

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No. 804 OF 2016**

**ORDER:**

This civil revision petition under Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (for short, 'the Act') is filed by the petitioner-tenant challenging judgment dated 10-09-2015 in R.A.No. 71 of 2013 on the file of the Court of Chief Judge, City Small Causes Court, Hyderabad (for short, 'the Appellate Court'), whereby the Appellate Court set aside order dated 20-03-2013 in R.C.No. 274 of 2011 on the file of the Court of I Additional Rent Controller, City Small Causes Court, Hyderabad (for short, 'the Rent Controller'), ordering his eviction from schedule property.

The petitioner is tenant and the respondent is landlord and they will hereinafter be referred to as tenant and landlord for convenience.

The landlord filed R.C.No. 274 of 2011 on the file of the Rent Controller against the tenant for his eviction from schedule property bearing No. 11-1-119 of New Agapura, Hyderabad, under Section 10 (2) (i) and 10 (3) (iii) (b) of the Act alleging that he let out the schedule residential premises on monthly rent @ Rs.2,665/- and obtained rental deed from the tenant on 01-03-2007 for a period of eleven months. As per the terms of lease deed, the tenant deposited two months' rent as advance and the lease period was expired by February, 2008. Though the lease period was expired, the tenant did not vacate and deliver vacant possession of the premises to the landlord despite his request to vacate the same. The landlord sought for eviction of the tenant on the ground that the premises is required for occupation of his son for his residence who is recently married and to set up practice in the mulgi attached to the house. Therefore, he required the premises for *bona fide* occupation of his son for residential purpose and to run a dispensary in the mulgi, which is not the subject matter of the

schedule premises, along with the landlord. The landlord also claimed eviction of the tenant on the ground that the tenant committed willful default in payment of rent from May, 2010, till the date of filing the petition before the Rent Controller. When the landlord demanded the tenant for payment of arrears of rent, the latter gave an undertaking that he would vacate the premises by 31-03-2011 after paying entire dues but he did not vacate the residential premises and pay the arrears of rent. Thereupon, the landlord got issued legal notice dated 15-04-2011 calling upon the tenant to vacate the premises but the tenant did not comply with the legitimate demand made by the landlord. Therefore, the landlord filed petition for eviction of the tenant on the two grounds referred *supra*.

The tenant filed counter denying the *bona fide* requirement and willful default *inter alia* contending that the premises bearing No. 11-1-119 consists of three rooms; one hall, kitchen and toilet; admeasuring 135 square yards situated in New Aghapura, Hyderabad, and obtained the same on monthly rent of Rs.2,200/- exclusive of electricity and water consumption charges in the year 2000. At the time of commencement of tenancy, the tenant allegedly deposited Rs.10,000/- as advance which is returnable at the time of vacating the premises without any interest under rental agreement dated 20-06-2005. The tenant paid rent regularly without any default and no amount was due towards rent till the date of filing the petition but there was no practice of issuing receipts acknowledging receipt of monthly rent by the landlord. Son of the landlord already established his practice at Padma Rao Nagar along with the landlord at their residence. As per reliable information received by the tenant, the son of the landlord is about to leave to U.S.A. to set up practice there. Therefore, the schedule premises is neither required nor suitable for resident and establishing dispensary by son of the landlord. The tenant denied execution of any undertaking on 26-12-2010 to vacate the premises and it is a concoction. The

landlord got issued legal notice dated 15-04-2011 for which he got issued suitable reply on 28-05-2011. The fact remains that the landlord demanded the tenant to enhance the rent from Rs.2,200/- to Rs.2,500/- and accordingly enhanced the rent as demanded and paying rent without any default till January, 2011, on or before fifth of every succeeding month. Therefore, the allegation that the tenant committed willful default in payment of rent from 05-03-2011 is false. When the tenant tendered rent, the landlord promised to come to schedule property to collect rent. Accordingly, on 22-03-2011, the landlord came along with one Mohsin Ali Imran, who is a local rowdy, and demanded for enhancement of rent to Rs.10,000/- per month or to vacate the schedule premises. Thereupon, the tenant filed O.S.No. 711 of 2011 for injunction and obtained *interim* injunction in I.A.No. 54 of 2011 in O.S.No. 711 of 2011. While *interim* injunction was subsisting, the landlord deliberately refused to receive monthly rent sent by Money Orders in the months of February and March, 2011. In reply notice dated 28-05-2011, the tenant requested the landlord to furnish his bank account particulars enabling the tenant to deposit monthly rent to the credit of his account but failed to comply with the legitimate demand and meanwhile, he received notice in rent control proceedings. Along with vakalat, the tenant filed memo tendering rent for the months from February, 2011, to August, 2011, but learned counsel for the landlord refused to receive the same. Thereupon, the tenant got issued legal notice again enclosing cheque bearing No. 031796 dated 12-11-2011 for Rs.22,500/- towards rent for the months from February, 2011, to October, 2011, and again called upon to furnish account particulars to deposit monthly rent to the credit of his account. Thus, the tenant did commit no default much less willful default in payment of rent and prayed for dismissal of the petition.

During inquiry, on behalf of the landlord, the landlord himself was examined as P.W.1 and got marked Exs.P1 to P4. On behalf of the tenant, the tenant himself was examined as R.W.1 and got marked Exs.R1 to R24.

Upon hearing argument of both counsel, the Rent Controller dismissed the petition without costs disbelieving the *bona fide* requirement and willful default pleaded by the landlord while believing the contention of the tenant.

Aggrieved by the dismissal order dated 20-03-2013 in R.C.No. 274 of 2011, the unsuccessful landlord preferred R.A.No. 71 of 2013 on various grounds.

Upon hearing argument of both counsel, the Appellate Court allowed the appeal and ordered eviction of the tenant in occupation of the residential premises.

Aggrieved thereby, the tenant filed the present revision on various grounds. The first and foremost contention raised in the grounds of appeal is that the landlord did not disclose the residential house, which he own and possessed at Padma Rao Nagar, Secunderabad, in an extent of 370 square yards consisting of G+1 floors and which he admitted in evidence and another ancestral house at Mangalhat in an extent of 545 square yards bearing house No. 14-1-38. Non-disclosure of owning and possessing those two properties is suffice to dismiss the eviction petition but the Appellate Court did not appreciate this contention in proper perspective. The second ground raised before this Court is that the landlord never pleaded that this schedule premises is required as additional accommodation while residing in a house at Padma Rao Nagar, Secunderabad, but the Appellate Court on erroneous appreciation of facts and law ordered eviction of the premises. Son of the landlord is prosecuting his post-graduation in medicine at Gandhi Medical College, Secunderabad, and the

requirement of the premises for his personal occupation is false on the face of the record in view of the clear admission made by the landlord in O.S.No. 711 of 2011 that his son was prosecuting first year post-graduation in medicine and it is three years course and that itself is suffice to conclude that the requirement is not *bona fide* but the Appellate Court failed to consider the evidence in proper perspective and committed an error. The Appellate Court also failed to consider the law declared by the Apex Court in ***Dinesh Kumar Vs. Yusuf Ali***<sup>1</sup>; ***Mohd. Ayub and another Vs. Mukesh Chand***<sup>2</sup>; and ***Mahendra K. Agarwal Vs. Vinay Kumar Gupta and others***<sup>3</sup> and thereby committed an error in ordering eviction of the tenant on the ground of *bona fide* requirement of schedule premises for occupation of the son of the landlord and prayed to set aside the judgment of the Appellate Court while restoring the order passed by the Rent Controller.

During hearing, Sri Ali Farooq, learned counsel for the tenant, contended that when the landlord failed to disclose various other properties owned and possessed by him in the petition, he is disentitled to claim eviction of the tenant on the ground of *bona fide* requirement. Therefore, when the landlord suppressed certain facts, he is disentitled to claim eviction of the tenant under Section 10 (3) (iii) (b) of the Act and placed reliance on ***Ali Bin Mohammed (died) per L.Rs. Vs. Khaja Moinuddin (died) per L.Rs.***<sup>4</sup>; ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta***<sup>5</sup>; ***Ram Dass Vs. Ishwar Chander***<sup>6</sup>; ***P.Murali Rao and another Vs. Raghunatha Rao Ghatge***<sup>7</sup> in support of his contention. He also contended that when the findings recorded by the Rent Controller or the Appellate Court are perverse and not based on any evidence, this Court can

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<sup>1</sup> (2010) 12 SCC 740

<sup>2</sup> (2012) 2 SCC 155

<sup>3</sup> (2010) 15 SCC 574

<sup>4</sup> 2007 (1) ALD 438

<sup>5</sup> 1999 AIR (SC) 2507

<sup>6</sup> 1988 (2) PLR 478

<sup>7</sup> 2005 (1) ALT 731

interfere with the fact findings by exercising power under Section 22 of the Act and there is no fetter on the power of the Court and placed reliance on ***Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh***<sup>8</sup> in support of his contention. It is finally contended that when son of the landlord is prosecuting his post-graduation as on the date of filing the petition, the requirement of son of the landlord is totally *mala fide* but the Appellate Court on erroneous appreciation of both facts and law committed serious error and such finding is perverse and not based on any evidence on record. Thereby, the judgment of the Appellate Court is liable to be set aside exercising power under Section 22 of the Act and prayed to set aside the same.

*Per contra*, learned counsel for the landlord supported the findings recorded by the Appellate Court while disputing the findings recorded by the Rent Controller in all respects. It is the specific contention of learned counsel for the landlord that the principles laid down in the judgments relied upon by learned counsel for the tenant have no application to the present facts of the case as those judgments are in respect of non-residential premises and the landlord never claimed eviction of the tenant on the ground of personal occupation for himself or as additional accommodation but claimed eviction of the tenant for personal occupation of his son with intention to reside in the residential house and run a dispensary in the mulgi attached to the schedule premises along with the landlord which is lying vacant (mulgi is not the subject matter of the eviction petition). In such case, non-disclosure of owning or possessing of any other premises within the city would not disentitle the landlord to seek eviction of the tenant. Therefore, the Appellate Court did commit no error warranting interference of this Court while exercising jurisdiction under Section 22 of the Act. Learned counsel for the landlord relied on ***Dinesh Kumar*** (1<sup>st</sup> *supra*),

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<sup>8</sup> (2014) 9 SCC 78

**Mohd. Ayub** (2<sup>nd</sup> *supra*), **R.C. Tamrakar and another Vs. Nidi Lekha**<sup>9</sup>, **Om Prakash and others Vs. Sunhari Devi (Smt.) and others**<sup>10</sup>, and **Mohammed Abdul Rahman and others Vs. B.Manorama and another**<sup>11</sup> to contend that the Court has to inquire into the *bona fides* of the landlord when a petition is filed for eviction of the tenant and the landlord himself is the best judge of what his requirements are. Neither the tenant nor the Court may endeavour to show how the landlord should adjust himself and the tenant cannot direct the landlord to occupy a particular premises. The landlord in the present case had chosen the schedule residential premises for occupation of his son for his residence and to run dispensary in the vacant mulgi attached to the residential premises. Therefore, the requirement of the landlord is *bona fide* and the Appellate Court rightly reversed the finding recorded by the Rent Controller. Learned counsel for the landlord also placed reliance on **Hindustan Petroleum Corporation Limited** (8<sup>th</sup> *supra*) to contend that the scope of interference of this Court is limited in a fact finding recorded by the Appellate Court; according to Section 22 of the Act, the revisional Court is only competent to decide legality, regularity or propriety of the judgment under challenge and nothing more than that; if the principle laid down in the above judgment is applied, the jurisdiction of this Court is limited and finally prayed to confirm the judgment of the Appellate Court dismissing the present revision.

Considering rival contentions and perusing material available on record, the sole point that arises for consideration is thus:

***"Whether the requirement of schedule premises for occupation of the son of the landlord for his residence and to run dispensary in the mulgi (which is not the subject matter of the petition) is bona fide, if not, whether the tenant is liable to be evicted under Section 10 (3) (iii) (b) of the Act?"***

<sup>9</sup> (2001) 8 SCC 431

<sup>10</sup> (1993) 2 SCC 397

<sup>11</sup> 2008 (4) ALD 586

**In Re. Point:**

Before deciding the point, I would like to examine the scope of revision under Section 22 of the Act. According to Section 22 of the Act, this Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution under Section 15 or by the appellate authority on appeal under Section 20, for the purpose of satisfying itself as to the legality, regularity or of propriety of such order or proceeding and may pass such order in reference thereto as it thinks fit. Though the scope is limited to pass order or proceeding with regard to legality, regularity or propriety, the judicial interpretation is otherwise. The scope of revision under Section 22 of the Act is limited and this Court cannot interfere with the fact findings recorded by the Rent Controller as held by the Apex Court in ***Hindustan Petroleum Corporation Limited*** (8<sup>th</sup> *supra*). No doubt the revisional powers of this Court under Section 22 of the Act are limited and this Court cannot interfere with the fact findings recorded by the Rent Controller and the Appellate Court except where the Courts committed an illegality or irregularity and pronounced incorrect orders and such findings are *ex facie* perverse. Keeping in view of the scope of review under the Act, it is relevant to advert to the facts of the present petition. The landlord filed petition under Section 10 (2) (i) and 10 (3) (iii) (b) of the Act but the Rent Controller did not accept the contentions of the landlord on both counts and dismissed the petition. However, in the appeal, the Appellate Court confirmed the finding recorded by the Rent Controller holding that the landlord is not entitled to evict the tenant on the ground of willful default but reversed the finding recorded by the Rent Controller on the ground of *bona fide* requirement of schedule premises for occupation of the son of the landlord. Therefore, the dispute is only with regard to *bona fide* requirement.

The first and foremost contention raised by learned counsel for the tenant is that when the landlord possessed other buildings in the town, the landlord is not entitled to claim eviction of the tenant on the ground of suppression of material facts *i.e.* owning and possessing of building at Padma Rao Nagar and Mangalhat. On this ground alone, he requested this Court to set aside the impugned judgment. In view of the specific contention raised before this Court, it is necessary to advert to Section 10 (3) (a) (i) of the Act and it is extracted hereunder:

*"Section 10 (3) (a) A landlord may subject to the provisions of clause (d), apply to the controller for an order directing the tenant to put the landlord in possession of the building –*

- (i) in case it is a residential building -*
- (a) if the landlord is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation;*
- (b) if the landlord who has more buildings than one in the city, town or village concerned is in occupation of one such building and he bona fide requires another building instead, for his own occupation;*

Thus, it is clear from the provisions that the landlord is entitled to evict the tenant if he is not occupying a residential building of his own in the city, town or village concerned and he requires it for his own occupation. The landlord is also entitled to evict the tenant in occupation of the building though he is in occupation of a residential building of his own in the city, town or village, for occupation of anyone of his family members and not for his own occupation. The schedule premises house bearing Municipal No. 11-1-119 consisting of three rooms; hall, kitchen and toilet and bathroom; admeasuring 137.60 square yards situated at Aghapura, Hyderabad. In the body of the petition also, the landlord described the schedule premises as residential premises and let out for residential purpose on monthly rent *vide* para No. 1 and the landlord required the schedule premises for his son's occupation *i.e.* for setting up his family who got recently married and also to set up practice as a doctor in the mulgi attached to

the said house. The landlord is a retired doctor and his son completed degree in medicine and prosecuting post graduation in Gandhi Medical College. Therefore, the requirement of schedule premises is purely for residential purpose and to carry on practice in the mulgi which is totally unconnected with the schedule premises since mulgi is not part of the residential premises shown in the schedule annexed to the petition. Therefore, the petition would clearly fall within Section 10 (3) (a) (i) (b) of the Act but the landlord filed the petition under Section 10 (3) (iii) (b) of the Act and it is nothing but quoting of wrong provision of law. Mere quoting of wrong provision of law or misquoting of provision of law is not a ground to deny the relief if the petitioner is otherwise entitled (*vide State of Karnataka Vs. Krishnaji Srinivas Kulkarni and others*<sup>12</sup>; *Venture Global Engineering Vs. Satyam Computer Services Limited and another*<sup>13</sup>; *Payala Gopi Vs. Tiebeam Technologies (P) Limited and others*<sup>14</sup>; and *J.Kumaradasan Nair and another Vs. IRIC Sohan and others*<sup>15</sup>). Therefore, on the ground of wrong quoting of provision of law, the relief to the landlord cannot be denied. The tenant in para No. 3 of his counter also admitted that the premises was obtained for residential purpose in the year 2000 and residing therein with his family members. As such, the undisputed fact is that the premises is only residential premises. Thereby, the present facts of the case would fall within Section 10 (3) (a) (i) (b) of the Act, as the landlord is in occupation of other building at Padma Rao Nagar, Secunderabad. In such case, the landlord is not required to disclose the premises which he own and occupied by him in the city, town or village as required under Section 10 (3) (iii) (b) of the Act. Therefore, the contention that failure to disclose occupation of any other residential premises of his own by the landlord would not disentitle to claim

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<sup>12</sup> (1994) 2 SCC 558

<sup>13</sup> 2010 (6) ALD 15 (SC)

<sup>14</sup> 2015 (3) ALD 608

<sup>15</sup> AIR 2009 SC 1333

eviction of the tenant from the schedule premises. This Court in **Ali Bin Mohammed** (4<sup>th</sup> *supra*) while dealing with revision petition against orders passed by Rent Controller and confirmed by Appellate Court in a petition filed under Section 10 (3) (a) (iii) of the Act held that suppression of fact *i.e.* occupation of any non-residential premises by landlord disentitles him to claim eviction. No such requirement is contemplated under the Act in case of residential premises. Therefore, failure to disclose occupation of own residential premises by the landlord is not a ground to deny eviction of the tenant.

Learned counsel for the tenant placed reliance on **Shiv Sarup Gupta** (5<sup>th</sup> *supra*) which dealt with Delhi Rent Control Act and defined the word *bona fide* requirement as follows:

*"The words 'need' and 'require' both denote a certain degree of want with a thrust within demanding fulfillment. The term bona fide 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 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 judge of facts should place himself in the arm chair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. Once the Court is satisfied of the bona fides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the Court. The Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a particular approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."*

If this principle is applied to the present facts of the case, the landlord admittedly performed the marriage of his son who is prosecuting his post graduation in medicine and the residential premises is required for his occupation so as to enable the landlord to set up his practice along with his son in the mulgi which is not the subject matter of the petition. Therefore, the

intention to set up practice in the mulgi adjacent to the schedule premises is irrelevant for deciding the real controversy between the parties. Admittedly, the landlord is in occupation of one residential house at Padma Rao Nagar and one ancestral building at Mangalhat but it is the choice of the landlord to choose any one of the buildings of his own for occupation of himself or his family members and the tenant cannot dictate terms to the landlord to occupy a particular premises and the Court cannot direct the landlord to occupy any other building. The Apex Court in the above judgment is of the view that the judge of facts should place himself in the arm chair of the landlord and then ask the question to himself whether in the given facts substantiated by the landlord 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 *bona fide*. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the Court to draw an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the Court certainly to deny its judicial assistance to the landlord. The Apex Court is of the further view that when an alternate accommodation is available to the landlord other than the premises in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14 of Delhi

Act, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the Court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the Court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. However, the principle laid down in the above judgment has no application to the present facts of the case since Section 14 (1) (e) of Delhi Rent Control Act obligates the landlord to satisfy the Court that the alternate accommodation which exists and available is not suitable for his occupation but no such provision exists in the State Act. On the other hand, Section 10 (3) (a) (i) (b) of the Act permits the landlord to seek eviction of the premises in occupation of the tenant for *bona fide* occupation though he is in possession of other residential building for any other member of the family who is ordinarily resides with the landlord. Here the requirement is for occupation of son of the landlord who recently got married. The marriage is an undisputed fact and son of the landlord usually resides with his father till he secures employment or gets married or sometimes even after marriage also subject to family relationship. Therefore, occupation of residential premises for his son is the requirement of the landlord which would fall within the ambit of Section 10 (3) (a) (i) (b) of the Act. Hence, the law declared by the Apex Court with reference to the provisions of Delhi Act cannot be applied.

Similarly, learned counsel for the tenant has drawn attention of this Court to **Ram Dass** (6<sup>th</sup> *supra*), wherein the Apex Court discussing the *bona fide* requirement with reference to the provisions of East Punjab Urban Rent Restriction Act, 1949, held that the power of revision of the High Court under

Section 15 (5) is much wider which enables the Court to examine correctness of findings of facts also though revisional Court is not a second Court of first appeal. The Apex Court adverting to various provisions of the Act concluded that the revisional power of the Court is wider and the Court while exercising revisional power has to verify whether findings recorded by Court below are perverse and not based on any evidence. The Apex Court in para Nos. 8 and 9 held that

*"It is, no doubt, true that the question whether the requirement of the landlords is bona fide 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 landlord subject to the satisfaction of certain statutory conditions. One of them is bona fide requirement of the landlord, 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 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."*

In view of the law declared by the Apex Court, Court can take cautious cognizance of facts and circumstances of the case and decide applying its mind to each and every fact which weighed Rent Controller or Appellate Authority to come to such conclusion accepting or denying the requirement of landlord. Mere adverting to evidence and law is not sufficient and Rent Controller or Appellate Authority must make every endeavour to verify whether the requirement is honest or not sitting in the arm chair of the landlord putting question to himself or herself whether in the given circumstances the requirement is honest, *bona fide* or genuine and record finding. In the present case, the Rent Controller and the

Appellate Court recorded findings as if the premises is non-residential premises which falls under Section 10 (3) (iii) (b) of the Act but the approach of both Courts below is erroneous and it appears that on account of wrong quoting of provision of law and misconstruction of law, both Courts below proceeded to decide the petition as if the landlord required the non-residential premises for the occupation of his son. Therefore, the finding of the Rent Controller is erroneous but the Appellate Court considered various aspects in different angles and concluded that the requirement is *bona fide*.

Learned counsel for the tenant contended that when the landlord occupied another building, he is disentitled to claim relief and in support of his contention, he placed reliance on **P.Murali Rao** (7<sup>th</sup> *supra*) but the principle laid down in the above judgment has no application for the reason that the premises in the facts and circumstances of the case is non-residential premises.

Learned counsel for the landlord, supporting the finding recorded by the Appellate Court, placed reliance on **Om Prakash** (10<sup>th</sup> *supra*), wherein the Apex Court held that

*"Even in a second appeal, the High Court must restrict itself to questions of law; all the more so in a writ petition. We have referred to the findings of the High Court in some detail. They leave us in no doubt that the High Court re-assessed the evidence and went beyond its legitimate jurisdiction. The intervention of this Court is therefore, called for, especially since the High Court has directed the appellate authority to decide the appeal afresh "in the light of the observations made above". We do not approve of some of those observations. It is, to take one example, very difficult to see how a landlord can be asked to build alternative premises. To take another, it is very difficult to see how a landlord who has asked for the eviction of a tenant from commercial premises can be faulted for not having given particulars of his residential accommodation and how this can be treated as a purposeful attempt on his part to keep back relevant material from the Court, which should be taken into consideration in deciding his bona fide need."*

In the facts of the above judgment, the landlord sought for eviction of the tenant from a non-residential premises without disclosing occupation of residential premises and the Court concluded that it is not suppression of

material fact and faulted the finding recorded by the High Court while deciding a Writ Petition since it is limited to pure question of law. Similarly, the Apex Court in **R.C. Tamrakar** (9<sup>th</sup> *supra*) held that

*"Law is well settled that it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. In deciding the question of the bona fide requirement, it is unnecessary to make an endeavour as to how else the landlord could have adjusted himself."*

In view of the law declared by the Apex Court in the above judgment, it is for the landlord to opt any of the premises for his occupation or for occupation of his family members and the tenant cannot dictate terms. Therefore, the landlord opted the schedule premises for his son's occupation to set up new family who got recently married. The Apex Court reiterated the same principle in **Dinesh Kumar** (1<sup>st</sup> *supra*), **Mohd. Ayub** (2<sup>nd</sup> *supra*) and **Mahendra K. Agarwal** (3<sup>rd</sup> *supra*). Learned counsel for the landlord also placed reliance on **Mohammed Abdul Rahman** (11<sup>th</sup> *supra*) but the principle laid down in the judgment has no application as those cases relate to non-residential premises but the petition was filed under Section 10 (3) (a) (i) (b) of the Act for eviction of the tenant from residential premises.

Viewed from any angle, it is evident that the landlord own other residential premises both at Padma Rao Nagar, Secunderabad, and Mangalhat and he did not disclose owning or possessing of any other premises of his own but that is not a requirement to claim eviction of the tenant from residential premises since Section 10 (3) (a) (i) (b) of the Act permits the landlord to claim eviction of the tenant for occupation of any one of his family members though he occupied another residential premises of his own in the city, town or village and requirement to disclose occupation of non-residential premises is only in case where landlord sought eviction of tenant from non-residential premises.

Therefore, the whole argument of learned counsel for the tenant is not legally sustainable in view of the facts and circumstances of the case.

The Appellate Court, after elaborate consideration of entire material available on record, concluded that the requirement of the landlord is *bona fide* i.e. for occupation of residential premises by his son, who recently got married, to set up his family whereas the Rent Controller did not appreciate the facts with reference to law in proper perspective and mechanically concluded that the requirement is not *bona fide* because he is in occupation of other residential premises. Therefore, the finding of the Appellate Court is hereby confirmed while disagreeing with the finding recorded by the Rent Controller.

On overall consideration of law limiting its power under revision to question of law and testing the correctness of the judgment within the ambit of Section 22 of the Act, I find no illegality in the judgment passed by the Appellate Court warranting interference of this Court exercising power under Section 22 of the Act. Consequently, the revision petition is liable to be dismissed as it is devoid of merits.

The civil revision petition is accordingly dismissed directing the tenant to vacate and deliver vacant possession of the schedule premises within eight weeks from today. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

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**M.SATYANARAYANA MURTHY, J.**

Date: 26-07-2017.

JSK