum – Principal Junior Civil Judge, Kakinada, for convenience and clarity.

The petitioners/landlords filed a petition under Section 10 (i) (ii) (iii) and (3) (b) of the Rent Control Act, seeking eviction of the respondent/tenant from the schedule premises, contending that they are the owners of the schedule premises which fell to their share in the partition effected in PLC 45 of 2002 as per the Award passed by the Legal Service Authority, Kakinada; the petitioners are not having any business for their livelihood, whereas, the 1st petitioner is experienced in carrying on fruits and vegetable business at Kakinada; Petitioner No.1 is intending to carry on fruits and vegetable business in the subject premises; As Petitioner No.1 is not in occupation of any other non residential premises at Kakinda, he requires the schedule premises for his personal occupation for carrying on business; The respondent/tenant obtained the schedule premises to carry on the business on a monthly rent of Rs.900/-; As per the terms of oral tenancy, the respondent/tenant has to pay rent regularly, but he is paying rent through his counsel to the petitioner's counsel and the rent is being received without prejudice to the rights and contentions of the petitioners.

The respondent/tenant filed Counter admitting the jural relationship of tenant and landlord between them, while denying the allotment of the schedule premises to the share of the petitioners, as per the Award in PLC No.45 of 2002 passed by the Legal Services Authority, Kakinada, so also, the *bona fide* requirement of the schedule premises for occupation of petitioner No.1 to carry on fruit and vegetable business. His main grievance is that one Kalla Purushotamarao, who was the father of petitioner No.1 and husband of petitioner No.2, was blessed with one daughter by name Sudda Padmavathi and that the petitioners are claiming right in the schedule premises as legal heirs of late Kalla Purushotamarao and that the daughter of Kalla Purushotamarao is also a proper and necessary party to the Rent Control Case, having share in the property along with the petitioners, as per the Hindu Succession Act. His further case is that Petitioner No.2 also passed away recently and her daughter Padmavathi is also having equal share along with petitioner No.1 and as such, the present petition is not maintainable without impleading the legal heirs of the deceased Kalla Purushotamarao and his wife. Late Kalla Purushotamarao, late Narayanarao, late Kalla Venkatarao and Kalla Mutyalarao @ Mohanrao are brothers and they had two sisters namely late Chelluri Kalavati and Amanapu Venkatachalamma @ Ammadu and their parents are late Kalla Lakshmi Narasimharao and Late K. Ammani. The tiled house and site bearing D.No.33-2-137, 138 and 139 of which the schedule premises is a part, originally belongs to late Kalla Lakshmi Narasimharao. After his death, it devolved upon his wife, four sons and two daughters. K. Ammani died about 22 years ago leaving behind her children as her legal heirs and they were not made parties to PLC No.45 of 2002.

The respondent/tenant obtained the schedule premises on monthly rent of Rs.900/- and carrying on business in selling Termaric, Kumkum, wooden idols etc., in the schedule premises. On the west of the schedule premises, there is common lane within the main building for all the occupants of the premises. On the north, there is a leasehold premises of Vanumu Simhachalam in the same building. The petitioners/landlords mentioned the northern boundary as the property of Chittabbayi, who is the husband of late Chelluri Kalavathi. The petitioners are collecting rent of the southern portion, which is under occupation of lessee by name G. Syamala, and also collecting rent from Konduru

Chittemma, who is having leasehold premises to the south of the portion occupied by G. Syamala. The petitioners also filed an Eviction Petition in R.C.C.No.37 of 2006 against the said G. Syamala on the ground of *bona fide* requirement by the petitioner No.1. Apart from the schedule shop, there are seven more shops facing the market street, which are under occupation of independent tenants. Except G. Syamala, all other tenants are in occupation of their respective shops since a long time.

During the year 1999, the petitioners demanded all the tenants for exorbitant enhancement of rent. Thereupon, the respondent/tenant, apprehending unnecessary interference in his occupation of the schedule premises, filed a suit in O.S.No.199 of 1999 for permanent injunction, which was decreed on merits on 07.01.2006 and the decree attained finality. During pendency of the said suit, the respondent/tenant was directed to pay rent to Kalla Srinivasarao, S/o Venkatarao, who was receiving rent till the disposal of the suit, without any demur and, accordingly, said Kalla Srinivasarao received rent till the end of August, 2006. Suddenly, Chelluri Chittabbayi, husband of Chelluri Kalavathi, issued a notice, dated 16.09.2006, to the respondent/tenant through his counsel MVJ Ramagopal, informing that under the alleged compromise in PLC No.45 of 2002, the schedule premises was allotted to the share of his wife-Kalavathi and on her death, the same devolved upon him. Even before issuance of reply to the notice sent by Chelluri Chittabbayi, Petitioner No.1 approached the respondent/tenant and demanded orally to pay monthly rent to him. Since, the respondent/tenant was paying rent to K. Srinivasarao, a genuine doubt arose to him as to whom the rent is to be paid from September, 2006 onwards. Thereafter, he got issued reply notice, dated 25.09.2006, calling upon the said Kalla Srinivasarao and the petitioners to furnish their bank account for depositing the rent, in view of genuine doubt as to whom he shall pay the rent for the schedule premises. Since, the petitioners did not furnish any information as called upon, he filed R.C.C.No.19 of 2006 under Section 9 of Rent Control Act and it is pending. His further contention is that after filing of RCC No.39 of 2006, the respondent paid rent to the counsel for the petitioners herein in RCC No.39 of 2006 regularly without any default and the same was being received without any prejudice. The respondent/tenant denied the alleged *bona fide* requirement of the petitioner No.1 for occupation of schedule premises to carry on fruits and vegetable business and it is an invention by the petitioners.

The respondent/tenant also filed additional Counter raising specific contention that the petitioners filed RCC No.37 of 2006 for eviction of Kondru Chitemma, who was in occupation of adjacent shop situated to the south of shop of G. Syamala and obtained an eviction order on the same ground of *bona fide* requirement. The appeal preferred by Kondru Chitemma in R.C.A.No.1 of 2010 on the file of lower appellate Court was pending. While the matter stood thus, during December, 2010, there was a compromise between the petitioners and the said Kondru Chitemma and as per the compromise, she vacated the premises and, accordingly, R.C.A.No.1 of 2010 was dismissed. Thus, the petitioners obtained another premises during pendency of the eviction petition filed against him and thereby, the petitioners are not entitled to evict the respondent on the ground of *bona fide* requirement and prayed for dismissal of the petition.

Thus, the respondent/tenant filed R.C.C.No.39 of 2006 under Section 9 of Rent Control Act, seeking permission to deposit the rent, as there is a genuine doubt as to who is entitled to receive the rent from him for the schedule premises, raising the same contentions which he raised in R.C.C.No.43 of 2007 referred above. Whereas, the petitioners/landlords filed Counter reiterating the contentions regarding allotment of the property to the share of petitioners as per the Award in PLC No.45 of 2002 and claimed rent payable by the respondent/tenant for the schedule premises.

During enquiry, both the Rent Control Cases were clubbed and common evidence was recorded in RCC No.43 of 2007.

During enquiry, on behalf of petitioners/landlords, Kalla Ramarao was examined as PW.1 and Ex. A.1 was marked. On behalf of respondent/tenant, Ramayanam Sai Prasadarao, was examined as RW.1 and Exs.B.1 to B.5 were marked.

Upon hearing both the counsel, the Rent Controller – cum – Principal Junior Civil Judge, Kakinada, passed Common Order, dated 11.07.2011, ordering eviction of the respondent/tenant from the schedule premises in R.C.C.No.43 of 2007, while dismissing R.C.C.No.39 of 2006 filed by respondent/tenant.

The Rent Controller framed only two points and held both the points in favour of the petitioners/landlords.

Aggrieved by the Common Order, dated 11.07.2011, passed in R.C.C.No.39 of 2006 and R.C.C.No.43 of 2007 by the Rent Controllcer – cum – Principal Junior Civil Judge, Kakinada, the respondent/tenant preferred two appeals before the lower appellate Court, i.e., Principal Senior Civil Judge, Kakinada, and the lower appellate Court, upon re-appreciation of evidence available on record, allowed both the appeals and granted permission to the respondent/tenant to deposit rent in R.C.C.No.39 of 2006 by setting aside the dismissal Order passed by the Rent Controller, and dismissed the eviction petition filed by the petitioners in R.C.C.No.43 of 2007 by setting aside the eviction order, dated 11.07.2011, passed by the Rent Controller.

Aggrieved by the Common Order, dated 28.08.2012, passed in R.C.A.Nos.5 and 6 of 2011 passed by the lower appellate Court, i.e., Principal Senior Civil Judge, Kakinada, the present revisions are filed under Section 22 of Rent Control Act by the petitioners/landlords on various grounds.

The contention of the learned counsel for the petitioners/landlords is that the lower appellate Court, without considering the oral and documentary evidence, more particularly Ex.A.1 - Certified Copy of the Order in PLC No.45 of 2002, disbelieved the case of the petitioners/landlords that any of the co-owner is entitled to file an eviction petition, but the lower appellate Court did not understand the law declared by the Courts in proper perspective. He further contended that the petitioners/landlords came into possession of the neighbouring shop for their *bona fide* occupation and thereby, the question as to 'whether the *bona fide* requirement ceased to exist' is erroneous since the petitioners filed all these petitions including R.C.C.No.43 of 2007 and 37 of 2006 at the same time and the *bona fide* requirement is still subsisting as on the date of passing the order and, therefore, the contention that the requirement of schedule premises by the petitioner No.1 for his own occupation to carry on business is a *bona fide* requirement, but the Appellate Court, on erroneous appreciation of evidence, recorded such a finding without any basis and requested this Court to set aside the Common Order, dated 28.08.2012, passed in R.C.A.Nos.5 and 6 of 2011, by exercising power under Section 22 of the Rent Control Act.

He further contended that granting permission to the respondent/tenant to deposit rent to the credit of R.C.C.No.39 of 2006 by the lower appellate Court is erroneous, for the reason that the petitioners/landlords became the owners of the property in view of the allotment of the property to the share of petitioners, as per Award in PLC No.45 of 2002 passed by the Legal Services Authority, Kakinada, and that the lower appellate Court did not appreciate the evidence in proper perspective and granted permission to the respondent/tenant to deposit rent to the credit of RCC No.39 of 2006 filed by the respondent/tenant under Section 9 of the Rent Control Act and the question of depositing the rent to the credit of R.C.C.No.39 of 2006 does not arise when the petitioners/landlords admitted that they became the owners of the property by virtue of the Award referred supra. In such case, when the petitioners/landlords are ready and willing to receive the rent payable for the premises, granting permission to deposit rent to the credit of R.C.C.No.39 of 2006 is illegal and prayed to set aside the Common Order passed by the Appellate Court, restoring the common Order, dated 11.07.2011, passed by the Rent Controller.

Sri E.V.V.S Ravi Kumar, learned counsel for the petitioners/landlords contended that the petitioners/landlords are entitled to file any number of applications for eviction of various tenants in occupation of the building on the ground of *bona fide* requirement and that non-compliance of proviso to Section 10 (3) a (iii) (a) & (b) of the Rent Control Act does not arise in this case since R.C.C.No.37 of 2006 was pending by the date of filing the eviction petition against the respondent/tenant. Therefore, the petition for eviction cannot be dismissed by the lower appellate Court, but the Appellate Court erroneously dismissed the petition. He further contended that the requirement of petitioner No.1 to carry on the business in schedule premises is genuine and not mere a wish and that the lower appellate Court ought to have ordered eviction, but the lower appellate Court, without assigning any justifiable reasons, set aside the order passed by the Rent Controller. He further contended that the petitioners/landlords claimed eviction of the respondent/tenant on the ground of willful default, but the lower appellate Court did not record any specific finding as to the commission of willful default in payment of the rent by the respondent/tenant. He further contended that granting permission to deposit the rent to the credit of R.C.C.No.39 of 2006 is illegal, since the petitioners/landlords became owners of the schedule premises by virtue of the Award and they are ready and willing to receive the rent payable for the schedule premises. Therefore, the common orders passed by the lower appellate Court is liable to be set aside restoring the common order passed by the Rent Controller.

In reply, learned counsel for the respondent/tenant argued in support of the Common Order passed by the lower appellate Court and requested this Court to affirm the Order passed by the lower appellate Court.

Both these Civil Revision Petitions are filed under Section 22 of the Rent Control Act. The scope of jurisdiction under Section 22 of the Rent Control Act is limited and this Court normally would not disturb the concurrent fact findings, except when this Court finds that the findings recorded by the Court below are manifestly perverse or apparently erroneous or without any evidence. The scope of power of Revision under Rent Control Law came up for consideration before the Apex Court in *Hindustan Petroleum Corporation Limited v. Dilbahar Singh*[1], wherein, the Apex Court, after considering the Rent law of Kerala and Tamil Nadu which in *pari materia* with A.P. Rent Control Act, held that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by

[1] (2014) 9 SCC 78

the first appellate court/first appellate authority because on re-appreciation of the evidence, its view is different from the Court/authority below. The consideration or examination of the evidence by the High Court in Revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court, in exercise of its Revisional jurisdiction under the above Rent Control Acts, shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it, as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.

This legal preposition is reiterated in the later judgment of the Apex Court in *M/s. Boorugu Mahadev and Sons v. Sirigiri Narasing Rao*[2].

Keeping in view, the limited power of this Court under Section 22 of the Act, I would like to decide the correctness of the Common Order passed by the appellate Court based on the material available on record.

Considering the rival contentions and perusing the material available on record, the points that arise for consideration in both these revisions are:

1) *Whether the requirement of schedule premises for occupation of petitioner No.1 is genuine and bona fide, if so, whether the respondent/tenant is liable to be evicted from the schedule premises?*

2) *Whether there is any genuine or bona fide dispute as to who is entitled to collect or receive rent from the respondent/tenant; if so, whether permission be accorded under Section 9 of the Act to deposit rent to the credit of RCC No.39 of 2006*?

<u>POINT No:1:</u> The petitioners/landlords filed RCC No.43 of 2007 before the Principal Junior Civil Judge, Kakinada, for eviction of the respondent/tenant from the schedule premises on the ground of non-residential premises for *bona fide* occupation of petitioner No.1 to carry on fruits and vegetable business, as he is experienced in that particular business. Since the title of the petitioners is disputed by the respondent/tenant, the

[2] AIR 2016 SC 433

petitioners/landlords produced Ex.A.1-copy of the Award in PLC No.45 of 2002 to prove that the schedule premises fell to the share of the petitioners/landlords and, thereby, the petitioners have become the landlords of the schedule premises.

The main grievance of the respondent/tenant is that the building, in which the schedule premises is a part consists of seven shops. Against one K. Chittamma, who was the occupier of adjacent shop of the respondent/tenant, the petitioners/landlords filed eviction petition on the ground of *bona fide requirement* for occupation of schedule premises to carry on business. The petitioners, though owners of various shops, viz., 7 shops in the complex facing towards road, did not disclose the shops owned and possessed by them, but conveniently made a specific allegation in para No.VI in R.C.C.No.43 of 2007, which reads as follows:

> *"The petitioners submit that the petition schedule property is required for the personal occupation of the petitioner No.1. Petitioner No.1 is not in occupation of any non residential premises in Kakinada and petitioner No.1 is not in occupation of any non residential premises at Kakinada."*

Learned counsel for petitioners submits that the petition schedule property is required for personal occupation of petitioner No.1, as he is not in occupation of any non residential premises in Kakinada. Thus, petitioner No.1 requires the petition schedule premises for his personal occupation for carrying on fruit and vegetable business, as such, the petitioners require the petition schedule property for their personal occupation *bona fidely.*

Petitioner No.1 is the son of Kalla Purushotama Rao and petitioner No.2 was the wife of Kalla Purushothama Rao. Thus, the petitioners are son and mother. The Award passed in PLC No.45 of 2002 is placed on record, which is marked as Ex.A.1. The Certified copy of the Award shows that the schedule shop was allotted to the petitioners jointly i.e., Kalla Ramarao and Kalla Jayalakshmi. In the evidence of PW.1, he admitted that he filed R.C.C.No.37 of 2006 against K. Chittamma and he was examined as a witness in R.C.C.No.37 of 2006. In his evidence, he asserted that the shop, which is subject matter in R.C.C.37 of 2006, was allotted to the share of petitioners. He also admitted that G. Syamala is in possession of shop situated on the southern side of the petition schedule premises, which was allotted to and leased out to the said G.Syamala in the year 2005 and she has been paying rent of Rs.70/- per day; that he filed eviction petition against G.Syamala for eviction, but the said case was not numbered. Therefore, the undisputed facts are that the petitioners/landlords claimed eviction of three tenants i.e., Chittamma, Syamala and the respondent herein, as these three shops were allotted to the share of petitioners, vide PLC No.45 of 2002. At the end of cross examination, Pw.1 admitted that he along with petitioners filed R.C.C.37 of 2006 against Kondru Chittemma, for eviction of the adjacent shop and obtained eviction order. Thereafter, Chittemma filed appeal in R.C.A.No.1 of 2010 on the file of Priicipal Senior Civil Judge’s Court, Kakinada and during pendency of the appeal, Pw.1 and his tenant—K. Chitemma compromised the matter and, accordingly, Chitemma vacated and handed over vacant position, recently. Thus, the clear and categorical admissions of Pw.1 would show that the tenant—Chittamma, who is in possession of adjacent premises, already vacated and delivered vacant possession of the shop adjacent to the schedule premises to the petitioners.

Therefore, based on such admission, it was contended before the lower Appellate Court by the respondent/tenant that *bona fide* requirement of the petitioner ceased to subsist as on the date of passing the Order and, thereby, they are not entitled to claim eviction and this contention was accepted by the lower appellate Court and dismissed the eviction petition filed by the petitioners herein.

Before this Court, learned counsel for the petitioners contended that when the petitioners filed more than one eviction petition on the ground of *bona fide requirement*, they are entitled to prosecute the proceeding against all the tenants in occupation and if, the requirement is *bona fide*, the Court can pass appropriate order in favour of petitioners/landlords. Merely because when the landlords occupied other premises during pendency of the appeal, it would not take away the valuable right that accrued to the petitioners i.e., right to claim eviction on the ground of *bona fide* requirement, and still it subsists. He placed reliance on a judgment of this Court in *Laxmi Bai and others v. Yashoda Bai and others*[3], wherein, this Court, while deciding an identical question for eviction of the tenant in occupation of non residential premises, opined that when a building consists of eight portions out of 14 now converted into non residential premises, having fallen vacant during the pendency of these proceedings

[3] 1997 (3) ALD 306

and being available to the petitioners to occupy, the petitioners are entitled to claim eviction. The authorities under the Rent Control Act has to consider the meaning of building under Section 2(iii) of the Act, which defined the building as any house, or part of house let or to be let separately for residential or non residential purposes. Though as per Section 2 (iii) of the Act, every portion is to be treated as separate building, if the context otherwise requires, all portions put together can be treated as one single building. Thus, the portions occupied by 14 tenants constitute one structure and though 8 portions have fallen vacant, it cannot be said that the landlords have no residential premises available for own occupation to disentitle to claim eviction.

If this principle is accepted and applied to the present facts of the case, obtaining eviction order against K. Chitemma by filing R.C.C.37 of 2006 on the ground of *bona fide* requirement and delivery of possession by her would not disentitle the petitioners/landlords to claim eviction of the respondent herein/tenant in occupation of the adjacent premises.

The learned counsel for the petitioners further drawn the attention of this Court to the judgment reported in *Danduboina Madhav Rao v. Kandi Atchiraju(died) and another*[4], wherein, this Court while deciding the petition under Section 10(3) (c) and the proviso thereto, held that burden is on the landlord to prove *bona fide* additional requirement and the tenant cannot dictate the terms to the landlord to occupy any particular premises. But, the principle laid down in the above judgment has no application

[4] 2013 (3) ALD 23

to the present facts of the case since the application was filed under Section 10(3)(c) of the Rent Control Act, i.e., for additional accommodation *bona fidely* by the landlord.

Learned counsel for the petitioners further contended that the subsequent events cannot be taken into consideration to order eviction when the petition was filed on the ground of *bona fide* requirement. In support of this contention, he placed reliance on the judgment reported in *Akkanissery Govindan Nambiar v. Kariyath Raghavan*[5], wherein, the Apex Court, while deciding an application for eviction of the tenant on the ground of *bona fide* requirement under Kerala Rent Control Act, considered the subsequent event of getting another premises in the said city for occupation of the tenant and finally contended that the requirement of law is that the building which has been vacated should be of such a character which would meet the requirements of the landlord and not that the building which fell vacant could meet his requirements after reconstruction/ renovation etc., and thereby set aside dismissal order passed by the Court below.

In *Boorgu Jagadeshwaraiah and Sons v. Pushpa Trading Company*[6], the Apex Court held that aspects of quality, size and suitability of the building for the business are relevant factors and non-consideration of it would frustrate the purpose of the Act. Mere occupation of another building is not enough. Landlord's contention that the non residential premises he owned did not serve the purpose of his need of setting up a textile and

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[5] (1998) 6 SCC 491
[6] (1998) 5 SCC 572

cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought and dismissal of the application without considering those aspects would vitiate the order of dismissal.

No doubt, subsequent obtaining of vacant possession of the premises adjacent to the schedule premises is one of the facts to be taken into consideration while deciding subsistence of genuine or *bona fide* requirement to occupy the premises by the petitioner No.1. If the requirement is genuine and the Court believes that the requirement of the petitioner is *bona fide* and not a mere wish or fanciful, the Rent Controller may order eviction of a tenant in occupation of non residential premises. Non consideration of quality, size and suitability of the building would frustrate the purpose of the Act. Here, in this case, though Pw.1 admitted that he obtained vacant possession of another shop, which is adjacent to the schedule premises, evicting K. Chittemma by filing R.C.C.37 of 2006, much prior to filing of the present revision petitions, it was not the case of the petitioners that the adjacent premises, which was subject matter of R.C.C.No.37 of 2006, is not suitable for his occupation to carry on the proposed business and he did not state anything about the quality, size etc., to contend that it is not suitable for his proposed business. The Appellate Court took into consideration the quality, size and suitability of the premises which was in occupation of Chittamma and obtaining its possession.

In para No.39 of the common judgment, the lower Appellate Court observed that if a landlord is in possession of other non residential premises or if he comes into possession of other non residential premises, he must prove that the other premises is not sufficient considering the aspects of quality, size and suitability of the building and if the landlord failed to plead and prove that the other premises are not suitable for his business, his claim cannot be accepted and his requirement cannot be treated as *bona fide* requirement.

In the present petition, the petitioners did not plead and prove that the other premises, which fell vacant after evicting Chittamma, is not suitable based on its quality and size etc., for occupation of the proposed premises by petitioner No.1 to carry on business. When the petitioner did not raise any specific contention with regard to the premises, which was in occupation of Chittamma, is not suitable based on quality and size etc., non consideration of the same is not at all a ground to believe *bona fide* requirement. Though they are relevant for consideration, non-consideration of those aspects would arise only when the petitioners/landlords raised a contention that the premises is not suitable based on quality and size etc., Otherwise, non-consideration of the said contention would not frustrate the purpose of the Act to evict the respondent/tenant from the schedule premises on the ground of *bona fide* requirement.

According to Section 10 (3) a (iii) of the Act, to pass an order directing the tenant to put the landlord in possession of the building, the landlord has to plead and prove the requirements laid down in Sub Section a (iii) of Section 3 (b) of Section 10 of the Act. The second proviso to sub Section 3 (a) (iii) of Section10 of the Act makes it clear that in case, the landlord has obtained possession of non residential premises, he is not entitled to apply again, under the same clause for eviction for possession of another non residential premises of his own. On the other hand, Section 10(3) (i) (iii) of the Act specifically enables the Court to order eviction of the tenant subject to proof of *bona fides in* the requirement, on the application filed by the landlord to evict the tenant in occupation of non residential building, if he is not in possession of non residential building of his own in the city, town or village and he requires for his own occupation. Acquisition of non residential premises in the same city or village is a material fact.

In *Ali Bin Mohammed v. Khaja Moinuddin*[7], a single Judge of this Court, while dealing with a Revision filed against an order passed by the appellate Court under Section 10 (3) (a) (iii) of the Act, held that the condition prerequisite entitling the landlord to seek eviction of the tenant is that the landlord shall not be in occupation of a non-residential building in the city, town or village concerned, which is his own or to the possession of which he is entitled under the Act. Admittedly, in the facts of the above judgment, the landlord is the owner of the petition schedule mulgi, the adjacent mulgi and two other mulgies bearing Nos.23-3-467 and 468 situated at Sultan Shahi, Hyderabad, wherein the tenants have been evicted. The suppression of those facts in the eviction petition is material, as it cannot be said that the landlord is not having any other non-residential building in the

[7] 2007 (1) ALD 438

city. The lapses on the part of the landlord have been tried to be explained in an oral deposition but the fact remains that the landlord is the owner of the adjacent mulgi and two other mulgies, wherein, the tenants have been evicted. Accordingly, the eviction petition was dismissed by the revisional Court.

The same principle was reiterated in a later judgment reported in *Kunj Bai G. Chugani v. Fashions, Secunderabad*[8].

In the instant case, petitioner No.1 is not in possession of any other non residential premises to carry on business. But eviction petition was filed by two petitioners and the petitioner No.2 did not disclose whether she is in occupation of any non residential premises of her own or which she is entitled to occupy by the same, which is a pre condition to order eviction on the ground of *bona fide* requirement of non residential premises evicting the tenant in occupation therein. Therefore, non compliance of sub Section 10(3) (a) (iii) of the Act is fatal to the petitioner's case when petitioners evicted one Chittamma from the adjacent premises of the subject property during pendency of the present petition, undisputedly. Therefore, the petitioners must prove that adjacent premises, which was occupied by Chittamma and evicted during pendency of the proceedings, is not sufficient considering the aspects of quality, size and suitability of the building suitably amending the petition by brining subsequent events. Unless such aspects are pleaded and proved, the *bona fide* requirement of the petitioners cannot be held to be *bona fide* and their claim for eviction cannot be accepted. Thus, in

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[8] 2012(3) ALT 433

view of the law declared by the single judge of this Court, the basic requirement to claim eviction of the tenant from non residential premises, the petitioners have to disclose material fact that they are not in occupation of any other premises or entitled to occupy any non residential premises in the city or town to claim eviction.

In *Palichetty Latchanna v. Giduthuri Appa Rao*[9], a learned Single Judge of this Court had an occasion to decide an identical issue and held that in the absence of disclosure of occupying any other business premises, the landlord is not entitled to claim eviction of the tenant.

Therefore, in view of the consistent views of the Apex Court and this Court in various judgments referred to supra, it is the obligation of the petitioners to disclose that they are not in occupation of other non residential premises or entitle to occupy any non residential premises in the city or town to evict the present respondent under Section 10 (3) (a) (iii) of the Act.

In para No.VI in R.C.C.No.43 of 2007, which is extracted above, petitioner No.1 disclosed that he is not in occupation of any non residential premises, but petitioner No.2 did not comply the requirement as stated above. On this ground alone, the petitioners are disentitled to claim eviction of respondent/tenant on the ground of *bona fide* requirement for occupation of the schedule premises. While deciding the petition under Section 10

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[9] Air 1983 AP 244

(3) (a) (iii) of the Act i.e., for *bona fide* requirement, the Court has to consider various aspects.

The word *bona fide* is not defined under the Act. The Apex Court and the High Courts held that a genuine requirement of the premises by the land lord can be said to be a *bona fide.*

In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*[10] , the Apex Court, in paras 11 to 13, discussed as to what amounts to *bona fide* requirement and held that Chambers 20th Century Dictionary defines *bona fide* to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define *bona fide* to mean 'good faith, without fraud or deceit'. Thus the term *bona fide* or genuine refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required *bona fide* ' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. The Apex Court further held that the *bona fide* requirement must be an outcome of a sincere, honest desire, in contra-distinction with a mere pretence or pretext to evict a tenant, on the part of the landlady claiming to occupy the premises for herself or for any member of the family would entitle her to seek ejectment of the tenant. The question to be asked by a Judge of facts, by placing himself in the place of the landlord, is, whether in the given facts proved by material on record, the need to occupy the premises can be said to be natural, real, sincere,

[10] 1999(3) SCR 1260

honest? If the answer be in the positive, the need is *bona fide.* The concept of *bona fide* need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell into lesser premises so as to protect the tenant's continued occupation in tenancy premises.

In *Deena Nath v. Pooran Lal*[11], the Apex Court held that *bona fide* requirement has to be distinguished from a mere whim or fanciful desire. The bona fide requirement is in praesenti and must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire.

Similarly, in *Ram Dass v. Ishwar Chander*[12], the Apex Court held as under that 'it is, no doubt, true that the question whether the requirement of the landlords is bonafide or not is essentially one of fact, notwithstanding the circumstance that a finding of fact is a secondary and inferential fact drawn from other primary or perceptive ones. All conclusions drawn from primary-facts are not necessarily, questions of law. They can be, and quite often are, pure questions of fact. The question as to *bona fide* requirement is one such. Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the land-lord subject to the satisfaction of certain statutory conditions. One of

[11] (2001)5 SCC 705
[12] 1988 (supl) SCR 239

them is the *bona fide* requirement of the land-lord, variously described in the statutes as "*bona-fide* requirement", "reasonable requirement", "*bona-fide* and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, that court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down. But here, Section 15(5) of the Act enables the High Court to satisfy itself as to the "legality and propriety" of the order under revision, which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not "a second court of first appeal" (See Dattonpant Gopalvarao Devakate v. Vithalrao Marutirao). In view of the above legal position, to order eviction of the tenant, the requirement must be genuine and honest and not fanciful or whimsical.

If the said principles are applied to the present facts of the case, the hardship being caused to both landlords and tenant is to be weighed. Hardship is relevant only when the landlords claim eviction of a tenant on the ground of *bona fide* requirement of premises as additional accommodation but not for *bona fide* requirement, separately.

If the principles laid down in the above judgments are applied to the present facts of the case, eviction of other tenant i.e., Chitimma on the ground of *bona fide* requirement to carry on business by petitioner No.1 is sufficient to disentitle the petitioners to claim eviction of the respondent/tenant in the absence of any material on record to prove that the said premises is not suitable for occupation to carry on the proposed business.

The second proviso to Section 10 (3) (b) of the Act created a direct interdict in obtaining possession of the building and according to this Clause where the landlord has obtained possession of the another building after evicting the tenant under Section 10 (3) (a) (iii), such landlord is not entitled to apply again under this clause in case he obtained possession of non residential building for possession of another non residential building of his own. Here, the petitioners already obtained possession of another adjacent mulgi after evicting Chittemma and, therefore, in view of the bar under second proviso to Section 10 (3) (a) (iii) Act and on this ground also, the petitioners/landlords are not entitled to claim eviction of the tenant. If petitioner No.1 is really intended to carry on business, nothing prevented him to carry on business in the premises which the petitioners occupied after evicting Chittamma, in the absence of any contention that the said premises is not suitable for their business. Therefore, insisting the tenant to vacate the premises on the ground of *bona fide* requirement to carry on business is not genuine cause on the face of it and the present petition is filed with a *mala fide* intention to vacate the respondent/tenant herein.

One of the major contentions of the learned counsel for the petitioners/landlords is that when building consists of several shops and the landlord required all the shops for occupation, the tenant is liable to be evicted. It is not the case of the petitioners that they require the entire building consisting of various mulgies or shops for their *bona fide* occupation after renovation etc. As per section 2 (iii) of the Act, each malgi is a building, which was let out by the landlord to the tenant. It is not the case of the petitioners/landlords that they intended to demolish or renovate the entire building to occupy the same for their business, but claimed that the schedule premises is required for personal occupation by petitioner No.1 to carry on fruit and vegetable business. The same was the contention in other R.C.C.No.37 of 2006. In such a case, the principle laid down in *Laxmi Bai's* case referred supra has no application. Therefore, the lower Appellate Court did commit no error in dismissing R.C.C.No.43 of 2007 filed for eviction of the tenant, disbelieving the *bona fide* requirement and the same is in accordance with law and such a finding cannot be disturbed while exercising power under Section 22 of the Rent Control Act. This point is accordingly answered in favour of the respondent/tenant and against the petitioners/landlords.

<u>POINT No.2</u>: As seen from the material on record, there was litigation between members of the family of the petitioners/landlords and suits were filed against six tenants in occupation of the shops in same building restraining the tenants from interfering with their possession and enjoyment and also filing of R.C.C.No.39 of 2006 by the respondent/tenant seeking permission to deposit rent, as there was *bona fide* dispute as to who is entitled to claim or receive the rent and the respondent/tenant admittedly paying rent to the counsel on record for the petitioners/landlords in RCC No. 39 of 2006 and the said counsel on record received rent without prejudice to the rights of the parties in the main petition. However, the Rent Controller dismissed the petition on the ground that there is no genuine dispute as to who is entitled to collect rent. In any view of the matter, it is clear from the voluminous evidence available on record that there is a *bona fide* and genuine dispute as to who is entitled to receive the rent. The Appellate Court, after re-appraisal of the entire evidence, rightly granted permission to protect the interest of both the parties i.e., landlord and tenant. Therefore, the findings recorded by the lower appellate Court needs no interference by this Court.

Since the jurisdiction of this Court is limited, this Court need not re-appreciate the entire material to come to an independent conclusion, as the Revisions are mostly confined to question of law. Further, when this Court is agreeing with the views expressed by the lower appellate Court, while deciding a Revision under Section 22 of the Act, this Court need not re-appreciate the entire evidence, but findings recorded by the Court is sufficient compliance of requirement under Section 22 of the Act, in view of the law declared in *Nopany Investments (P)Ltd. Vs.Santokh Singh*[13], wherein the Apex Court stated about the necessity of recording reasons in the first appeal and held that in case of reversal of first appeal, the Court ought to give some reasons for reversal of the findings, whereas, for the confirmation, the appellate Court need not record reasons. Thus, it clear from the judgment of Apex Court that this Court need not record any reason to concur with the findings recorded by the Courts below when this Court is accepting the findings. That too, the scope of revision under Section 22 of the Act is limited. In such case, this Court need not record any reason while expressing concurrence with the findings recorded by the courts below. Therefore, I find no ground to reverse the findings recorded by the lower appellate Court in R.C.A.Nos.5 and 6 of 2011. Hence, the respondent is entitled to deposit rent to the credit of RC No.39 of 2006 till all the legal heirs of Kalla Purushortham, the original landlord, settles their disputes. If the legal heirs of Kalla Purushotham files an affidavit before the trial Court, i.e., Rent Controller–cum–Principal Junior Civil Judge, Kakinada, in R.C.C.No.39 of 2006 that all the legal heirs have no objection if the petitioners herein collects/receives rent payable for the schedule premises by the respondent/tenant, the Rent Controller may permit the respondent herein/tenant to pay rent as agreed by the parties. Till filing of such an affidavit with regard to the collection of rents for the schedule premises, the respondent/tenant is directed to

[13] 2008(2) SCC page 728

deposit rent to the credit of R.C.C.No.39 of 2006. This point is answered accordingly.

In view of my findings on Point Nos.1 and 2, both these Civil Revision Petitions are *de void* of merits and are liable to be dismissed.

In the result, these two Civil Revision Petitions are dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in both these Civil Revision petitions, shall stand dismissed.

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M.Satyanarayana Murthy, J

Date: _____ October, 2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.2411 & 2668 of 2013

Dt. /10/2017

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