

Reserved on : 20.02.2019

Pronounced on : 26.02.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) Nos.204 & 205 of 2013 &

M.P.No.1 of 2013 & M.P.No.1 of 2014

1. M/s.Hateemy Sales Corporation,
Rep. By its Prop.
Husseni (deceased)
2. Moiz Husseni Hirani
3. Fakruddin Husseni Hirani

.. Petitioners in CRP
(NPD)No.204 of 2013

1. M/s.Saraswathy Agencies,
2. Mr.Kothandaraman

.. Petitioners in CRP.
(NPD) No.205 of 2013

Vs.

Mr.R.Sudhakar

.. Respondent in both the
revision petitions

PRAYER: Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the Order of the learned VII Judge, Court of Small Causes, Chennai dated 15.12.2012 passed in R.C.A.Nos.1291 of 2003 & 1323 of 2003.

For Petitioners : Mr.K.Madanagopal
in both CRPs

For Respondent : Mr.K.P.Ashok
in both CRPs

COMMON ORDER

Aggrieved over the concurrent finding of the Courts below in ordering eviction under section 10(3) (a) (iii) and Section 10(2)(ii)(a) of Tamilnadu Buildings (Lease and Rent Control) Act 1960 on the ground of for own use, act of waste of the petition mentioned property and causing nuisance to the occupants, the present revisions have been filed.

2. Since both the Rent Control appeals are arising out of a common judgment passed by the Rent Controller as well as the appellate authority, this Court is also inclined to dispose of both the revisions in a common Order. The parties are arrayed as per their own ranking before the trial Court.

3. The brief facts leading to filing of RCOP.No.1290 of 2000 subject matter of CRP.No.204 of 2013 is as follows :

The petitioner is carrying on business of cement products and tiles under the name and style of M/s.Cement Concrete Works in Royapettah. The owners of the land and building have already issued notice to vacate the petitioner from

the premises. Besides the petitioner is also carrying on business in computer training and internet center under the name and style of M/s.Internet Services in Triplicane High Road. The said premises belongs to M/s.Hamsa Theatre (P) Ltd. The petitioner is also one of the share holder in the company and a suit is pending in respect of allotment of share to the petitioner in respect of the above property. Since, the petitioner is having no property in his exclusive possession, he is in need of the petition premises. Besides, the respondent has also sublet the premises to the third parties. The respondent also converted the business into a partnership firm. In the portion let out to the respondent, there was a toilet at the rear end of the shop. It connects the drainage connection in the other two shops in the ground floor and it connects the common toilets in the I & II floor. The second respondent without the permission of the petitioner closed the toilet and drainage pipes by cementing the toilet floor and removed the closet and put a cemented floor and using the toilet as a store room. Therefore, the drainage connection of the other two shops and I and II floor toilets got completely block and the toilets could not be used. With great difficulty, the petitioner after spending huge money managed to give separate pipe lines for the I and II Floor toilets. Till date, the drainage of the other two ground floor shops are still blocked and the toilets cannot be used. The act of the respondent reduced the value of the building and also caused nuisance to the occupants. The respondent also kept another name board vertically at the entrance and caused nuisance and obstruction to the other occupants in the same building. Hence,

eviction is sought on the ground of own use and act of waste, nuisance and subletting the premises to third parties.

4. Brief facts leading to filing of RCOP.No.1291 of 2000 subject matter of CRP.No.205 of 2013 is as follows :

The petitioner is carrying on business of cement products and tiles under the name and style of M/s.Cement Concrete Works in Royapettah. The owners of the land and building have already issued notice to vacate the petitioner from the premises. Besides the petitioner is also carrying on business in computer training and internet center under the name and style of M/s.Internet Services in Triplicane High Road. The said premises belongs to M/s.Hamsa Theatre (P) Ltd. The petitioner is also one of the share holder in the company and a suit is pending in respect of allotment of share to the petitioner in respect of the above property. Since, the petitioner is having no property in his exclusive possession, he is in need of the petition premises.

5. In RCOPNo.1290 of 2000, the contention of the respondent is that the first respondent is a partnership firm and the petition premises consists of 6 shops and the petition for eviction has been filed for three shops alone. The premises is situated in Sembudoss Street, Chennai wherein only hardwares, pipe, steel business are carried on and it is not suitable for carrying on business for cement concrete business and internet business.

6. It is the contention of the respondent in R.C.O.P.No.1291 of 2000 is that admitting that there is a toilet on the rear side of the portion and the drainage connection for the other two shops in the ground floor is passing through the respondent portion and connection to the main drainage, he denied that the common toilets in the first and second floor is also passing through the respondent's shop. It is the contention of the respondent that they closed the toilet 10 years back and using the room as a store room. The building was not materially impaired and the value and utility are not reduced and no nuisance is caused to the other occupants. The petitioner carrying on two separate business at two different places is disputed. The petitioner is owning several buildings of his own in the City of Chennai. Out of 6 tenants, the petitioner filed eviction petition against only three tenants. The respondents never sub-let the property to other persons. There is no merits in this petition and hence, it is liable to be dismissed.

7. On the side of the petitioner, P.W.1 was examined and Ex.P.1 to Ex.P.9 were marked. On the side of the respondent side R.W.1 and R.W.2 were examined and Ex.R.1 to Ex.25 were marked. The learned rent controller ordered eviction in RCOP.No.1290 of 2000 on the ground of own use and occupation and Ordered eviction in RCOP No.1291 of 2000 on the ground of act of waste, nuisance and subletting the premises to third parties and for own use and occupation. The first appellate Court in RCA confirmed the finding of the Rent

Controller in both the appeals for eviction on the ground of own use and occupation and act of waste alone. Aggrieved over the above findings, the tenants have filed the present revisions.

8. The landlord in both the RCOPs is one and the same. It is the contention of the learned counsel for the revision petitioner that the landlord is carrying on business in Royapettah in his own building. He had put up construction in the vacant site measuring about 5000 sq.ft. The petition mentioned properties are situated in the city where the cement business now said to be carried out by the respondent cannot be carried out and this petition mentioned property is only a property with smaller extent. When the landlord is carrying on business in a larger extent it is highly improbable to contend that a smaller extent is required for doing his business. Hence, it is the contention of the learned counsel that there is no bonafide on the part of the landlord to seek eviction.

9. It is the further contention of the learned counsel for the revision petitioner that admittedly, the respondent is having a share in the property where he is said to be running internet business. He is only a co-owner in the above building. When he is already in occupation of the property of his own, he cannot seek eviction under section 10(3)(a)(iii) and the Courts below have not considered the above aspect.

10. It is the further contention of the learned counsel for the revision petitioner that the additional documents filed before this Court clearly show that now the petitioner is not using the non residential building at Royapettah for carrying on cement business. Now he is using the above place for sale of cars. That itself clearly indicate that his intention is only to get rid of the tenant and his requirement is not a bonafide one. Hence, submitted that the Courts below have failed to consider the above aspect.

11. In support of his contentions, he has relied upon the following judgments :

1. **A.Duraiswami Vs. A.Arumugham reported in 1997 (2) MLJ 401**
2. **A.Gurusami Vs. Dr.(Mrs.) A.Jacob (died) and others reported in 1998 – 1- L.W. 651**
3. **C.R.Subramaniam Vs. N.Vasudevan reported in 1998 (II) CTC 211**
4. **S.Devaji Vs.K.Sudarshana Rao 1994 – I- L.W. 24**
5. **R.R.Dinakaran Vs. S.L.Chinna Kuppuswami reported in 1999 L.W. 678**
6. **Super Forgings and Steels (Sales) Private Limited Versus Thyabally Rasuljee (dead through LRs. Reported in 1995 (1) MLJ**

12. It is the further contention of the learned counsel for the revision petitioner that merely because, the toilet has been closed that cannot be a

ground to hold that he has committed act of waste, unless the landlord establish that such an act diminishes the value of the building and its utility. Hence, submitted that the Courts below have not considered the above fact and prayed for allowing these revisions.

13. The learned counsel for the respondents in both the revisions vehemently contended that admittedly the Rent Control petitions have been filed 19 years back in the year 2000. At that time, the petitioner was carrying on cement business in a non residential building belonging to the third parties. Merely because he erected temporary structure with the permission of the owner, he cannot be considered that he is the owner of the building. It is the further contention of the respondent that ejection suit has been filed by the owner of the vacant site. It is his further contention that the petitioner is not carrying on business in the entire 5000 sq.ft. Only in the open space available in the above site, he was doing business. Therefore, the contention of the revision petitioner that the petition mentioned property is not fit for cement business cannot be countenanced. The petitioner has filed eviction petition not only against these respondents but also against other tenants. So the entire building is required for his own business. Hence, submitted that the contention of the tenants has no legs to stand.

14. It is the further contention of the learned counsel that merely because he was holding certain shares in the property owned by the private limited company in respect of which dispute is also pending questioning the very allotment of the share to the petitioner, he cannot be considered as a co-owner of the property. Admittedly, the above property is a property of the private limited company. The share holders of the company can never be considered as a co-owner of the property. Therefore, submitted that the contention of the revision petitioner cannot be countenanced and the learned trial Court and the appellate authority has rightly concluded that the building is required for own use and occupation for business purpose and also ordered eviction under act of waste and nuisance.

15. In support of the submissions, the learned counsel for the respondent has relied upon the following judgments :

1. **The Madras District Central Co-operative Bank Limited, Mylapore Branch, Madras – 4 Vs. A.Venkatesh** reported in 1999 L.W. 714
2. **A.Gopalakrishna Chettiar Vs. T.K.A.Yakub Hussain** 1997 L.W. 232
3. **Pratap Rai Tanwani and another Vs. Uttam Chand and another** reported in 2004 (8) Supreme Court Cases 490

16. The revision petitioner has filed M.P.No.1 of 2004 for filing additional documents namely photographs to show that Royapettah premises where the landlord is carrying on business is completely changed and the premises is used as car bazaar. Similarly, the respondent is carrying on internet business is also false. To show the nature of the building the photographs are necessary. In the nutshell, the application has been filed to show the subsequent events.

17. The above application is opposed by the respondent on the ground that a similar application was filed before the Appellate Rent Controller and the application has already been dismissed and now it cannot be permitted to be filed.

18. It is well settled that the bonafide requirement has to be decided on the date of petition. Any subsequent event intervening due to many years of litigation, the same cannot have bearing since the crucial date is the date of the petition to decide bonafide of the landlord. Therefore, even assuming that the landlord has changed his business subsequently, that cannot be a relevant factor to decide the entire issue involved in this revision. Change of business is always based on the profit earned from the particular business. One cannot expect the landlord should carry on the same business irrespective of the loss or other intervening circumstances. The Rent Control Proceedings has been filed in the year 2000. At the relevant point of time, it is the contention of the

respondent that he was carrying on cement business in Royapettah. Therefore, merely because, now the landlord has changed the business after a gap of 19 years during the pendency of this revision, it cannot be stated that there was no bonafide at all. Therefore, I am of the view that the document sought to marked in this revision to show the change of business and also to show that the building is in Triplicane and the same are not at all relevant to the issue in these revisions. The fact of bonafide is to be decided on the date of the petition. Hence, the petition filed by the revision petitioner is liable to be dismissed.

19. In the judgment in **A.Duraiswami Vs. A.Arumugham** reported in **1997 (2) MLJ 401**, wherein it has been held that

“In the light of these decisions, if we examine the present case we find that the Rent Controller and the Appellate Authority as well as the High Court have obviously failed to construe **Section 13(2)(iii)** in its proper perspective and they have failed to apply the correct legal tests for judging the nature of the constructions made by the appellant. As has been repeatedly pointed out in several decisions it is not every construction or alteration that would result in material impairment to the value or the utility of the building. In order to attract Sec. 13(2)(iii), the construction must not only be one

affecting or diminishing the value or utility of the building but such impairment must be of a material nature, i.e, of a substantial and significant nature. It was pointed out in *Om Prakash v. Amar Singh* (1987) (1) SCC 458 at 463) that the legislature had intended that only those constructions which brought about a substantial change in the front and structure of the building that would provide a ground for the tenant's eviction and hence it had taken care to use the word "materially altered the accommodation" and as such the construction of a chabutra, almirah, opening of window or closing a veranda by temporary structure or replacing of a leaking roof or placing partition in a room or making minor alterations for the convenient use of the accommodation would not materially alter the building. It would therefore follow that when a construction is alleged to materially impair the value or utility of a building, the construction value or utility of a building, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial or monetary point of view or from the utilitarian aspect of the building."

20. In **A.Gurusami Vs. Dr.(Mrs.) A.Jacob (died) and others reported in 1998 – 1- L.W. 651**, it has been held as follows :

“Coming to the act of waste, it is no doubt true that in the dividing wall between the tenanted premises and the premises owned by the tenant, an opening had been made in the north-south wall. The tenanted premises is also divided by a plywood partition. The case of the tenant is that the north-south wall is his wall and he made a hold on it. The Rent Controller found this as a fact. The landlady having sold the premises No. 123 to the tenant earlier, could have easily produced the said sale deed to establish what was conveyed to the tenant and whether it included the north-south wall dividing the tenanted premises and premises No. 123. In any event, making an opening in the said wall fixing a door and erecting a plywood partition in the tenanted premises does not appear to have brought any material change to the condition of the building, there is no evidence to show that such an act has impaired the value and utility of the building. In fact, a learned single Judge of this Court (Justice S.S. Subramani) in his judgment reported in [A. Duraiswamy v. A. Arumugham](#) (1997) 2 L.W. 346 had referred to all the judgment on this point and held as follows:

With regard to the plea of the landlord seeking eviction on the ground of tenant committing acts of waste, taking into

consideration the wordings in the statute, it is clear that unless the landlord establishes that the placing of a new door has impaired the value and utility of the building, he will not have any cause of action. The landlord has not even stated in his deposition that the building has been damaged materially. Excepting that a door had been placed, no other evidence has been let in this case. The finding of the Authorities below that for placing the door, portions of the wall will have to be demolished and, therefore, diminution of value and utility can be presumed, cannot be accepted."

21. In **Akkaniserry Govindan Nambiar Vs. Kariyath Raghavan** reported in **1999 – 1- L.W. 29**, it has been held as follows :

"When read in conjunction with sub-section (3) of Section 11, unambiguously shows that the Rent Control Court shall not give directions for eviction of the tenant, if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that "for special reasons, in any particular case it will be just and proper to do so". The very fact that the premises which fell vacant during the pendency of the proceedings have been found by the appellate authority, the

final fact finding authority, to be such as not to be suitable for the proposed business of grocery would be a "special reason" within the meaning of the proviso and the High Court, therefore, fell in error in construing the proviso otherwise. In our opinion the order of the appellate authority was well merited and sound and should not have been interfered with. The impugned order of the High Court under the circumstances cannot be sustained."

22. In **C.R.Subramaniam Vs. N.Vasudevan** reported in **1998 (II) CTC 211**, it has been held as follows :

"If a landlord is a co-owner of a non-residential building in the city, town or village concerned, which he is occupying for purposes of carrying on his business, will he not be occupying therefore a non-residential building of his own envisaged in the above Section 10(3)(a)(iii), as would disentitled him to the ground of eviction available thereunder being the real question needing our answer in the light of the aforesaid plea of learned counsel for the respondents urged in questioning the sustainability of the contention raised on behalf of the appellant-tenant, we have to find the answer therefor.

The answer to the said question, in our view, cannot be

anything other than that a non-residential building in occupation of landlord which is "his own" envisaged in Section 10(3)(a)(iii) above, is not only that of which he is an absolute owner, but also that of which he is a co-owner, for a co-owner of a building who is its landlord is regarded under Rent Control laws of our country as its owner entitled to obtain possession of such a building from a tenant for his bona fide requirement."

23. In **S.Devaji Vs.K.Sudarshana Rao** reported in **1994 – I- L.W. 24**, it has been held as follows :

"If a landlord is a co-owner of a non-residential building in the city, town or village concerned, which he is occupying for purposes of carrying on his business, will he not be occupying therefore a non-residential building of his own envisaged in the above Section 10(3)(a)(iii), as would disentitled him to the ground of eviction available thereunder being the real question needing our answer in the light of the aforesaid plea of learned counsel for the respondents urged in questioning the sustainability of the contention raised on behalf of the appellant-tenant, we have to find the answer therefor.

The answer to the said question, in our view, cannot be anything other than that a non-residential building in occupation of

landlord which is "his own" envisaged in Section 10(3)(a)(iii) above, is not only that of which he is an absolute owner, but also that of which he is a co-owner, for a co-owner of a building who is its landlord is regarded under Rent Control laws of our country as its owner entitled to obtain possession of such a building from a tenant for his bona fide requirement."

24. In **R.R.Dinakaran Vs. S.L.Chinna Kuppaswami** reported in **1999 L.W. 678**, it has been held as follows :

"4. In order to canvass the correctness of the order of the appellate authority, the tenant has preferred this revision. Before we go to the facts of the case, it will be relevant to refer to the terms of S.10 (2)(iii) of the Act. The said **S. 10(2)(iii)** reads as follows:-

—10(2) A landlord who seeks to evict his tenant shall apply to the controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied.

(iii) that the tenant has committed or caused to be committed such acts of waste as are likely to impair materially the value or utility of the building, the controller shall make an order directing the tenant to put the landlord in possession of the building and if controller is not so satisfied, he shall make an

order rejecting the application._ On a plain reading of the above provision, it may be seen that what is envisaged is committing of acts of waste which are likely to impair materially the value or utility of the building. In other words, the act of the tenant must be such as would prejudicially affect the interests of the building or by either lowering the value of the building or by reducing its utilitarian value for being let out for the same purpose for which it had been let out, or for allied purpose. Therefore it goes without saying that every act of a tenant, even if it is not permitted by the landlord, will not amount to an act of waste, as contemplated under S.10(2)(iii) of the Act. namely, an act of waste which impairs materially or affects adversely the value or utility of the building.”

25. In **Super Forgings and Steels (Sales) Private Limited Versus Thyabally Rasuljee (dead through LRs.** reported in **1995 (1) MLJ**, it has been held as follows :

“That a landlord who, for purposes of carrying on his business, is not occupying a non-residential building of his own in the city can get under [Section 10\(3\)\(a\)\(iii\)](#) of the Act, possession or another non-residential building of his own in the city in the occupation of a tenant was not disputed on

behalf of the tenant appellant. But it was contended on behalf of the tenant-appellant that a landlord occupying for purposes of carrying on his business a non- residential building, of which he is a co-owner cannot claim the benefit of ground of eviction available under [section 10\(3\)\(a\)\(iii\)](#) of the Act against a tenant in a non- residential building of which he is a owner or a co-owner. The sustainability of that contention was, questioned, rather strenuously, by learned counsel for respondents 2 to 11 on the plea that a landlord who is a co-owner Of non- residential building where he carries on his business, not being its sole owner, such building cannot be regarded as 'his own' envisaged under [section 10\(3\)\(a\)\(iii\)](#) of the Act as would disentitle him to the benefit of the ground of eviction, available thereunder.. We find it difficult to accept the plea advanced on behalf of respondents 2 to 11 in questioning the sustainability of the contention raised on behalf of the appellant-tenant.”

26. The facts in above judgments is not applicable to the present case for the simple reason that the contention of the revision petitioner is that the property situated in Royapettah is the own property of the landlord. But the evidence of the parties clearly show that the landlord has took the property at

Royapettah on lease and he has put up construction with the permission of the landlord. Now it appears that the owners have filed a suit for ejectment which is also pending before this Court in C.S.No.402 of 2002. The above plaint has also been marked as Ex.P.8 before the Rent Controller. A mere perusal of the above plaint makes it clear that the property originally owned by Sri Rao Saheb B Vekatappa and the respondent herein is a tenant under him and it is also pleaded in the plant that the defendant was permitted to erect additional structures in the available open space. Only on such a permission, the landlord was carrying on cement business and not in the entire property. Therefore, the contention of the tenant that the above property is the own property of the respondent herein cannot be countenanced. The respondent was only a tenant and a suit has also been filed by the original owners as can be seen from Ex.A.8. Therefore, at no point of time, the property in the possession of the respondent at Royapettah, construed as the absolute property of the landlord.

27. Similarly, it is the contention of the revision petitioner that the building in Triplicane, referred in the petition also belongs to the respondent. But it is the specific case of the respondent that the property is the company's property and he is only a minor share holder in the property. Further, it is also the contention of the respondent that a suit has also been filed for declaration for allotting shares in favour of the plaintiff by the other directors. Ex.P.7 plaint makes it clear that infact the suit is filed by the sister of the respondent for various reliefs

and also for declaration with regard to the shares transferred in the name of the respondent herein. Once, the property is said to be company's property, the share holders cannot be the owner of the property. They can never be considered as a co-owner of the property. Only the company is the owner of the property. Therefore, the contention of the revision petitioner that the respondent is the co-owner of the property cannot be countenanced.

28. Further, R.W.2 in his evidence has also categorically admitted that he has blocked the toilet and put up a separate room. In the course his evidence he has admitted that he has done such a work four years ago. Whereas, in the counter he has pleaded that he has constructed a toilet 10 years back. It is also admitted he has not obtained any permission to convert the toilet. It is also admitted in the counter that the drainage to the other shops is passing through the toilet. When the drainage itself is blocked, which forced the landlord to make some other arrangement to clear the drainage, such conversion has an impact on the utility of the property.

29. The learned counsel for the respondent relied on the judgment in **The Madras District Central Co-operative Bank Limited, Mylapore Branch, Madras – 4 Vs. A.Venkatesh** reported in **1999 L.W. 714**, wherein it has been held as follows :

“The question now is whether an order directing the tenant to

put the landlord in possession should be made. It is pointed out by the learned Counsel for the respondent-landlord following a ruling of this Court in [Abdul Rahman v. S. Sadasivam](#) that there is no jurisdiction for the Rent Controller to go into the question of bona fide requirement in a claim under Section 10(3)(a)(iii) of the Act. Ramanujam, J. took the view that a distinction has to be made between the two sections, Section 10(3)(a)(i) and Section 10(3)(a)(iii), in view of the word "require" occurring in Section 10(3)(a)(i) and the absence of that word in Section 10(3)(a)(iii). In other words, what the learned Judge points out is that the Rent Controller has no jurisdiction to go into the question whether the requirement of the landlord is bona fide, as the Rent Controller has to pass an order of eviction in case the landlord is not occupying for purpose of business which he is carrying on, any non-residential building in the City which is his own. The learned Judge further pointed out that when the provisions of Section 10(3)(a)(i) and Section 10(3)(a)(iii) use different expressions, it should be taken that the Legislature intended these provisions to have different operations. With respect to the learned Judge, I may point out that the mere absence of the word "require" in Section 10(3)(a)(iii) would not necessarily lead to the inference that the Legislature did not

intend that the Rent Controller should go into the question of bona fides of the requirement of the landlord in respect of the requirement of a non-residential premises under Section 10(3)(a)(iii) of the Act. My reasons for holding so are as follows: Section 10 enumerates certain grounds for the eviction of the tenant. In other words, eviction under the Rent Control Act can be effected only on the grounds mentioned in Section 10. The landlord may have a right to evict the tenant under the general law. Section 10(3)(a) says that the 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. Section 10(3)(a)(i) deals with residential buildings. Section 10(3)(a)(ii) deals with non-residential buildings used for purpose of keeping vehicles. Section 10(3)(a)(iii) is in respect of non-residential buildings. Section 10(3)(b) gives a right to religious, charitable, educational or other public institution, to institute proceedings before the Controller if the institution requires the building. Section 10(3)(c) is for additional accommodation. Section 10(3)(d) speaks of tenancy for specified period agreed between the landlord and the tenant and it prohibits the landlord from applying, before the expiry of such period.”

30. Similarly in **A.Gopalakrishna Chettiar Vs. T.K.A.Yakub Hussain** 1997 L.W. 232, it has been held as follows :

“As the property belonging to joint family could not be taken as landlord's own property, he could not be said to be carrying on business in building of his own, he was entitled to seek eviction on ground that he "required the premises in question for purpose of carrying on his business. The fact that he had been carrying on business in premises belonging to joint family did not disentitle him from getting his own building for purpose of business which he was carrying on.”

31. In **Pratap Rai Tanwani and another Vs. Uttam Chand and another** reported in **2004 (8) Supreme Court Cases 490** it has been held as follows :

“In the background of the factual position one thing which clearly emerges is that the High Court had considered the subsequent events which the appellants highlighted and tend to hold that the bona fide need continues to subsist. As observed in Hasmat Rai's case (supra) the appellate Court is required to examine, evaluate and adjudicate the subsequent events and their effect. This has been done in the instant case. That factual finding does not suffer from any infirmity.

What the appellants have highlighted as subsequent events fall within the realm of possibility or probability of non-return and a certainty, which is necessary to be established to show that the need has been eclipsed.

At this juncture it would be appropriate to take note of Section 17 of the Act. Same deals with consequences which statutorily follow if there is deviation from the purposes for which possession has been recovered. If in the instant case such contingency arises, the respondents shall re-deliver possession to the appellants-tenants on such terms as the Rent Controlling Authority shall fix.”

32. In the light of the above decisions, when the evidence of the landlord and tenant are analysed, it can be seen that the landlord is carrying on business in another building which is not his own. In fact, he is carrying on such a business in Royapettah, which is not his own building. The other building, where he is said to be carrying on internet business, the building belong to the company. That building is also not his own building. If the building is not his own building, there is nothing under section 10(3) (a)(iii) which debars him to have a recourse to seek for eviction for carrying on his business. It is for the landlord to chose the building, area and the extent of the land required for his own business. The tenant cannot dictate the landlord to continue the business in

the same extent as he was carrying on in the rented building. Admittedly, the landlord has filed petitions for eviction of three tenants, it will come around more than 1300 sq.ft. That being the position, as the tenanted portions are lesser extent than the area where the respondent is carrying on his business, it cannot be said that the landlord lacks bonafide. It is the choice of the landlord to locate his business. It is not for the tenant to say that the petition premises is neither suitable nor enough for the business conducted by the landlord. Merely because of subsequent events, due to prolonged litigation, the tenant cannot take the advantage of the same. As discussed above, the crucial date for asserting bonafide of the landlord is the date of the petition filed before the Rent Controller. Hence, this Court does not find any infirmity in the Order of the Courts below and these revisions lacks merits and are liable to be dismissed.

33. According, these revisions are dismissed and the Order of the Courts below is confirmed. Consequently, M.P.No.1 of 2014 is dismissed and the connected miscellaneous petition in M.P.No.1 of 2013 is closed. No cost.

26.02.2019

vrc

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To

1. The Judge,
VII Court of Small Causes,
Chennai.
2. The Judge,
X Court of Small Causes,
Chennai.



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N.SATHISH KUMAR, J.

VRC



Order in

CRP.(NPD) Nos.204 & 205 of 2013

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