

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 1133 of 2017

ORDER:

The Civil Revision Petition under Section 22 of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 (for short 'the Act'), is filed challenging the order dated 05.08.2016 passed by the Chief Judge, City Small Causes Court, Hyderabad, in R.A.No.102 of 2013 and Cross Objections (SR) No.3756 of 2013.

The first petitioner herein was the original tenant and he died during the pendency of R.C.No.349 of 2007. Thereby, his legal heirs were impleaded as respondents 2 to 9 in the said R.C. The first respondent herein was the landlady and she died during the pendency of this revision, her legal representatives were brought on record as respondents 2 to 4 as per the order dated 22.02.2017 passed by this Court in C.R.P.M.P.No.958 of 2017.

For the sake of convenience, the parties will hereinafter be referred to as the tenant and the landlady.

The facts, in brief, are that Kesar Bai Gilda, the landlady, claiming to be a senior citizen, filed R.C.No.349 of 2007 before the II Additional Rent Controller, City Small Causes Court, Hyderabad, under Section 10-C of the Act, for eviction of the tenant on the ground that she required immediate possession of the schedule premises. The other grounds raised for eviction of the tenant were that acts of

waste, which impaired or diminished the value and utility of the schedule premises, sub-letting a part of the schedule premises, willful default in payment of rent and *bona fide* requirement of premises for occupation of her son's wife .

The tenant filed counter denying the material allegations, *inter alia* contending that the requirement of the premises is not *bona fide*, it was stated that the landlady filed several Rent Control Cases and obtained possession of the property for her occupation. The landlady filed R.C.No.326 of 1985 for eviction of the tenant who was in occupation of the mulgi, which is adjacent to the schedule premises, on the ground that the said premises was required for her personal occupation and obtained possession of the same. The said shop is under use and occupation of her grandson, by name, Pradeep Kumar, S/o. late Ashok Kumar. The landlady's another grandson, by name, Prashanth Kumar is working in Karvy Consultancy and drawing a salary of Rs.3,50,000/- per annum. Originally, she sought eviction of the tenant in R.C.No.326 of 1985 pleading the requirement of the premises for her son - Ashok Kumar. However, the said Ashok Kumar died during the pendency of the eviction proceedings, and therefore, the petition was amended. In the present eviction petition, the landlady pleaded requirement of the premises for occupation of her daughter-in-law, who is the wife of late Ashok Kumar. The landlady filed another eviction petition in R.C.No.350 of 2017 under Section 10-C of the Act against one

Smt. Ramulamma, the tenant in occupation of shop bearing No.4-2-302 i.e., the shop adjacent to the petition schedule property and the said R.C. was allowed. Pursuant to the order passed in the said R.C., the tenant of Mulgi No.4-2-302 vacated and handed over the vacant possession of the said mulgi to the landlady in the month of November, 2008, and it is lying vacant as on the date of filing of the present petition. Therefore, the requirement of the premises is not *bona fide*.

While admitting the jural relationship of 'tenant' and 'landlady' between him and the landlady, the tenant stated that initial rent for the schedule premises was Rs.275/- per month and it was enhanced from time to time and that at the time of commencement of tenancy, he paid a sum of Rs.25,000/- towards security deposit, which is returnable at the time of vacating the premises. The tenant denied the other allegations of committing acts of waste, willful default etc., and prayed for dismissal of the petition.

During the pendency of the present R.C., the tenant died and his wife and children were brought on record as his legal heirs. They filed a counter raising several other contentions. While denying the *bona fide* requirement of the landlady, they contended that the statement of R.W.1 in R.C.No.449 of 2008 was misinterpreted so as to create a ground and the landlady is not entitled to seek eviction of the tenant from the schedule premises even on the ground of sub-letting and prayed for dismissal of the petition.

During the enquiry, on behalf of the landlady, P.Ws.1 to 3 were examined and Exs.P.1 to P.5 were marked. On behalf of the tenant, R.W.1 was examined and Exs.R.1 to R.20 were marked.

Upon hearing argument of both the counsel, the Rent Controller disbelieved the grounds of *bona fide* requirement and willful default, and ordered eviction of the tenant on the grounds of acts of waste and sub-letting.

Challenging the order of eviction on the two grounds referred to supra, the tenant filed an appeal in R.A.No.102 of 2013, whereas the landlady filed Cross Objections in S.R.No.3756 of 2013 questioning the adverse findings recorded against her on *bona fide* requirement and willful default and raising various other grounds.

The appellate Court, upon hearing argument of both the learned counsel for the tenant and the landlady, while ordering eviction of the tenant only on the ground of *bona fide* requirement under Section 10(3)(a)(iii) of the Act, confirmed the finding recorded by the Rent Controller on the ground of willful default and reversed the findings on the grounds of acts of waste and sub-letting, allowed Cross Objections in part. Appeal was allowed totally.

Aggrieved by the order passed in the appeal and cross objections ordering eviction of the tenant from the schedule premises on the ground of *bona fide* requirement under Section 10(3)(a)(iii) of the Act, the tenant preferred the Civil

Revision Petition under Section 22 of the Act. But, the landlady did not file any independent revision aggrieved by the adverse findings recorded by the appellate Court negating eviction of the tenant on the grounds of *bona fide* requirement under Section 10-C(1)(c) of the Act, sub-letting, acts of waste and willful default. Thus, the findings recorded by both the Rent Controller and the appellate authority on the grounds of *bona fide* requirement under Section 10-C(1)(c) of the Act and willful default are concurrent findings, whereas the findings on sub-letting and acts of waste were reversed by the appellate Court in the appeal and attained finality.

During the hearing, Sri Bankatlal Mandhani, learned counsel for the landlady, made an endorsement on C.R.P.M.P.No.4746 of 2017 filed under Section 151 C.P.C that he is not pressing his claim under Section 10-C of the Act. Therefore, this Court need not decide the claim of the landlady under Section 10-C(1)(c) of the Act so also other grounds like sub-letting, willful default and acts of waste which attained finality, as no separate revision is filed.

The schedule premises is non-residential and the requirement pleaded by the landlady is to carry on business in the said premises by her daughter-in-law. The major contention raised by the landlady before this Court with regard to *bona fide* requirement of schedule premises is that her daughter-in-law was hawking house hold items moving from house to house and she intends to establish a shop in

the premises after evicting the tenant in occupation and the requirement of the premises is *bona fide*. The tenant denied the *bona fide* requirement of premises for occupation of daughter-in-law of the landlady to carry on business muchless sale of house hold items. The tenant's counter is candid on the aspects of filing petitions earlier under Sections 10(3)(a)(iii) and 10-C(1)(c) of the Act and obtaining possession of the vacant premises after evicting the tenants, who were in occupation of different adjacent mulgies. The Rent Controller disbelieved the ground of *bona fide* requirement under Section 10(3)(a)(iii) of the Act, but the appellate Court reversed the said finding while deciding point No.4, in its judgment from paras 30 to 34. The reason assigned by the appellate Court is that initially the landlady sought eviction of the tenant from the schedule premises for occupation of her son, by name, Ashok Kumar Gilda, who died during the pendency of the eviction petition. Later, she amended the petition suitably by changing the requirement of premises for occupation of her daughter-in-law, wife of Ashok Kumar Gilda.

The scope of the revision under Section 22 of the Act is limited and this Court normally would not disturb the concurrent findings of fact, except when the findings recorded by the Courts below are apparently erroneous or without any evidence.

Scope of power of revision under rent law came up for consideration before the Apex Court in ***Hindustan Petroleum Corporation Limited v. Dilbahar Singh***¹. The Apex Court after considering rent law of Kerala and Tamil Nadu which in pari materia with A.P Act, held that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal 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.

¹ (2014) 9 Supreme Court Cases 78

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 reappreciate 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 position is reiterated in the later judgment of the Apex Court in ***M/s. Boorugu Mahadev and Sons v. Sirigiri Narasing Rao***².

In view of the limited scope of the power of this Court under Section 22 of the Act, I would like to decide the correctness of the order passed by the appellate Court based on the material available on record.

It is the specific case of the landlady that initially the schedule premises was required for occupation of her son - Ashok Kumar Gilda, who died during the pendency of the present R.C. Later, the landlady changed the requirement of the premises for occupation of her son into her daughter-in-law for selling house hold items by amending the petition suitably. But, the stand of the tenant from the beginning is candid that the landlady filed two other eviction petitions *vide*

² AIR 2016 SUPREME COURT 433

R.C.Nos. 326 of 1985 and 350 of 2007 and obtained possession of mulgies and the same are in occupation of her grandson, Prashanth Kumar. Therefore, the requirement of the schedule premises for occupation of either son or daughter-in-law of the landlady is neither *bona fide* nor genuine and eviction cannot be ordered.

Admittedly, the schedule premises is non-residential and to claim eviction of the tenant in occupation of non-residential premises, the landlady may apply to the Controller under Section 10(3)(a)(iii) of the Act for an order directing the tenant to put her in possession of the building. The said provision reads as under:

“In case it is any other non-residential building, if the landlord is not occupying a non-residential building in the city, town or village concerned which is his own or to the possession of which he is entitled whether under this Act or otherwise -

- (a) for the purpose of a business which he is carrying on, on the date of the application, or
- (b) for the purpose of a business which in the opinion of the Controller, the landlord bona fide proposes to commence.”

The second proviso to sub-section 3(a)(iii) of Section 10 of the Act makes it clear that in case the landlord has obtained possession of the non-residential building, he is not entitled to apply again under the same clause for possession of another non-residential building of his own.

Thus, the prerequisite to claim eviction of the tenant in occupation of non-residential building is that the landlord shall not be in occupation of a non-residential building in the city, town or village which is his own or to the possession of which he is entitled whether under the Act or otherwise. But in the present case, the landlady earlier filed two petitions *vide* R.C.Nos.326 of 1985 and 350 of 2007 on the file of the Rent Controller, Hyderabad, and evicted the tenants pursuant to the orders passed in the said R.Cs. The certified copies of the petitions and orders passed in the said R.Cs. were marked as Exs.R.1 to R.11.

According to the tenant, the landlady filed R.C.No.146 of 1976 on the file of the Additional Rent Controller, Hyderabad, and evicted the tenant – Sri P. Cehnnaiiah from the premises bearing Mulgi No.4-2-302, Sultan Bazar, opposite to Royal Talkies, Hyderabad, through process of Court and the said mulgi was let out to another tenant. She filed R.C.No.326 of 1985 on the file of the I Additional Rent Controller, Hyderabad, for eviction of Sri Gunti Jangaiah, the tenant in Mulgi No.4-2-300 and the same was occupied by her grandson, Pradeep Kumar Gilda. The landlady again filed R.C.No.350 of 2007 on the file of the II Additional Rent Controller, Hyderabad, and the same was pending as on the date of filing of the counter in the present R.C before the Rent Controller. Thus, the landlady having obtained possession of the mulgies on the ground of *bona fide* requirement, cannot

claim eviction of the tenant in occupation of the schedule premises under the same clause.

In the evidence of P.W.1, the landlady specifically admitted about the filing of Rent Control Cases before different Rent Controllers. She made a categorical admission in her cross-examination that she filed R.C.No.350 of 2007 against Smt. Ramulamma. Ex.R.1 is the certified copy of the said eviction petition, Ex.R.2 is the certified copy of the order in the said R.C., Ex.R.3 is the eviction petition in R.C.No.326 of 1985 and Ex.R.4 is the certified copy of the order in R.C.No.326 of 1985. Thus, it is clear that the landlady evicted Ramulamma and Jangaiah who occupied two different mulgies belonging to the landlady. The landlady also made categorical admission that she sought eviction of the said two persons from the mulgies for personal requirement of her son and that she filed the present eviction petition for occupation of the schedule premises for her daughter-in-law. From the evidentiary admission of the landlady coupled with the evidence of P.W.2-Smt. Sundari Bai Gilda, W/o. Ashok Kumar Gilda, it is clear that the landlady filed petitions for possession of two different premises one under Section 10-C(1)(c) of the Act and the other under Section 10 (3)(a)(iii) of the Act for *bona fide* occupation and obtained orders for eviction of the tenants and recovered possession of the same.

When I advert it to the testimony of R.W.1, he reiterated what he pleaded in his counter regarding the *bona fide* requirement of the premises for occupation of daughter-in-law of the landlady. In the cross examination, nothing was elicited to disprove the filing of two Rent Control Cases and obtaining possession of the two mulgies, which were in occupation of the tenants - Ramulamma and Jangaiah. Thus, it is an undisputed fact that the landlady obtained possession of two mulgies adjacent to the schedule premises by filing R.Cs. one under Section 10-C(1)(c) of the Act and the other under Section 10(3)(a)(iii) of the Act and that the said mulgies are non-residential. But the appellate authority recorded a finding that merely because the landlady did not disclose filing of eviction petitions against Ramulamma and Jangaiah, it does not amount to suppression of material fact and found fault with the observation of the Rent Controller regarding suppression of material facts, ordered eviction of the tenant on the ground of *bona fide* requirement.

The order passed by the appellate Court is challenged on the ground that to claim eviction under Section 10(3)(a)(iii) of the Act, the landlady shall not be in occupation of a non-residential building in the city, town or village which is her own or to the possession of which she is entitled. Admittedly, the landlady filed two Rent Control Cases against Ramulamma and Gunti Jangaiah, who were in possession of two other mulgies belonging to her, under Sections 10(3)(a)(iii)

and 10-C(1)(c) of the Act and on allowing the said petitions, they were evicted from the said mulgies. Since the landlady obtained possession of the mulgies by vacating the aforestated two tenants, she is not entitled to claim eviction of the tenant from the schedule premises, in view of the bar contained under proviso 2 of Section 10(3)(a)(iii) of the Act, which clearly interdicts the landlady to claim possession of another non-residential building in case she obtained possession of a non-residential building.

It is the case of the tenant that the landlady suppressed the material fact of her filing two R.Cs. and obtaining possession of the mulgies in pursuance of the orders passed in the said R.Cs.

An identical question came up before a learned Single Judge of this Court in ***Ali Bin Mohammed v. Khaja Moinuddin***³, wherein this Court held as under:

“Under Section 10(3)(a)(iii) of the Act 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 instant case, 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 city. The lapses on the part of the landlord have been tried to be explained in the oral deposition but

³ 2007 (1) ALD 438

the facts remains that the landlord is the owner of the adjacent mulgi and two other mulgies wherein the tenants have been evicted. However, now that the original landlord died and admittedly as his second son has a portion of the adjacent mulgi and other two mulgies where he is residing, it cannot be said that the landlord is not having any other non-residential building apart from the mulgi in question.”

In the instant case, the appellate Court did not draw distinction between the material fact and material particular. Section 10(3)(1)(iii) of the Act specifically enables the Rent Controller to order eviction of a tenant subject to proof of *bona fides* for the requirement on the application filed by the landlord to evict a tenant in occupation of the non-residential building if he is not in possession of a non-residential building of his own in the city, town or village and he requires it for his own occupation. Occupation of the non-residential premises in the city, town or village is a material fact. It is not a material particular. Thereby, suppression of such fact would disentitle the landlady to evict the tenant in occupation of the premises in view of the law declared by the learned Single Judge of this Court referred to supra.

In another judgment reported in ***Kunj Bai G. Chugani v. Fashions, Secunderabad***⁴, a learned Single Judge of this Court reiterated the same legal position holding that when a landlord claims eviction of a tenant from a non-residential building in the city on the ground of *bona fide* requirement, he must prove that the other premises is not sufficient

⁴ 2012(3) ALT 433

considering the aspects of quality, size and suitability of the building and that if he cannot plead and prove the same, his requirement cannot be treated as *bona fide*.

In the instant case, the landlady is in possession of other non-residential premises. Therefore, she must prove that the other premises are not sufficient considering the aspects of quality, size and suitability of the building. Unless such aspect is pleaded and proved, the requirement of the landlady cannot be held to be *bona fide* and her claim for eviction cannot be accepted. Thus, in view of the law declared by the learned Single Judge of this Court, it is the basic requirement to claim eviction of the tenant from non-residential premises. The landlady has to disclose the material fact that she is occupying two other shops after evicting the tenants and in the absence of any allegation that the other premises are not suitable for the proposed business, she is disentitled to claim eviction of the tenant from the schedule premises.

In ***Palichetty Latchanna v. Giduthuri Appa Rao***⁵, 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,

⁵ AIR 1983 AP 244

unless the landlady pleads and proves that she is not in occupation of any other non-residential building of her own, she is disentitled to claim eviction of the tenant in occupation of non-residential premises.

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

In ***Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta***⁶, the Apex Court in paras 11 to 13 discussed as to what amounts to *bonafide* requirement and held that Chambers 20th Century Dictionary defines *bonafide* to mean 'in good faith : genuine'. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define *bonafide* to mean 'good faith, without fraud or deceit'. Thus the term *bonafide* or genuinely 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 bonafide' 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 *bonafide* 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

⁶ 1999 (3) SCR 1260

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, honest? If the answer be in the positive, the need is *bonafide*. The concept of *bonafide* 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***⁷, 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***⁸, the Apex Court held as under:

“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

⁷ [2001] 5 SCC 705

⁸ 1988 (Sup1) SCR 239

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 *bonafide* 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 them is the *bonafide* 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.

As discussed above, to claim eviction of a tenant, the landlady must establish that she was not in occupation of any non-residential building in the city, town or village of her own or to the possession of which she is entitled and that the requirement is honest and genuine. In the instant case, the landlady miserably failed to disclose the material fact as contemplated under Section 10(3)(1)(iii) of the Act enabling the Court to order eviction of the tenant in occupation for her *bona fide* requirement for commencement of business by one of the family members i.e., daughter-in-law w/o. Ashok Kumar Gilda.

In ***Dinesh Kumar v. Yusuf Ali***⁹, the Apex Court held that the landlord is the best judge of his need and the tenant cannot dictate the terms to the landlord.

In the instant case, the *bona fide* requirement of the landlady is to be examined considering all attending circumstances.

Similarly, in ***Mahendra K. Agarwal v. Vinay Kumar Gupta***¹⁰, the Apex Court held that when a building is *bona fide* required either in the existing form or after demolition and the new construction by the landlord for occupation of himself or any member of his family for the purpose for whose benefit it is held by him he can seek an order of eviction against the tenant. But this judgment is of no assistance to either of the parties.

⁹ (2010) 12 Supreme Court Cases 740

¹⁰ (2010) 15 Supreme Court Cases 574

In ***Mohd. Ayub v. Mukesh Chand***¹¹, the Apex Court while deciding the question of *bona fide* requirement to commence a particular business in a particular area held that the court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start and the landlord's requirement need not be a dire necessity. The hardship the landlords would suffer by not occupying their own premises would be far grater than the hardship the tenant would suffer by having to move out to another place. Considering the difficulty to be suffered by the tenant, he was given six months time to vacate the premises.

If the said principle is applied to the present facts of the case, the hardship being caused to both landlady and the tenant is to be weighted. Hardship is relevant only when the landlord claims eviction of a tenant on the ground of *bona fide* requirement of premises for additional accommodation but not for *bona fide* requirement separately.

In view of the law declared in the above decisions, when the requirement of the premises by the landlord is genuine, and if he is not in occupation of any other non-residential premises of his own, he is entitled to evict the tenants in occupation of the premises.

¹¹ (2012) 2 Supreme Court Cases 155

But, in the instant case, the landlady filed two petitions, one under Section 10-C(1)(c) of the Act and the other under Section 10(3)(a)(iii) of the Act, and obtained possession of the mulgies by evicting the tenants. Therefore, the landlady is disentitled to claim eviction of the tenant in occupation of the schedule premises as she has suppressed the material fact and debarred from claiming eviction of the tenant from the suit schedule property under the second proviso to subsection 3(a)(iii) of Section 10 of the Act.

Similar question came up before this Court in **Omkar Tele v. Mohd. Abdul Rahman**¹², wherein a learned Single Judge of this Court held that when eviction is sought under Section 10(3)(a)(iii) of the Act for *bona fide* requirement though the landlord is in occupation of several mulgies it is the prerogative of the landlord to choose a particular building but there should be evidence in this regard. Suppression of several material facts by the landlord is sufficient to deny the eviction of the tenant. If this principle is applied to the present facts of the case, the landlady is disentitled to evict the tenant in occupation of the schedule premises.

The Rent Controller, having considered the claim of the landlady and the defence set up by the tenant in the eviction petition, failed to consider whether suppression of evicting the tenants of the adjacent mulgies, Ramulamma and Jangaiah, is a material fact and the appellate Court also failed to

¹² 2010(4) ALD 550

differentiate the material fact and material particular and committed an error in coming to conclusion that the landlady did not suppress any material fact.

On over all consideration of the material on record, I could cull out the following:

- (a) The landlady filed R.C.Nos. 326 of 1985 and 350 of 2007 under Sections 10-C(1)(c) and 10(3)(a)(iii) of the Act, obtained possession of adjacent mulgies.
- (b) She did not disclose her occupying non-residential premises adjacent to the schedule premises which is within the same town and the basic requirement to claim eviction of the tenant.
- (c) She filed petitions one after the other to evict the tenants from mulgies for occupation of the same by her family members for carrying on different businesses.

Therefore, the present petition is filed somehow to evict the tenant from the schedule property having failed to obtain an order for fixation of fair rent in R.C.No. 449 of 2008 and thereby, her requirement cannot be said to be *bona fide*, honest or genuine. The Rent Controller rightly concluded that the landlady suppressed the material facts and declined to order eviction on the ground of *bona fide* requirement under 10(3)(a)(iii) of the Act. But, the appellate Court, on

wrong appreciation of facts with reference to law, committed a serious error in ordering eviction of the tenant on the ground of *bona fide* requirement. Therefore, this Court, while exercising revisional jurisdiction under Section 22 of the Act, is bound to decide the propriety, legality and correctness of the order and if it is found that the order of the appellate Court is perverse or erroneous, apparently, this Court can set aside the order passed by the appellate Court.

Therefore, the finding recorded by the appellate Court insofar as it relates to *bona fide* requirement is hereby set aside dismissing the eviction petition in toto restoring the finding recorded by the Rent Controller in R.C.No.349 of 2007. Accordingly, the point is answered.

In the result, the Civil Revision Petition is allowed setting aside the order passed by the Chief Judge, City Small Causes Court, Hyderabad, in R.A.No.102 of 2013 insofar as it relates to *bona fide* requirement under Section 10(3)(a)(iii) of the Act .

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 31.08.2017
va