

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.245 OF 2013
WITH CA/17044/2022 IN CRA/245/2013

Hemantkumar Prabhudasji Vora,
Age 67 years, Occupation Business,
R/o. Latur.

...Applicants

VERSUS

1. Khimji Bhanji and Company,
Through its Partner,
Mr. Kantilal Premji Bheda,
Presently residing at -
23, Kanti Building, 2nd Floor,
Vaikuntha Bhai Mehta Road,
Opp. Sunrich Hospital, JVPD
Scheme, Vileparle (W),
Mumbai-400 056.
2. M/s Unilax Corporation
Erstwhile Partnership firm which
is now Closed w.e.f. 1-4-1993 but
represented Through its erstwhile
Partner Kantilal Premji Bheda,
Presently residing at -
23, Kanti Building, 2nd Floor,
Vaikuntha Bhai Mehta Road,
Opp. Sunrich Hospital, JVPD
Scheme, Vileparle (W),
Mumbai-400 056.
3. M/s Bheda Dal Mill
Erstwhile Partnership but now
Proprietary w.e.f.1.4.2002
Through Proprietor
Manilal Premji Bheda,
Age 61 years, Occu.Business,
R/o. Kanti Building, 2nd Floor,

B.M.Road next to Excel Petrol
Pump, JVPD Scheme, Parle
West, Mumbai -51.

...Respondents.

.....
Advocate for Applicant : Mr. S. P. Shah and Mr. S. V. Dixit
Advocate for Respondents : Mr. R. P. Adgaonkar
.....

CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving the Judgment :
07/08/2023**

**Date of Pronouncing the Judgment:
31/10/2023**

JUDGMENT :

1. By the present civil revision application, the applicant is challenging the order dated 18/04/2013, passed by the Appellate court i.e. Principal District Judge, Latur in Rent Appeal No.10 of 2006, whereby the Appellate Court was pleased to set aside the order of eviction dated 15/09/2006, passed by the Rent Controller, Latur in File No.1987/RCA/CR/6.

2. Brief facts leading to the filing of the application can be summarised as under : -

The suit premises bearing M.H.No.143/1 is situated in Ward No.14 on the main road of Latur in two parts, one eastern and another Western. The Eastern portion is admeasuring about 3100

sq.ft. The said premises are in some parts double storeyed. In the Southern portion of the said Eastern part there are residential amenities and the said portion is a residential area, whereas the Northern portion is a business premises. The applicant is owner and landlord of the entire Eastern portion. The opponents No.1 to 3 are a partnership concern and a separate entity. The entire Eastern portion premises were leased before 1975 to respondent No.1 for running their business, as traders in agricultural commodities. The residential portion was also occupied by the said firm.

3. The Agricultural Produce Market Committee (APMC) in Latur has subsequently developed a market yard about 600 meters away from the suit premises. The opponent No.1 was allotted a plot in the market yard and the opponent No.1 was carrying on its business in the market yard. The landlord initiated eviction proceedings against the tenant before the Rent Controller on four different grounds, as contemplated under Section 15 (2)(v) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 (hereinafter referred to as 'Rent Act').

4. The four grounds of eviction are as under : -

- (1) The tenant, without the consent in writing of the landlord, inducted two subtenant in the tenanted premises,
- (2) The tenant has secured alternate premises, for business, i.e. Plot in the APMC market yard
- (3) The landlord reasonably and bona fide requires the tenanted premises, for residence and business,
- (4) The landlord requires the tenanted premises for reconstruction.

5. The learned Advocate for the applicants contended that the tenant, without permission of the landlord in writing, inducted two subtenant in the tenanted premises. The part of the tenanted premises is in the occupation of two subtenants who had put up their sign board at the tenanted premises and, as such, he is entitled to the eviction of the tenant.

6. As regards the securing of the alternate premises, for business by the tenant, the landlord has contended that the tenant has been carrying on trading in agricultural produce. The APMC, Latur has developed the market yard, in the city of Latur, which is not far away from the tenanted premises. All the activities relating to the

business or trading in agricultural produce are being carried on in the market yard, Latur. The APMC, Latur allotted the premises in the market yard, Latur to the tenant for carrying on its business. As such the tenant has secured alternate premises, for business, and therefore, the landlord has right to evict the tenant.

7. As regards the reasonable and bona fide need of the tenanted premises, the landlord has contended that he has no residential premises of his own, that he with his family members, has been staying with his parents. It has become impossible to reside jointly with his father, mother and other family members. As such, he wants to construct a house on the southern side of the tenanted premises for his residence. He wants to start a business in the northern portion of the tenanted premises, which is the commercial premises, and thus, landlord contended that he needs the tenanted premises, reasonably and bona fide, for residence and business.

8. The landlord has contended that the tenanted premises was constructed about 65 years back and it is in dilapidated condition. As such, the tenanted premises requires immediate demolition and he cannot demolish and reconstruct the tenanted premises, without the

tenant vacating the tenanted premises. On the above grounds the landlord filed the proceedings before the Rent Controller, Latur for eviction of the tenant.

9. The respondents No.1 to 3 filed written statement and opposed the eviction proceeding. The respondent took a stand that the tenant has not inducted any subtenant. Only the sign boards of the defendants No.2 and 3 are put up at the tenanted premises for advertisement. The subtenants are not in possession of any portion of the tenanted premises. As such, the landlord is not entitled to evict the tenant.

10. The tenant admitted that in the market yard, one plot was allotted to it by APMC, Latur but most of the transactions take place in the tenanted premises and not in the premises allotted in the market yard, Latur. Further the office of the partnership firm is in the tenanted premises and from tenanted premises the business in different trading is being carried on. The purchase of the agricultural produce is being carried on in the market yard, and thus the tenant cannot be said to have acquired the alternate premises for business.

11. The tenant further contended that the tenanted premises is not in dilapidated or ruined condition, and therefore, it does not require reconstruction.

12. As regards the reasonable and bona fide need of the tenanted premises, the tenant has contended that the landlord resides with his father. The landlord only with a view to evict the tenant, has put forth the plea that it has become impossible for him to reside with his parents and other family members. As such, there is no reasonable and bona fide need of the tenanted premises by the landlord for the residence and business.

13. The Rent Controller, Latur on appreciation of the evidence of the landlord and the tenants came to the conclusion that the landlord has proved that he needs the tenanted premises, reasonably and bona fide, for residence and business, and that the tenanted premises requires reconstruction and the tenant has secured the alternate premises for business. The Rent Controller, Latur has further held that the landlord has proved that the tenant inducted subtenants in the tenanted premises and greater hardship

would be caused to the landlord if the order of eviction of the tenant is refused.

14. The order of Rent Controller was challenged before the Appellate court i.e. before the Principal District Judge, Latur under Section 25 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. The Appellate Court formulated following points for consideration :-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the landlord has proved that the tenant has secured a alternate premises for business in APMC, Latur ?	...No.
2.	Whether the landlord has proved that the tenanted premises requires the demolition and reconstruction, which cannot be carried out, without the tenant vacating the tenanted premises ?	...No.
3.	Whether the landlord has proved that he, reasonably and bona fide, requires the tenanted premises, for residence and business ?	...No.
4.	What order ?	...The appeal is allowed. The Judgment and order of the eviction of the tenant, is set aside.

15. The Appellate Court also observed that during the course of the arguments the landlord did not press the ground of subletting of

part of the tenanted premises by the tenant to the alleged subtenants, and as such, the appeal was confined to only three grounds of the eviction of the tenant.

16. The learned Advocate appearing for the applicant/petitioner landlord submits that he did not give up the ground of subletting and the Appellate Court has wrongly recorded the said fact and that there is no provision of filing of review petition and that this Court should consider this ground also in the present revision application.

17. With reference to the contention of the landlord that the tenant has secured alternate premises of APMC, Latur and thus became liable for eviction on the ground contemplated under Section 15 (2)(v) of the Rent Act, the landlord produced evidence that a plot has been allotted to the tenant in the market yard. As against this, the tenant stated that although one plot was allotted to him in APMC, Latur the tenant did not construct shop over the suit plot and the said plot is not in possession of the tenant and he has transferred the said plot to one Mr. Satishkumar Pandya on 04/02/1989 and the tenant does not possess premises in APMC, Latur. It was also observed that the tenant is in the business of

purchase of agricultural produce and to dispatch it to the outstation. The Appellate Court held that it is true that the tenant was allotted Plot No.43/A in the APMC, Latur for carrying the business activity and also it is not in dispute that the tenant carried business of purchase of the agricultural produce and to dispatch it to the customers or outstations, it appears that the tenant does not require the premises in APMC Latur, and as such, the plot allotted to the tenant was surrendered or transferred to another person.

18. The Appellate Court held that the tenant does not have office premises in APMC, Latur and all the transactions relating to the trading in agricultural produce, except the purchasing, are being conducted or take place in the tenanted premises. The plot which was allotted to the tenant, which was subsequently surrendered or transferred, cannot be said to be the alternate suitable premises, for the business. Since the said plot was of no use for conducting the trading in agricultural produce, except the purchasing, do not amount to acquisition of alternate premises, and therefore, tenant cannot be said to have acquired the suitable alternate premises in APMC, Latur for trading in agricultural produce.

19. As regards the dilapidated condition of the building, Section 15 (3)(a)(iv) of the Rent Act provides that, if the landlord desirous to carry out essential repairs or alteration to the house, which cannot be made without the tenant vacating the house, then the landlord is entitled to the eviction of the tenant. The third proviso to Section 15 (3)(a)(iv) of the Rent Act provides that where the landlord has obtained the possession of the house under sub-clause (iv), he shall on completion of the work of repairs, alteration, building or re-building, must give first preference to the tenant for occupying the house on same terms and conditions to be settled by the Rent Controller. In the instant case, there is no pleading and evidence of the landlord that on completion of the reconstruction of the building, he would provide the premises to the tenant on lease, on such terms and condition, to be settled by the learned Rent Controller. No ground for eviction is made by the landlord on that ground also.

20. As regards the ground that the landlord requires the tenanted premises reasonably and bona fide for residence and business. On scrutiny of the evidence of the landlord the appellate Court held that it is not in dispute that the landlord with his family members has been residing in Vora bungalow which was owned by his father. The

said bungalow is located on CTS NO.4705 on the main road Latur. The landlord has deposed that he has no residential premises of his own and his version in that regard is correct since no residential premises was allotted to him in partition between the family members.

21. It is not in dispute that the Vora bungalow in which the landlord has been staying was owned and possessed by the father of the landlord. The father of the landlord is no more. During the pendency of the appeal the father of the landlord has expired. The landlord has produced the copy of the declaration of the partition of the estate, possessed by the father of the landlord, which shows that he retained Vora bungalow and the agricultural land for himself. Further, the copy of the last Will executed by the father of the landlord is produced on record. As per the said Will, the father of the landlord bequeathed the residential house, known as 'Vora Bungalow' to his wife Sau. Ramgauri Prabhudasji Vora, and the mother of the landlord also expired during the pending of the appeal. Thus, the 'Vora Bungalow' has come in the occupation of the landlord. Thus, the Appellate Court considered whether need of the tenanted premises by the landlord, for residence and business

still survives. The Appellate Court thereafter held that the first of all, it has to be seen whether the landlord has established that he reasonably and bona fide needs the tenanted premises for residence and business. If the pleadings in regard to the reasonable and bona fide need of the tenanted premises are perused, then one would find that the landlord does not need the tenanted premises, bona fide. The landlord has pleaded that it has become impossible for him to be joint in mess and residence with his father. There is no averment that his relation with his father was strained and his father, who was the owner of the Vora bungalow, in which the landlord and his family members are staying, asked him to vacate it. Further the pleading as regards the requirement of the tenanted premises, for residence is vague and does not give any idea as to why it has become impossible for the landlord to be joint in mess and residence with his father.

22. The landlord has sisters it is not made clear in the pleadings whether the sisters of the landlord have been staying with the father. Thus the Appellate Court has held that the landlord has failed to prove prior to the filing of the application for eviction of the tenant he was required to quit Vora bungalow in which he has been

staying, and as such, he needs the tenanted premises. Thus, the Appellate Court held that the landlord has failed to prove that he reasonably and bona fide required the tenanted premises for residence.

23. The Appellate court also discussed the issue of requirement of the premises for business which held that the landlord was not sure which type of business he wants to start in the part of the tenanted premises.

24. The Appellate Court also held that in view of the subsequent events that the father and mother of the landlord have expired, the need of the tenanted premises by the landlord for his residence, is completely eclipsed by the subsequent events, and that the landlord has totally failed to prove that he reasonably and bona fide requires the premises for residential, and as such, allowed the appeal and dismissed the case of the landlord.

25. By the present civil revision application, the applicant has challenged the order passed by the Appellate court. It is contention of the applicant that findings of the Appellate court as regards the

bona fide requirement are completely perverse. The learned Advocate for the applicant also submits that the observations of the Appellate Court that the applicant has not pressed the ground of subletting is also erroneous as there is no reason or occasion for the appellant to give up the ground of subletting and he has succeeded before the Trial Court on the same ground. The learned Advocate also submits that the applicant had made out a case for demolition of the premises and construction of new one as the building is in dilapidated condition. The learned Counsel for the appellant submits that once an alternate premises is acquired by the tenant, the suitability of the alternate premises cannot be inquired into and the tenant becomes liable for eviction.

26. To support his case, the learned Advocate for the applicant has relied upon the Judgment passed in case of : -

- (1) Shankar Bhairoba Vadangekar since deceased through L.Rs. Dattatraya Shankar Vadangekar and others vs. Ganpati Appa Gatare since deceased through L.Rs. Smt. Sushilabai Ganpat Gatare and others, reported in 2001 (4) Mh.L.J. 131,**
- (2) D. Sasi Kumar vs. Soundararajan, reported in AIR 2019 Supreme Court 4525,**
- (3) Smt. Sulochanabai Kashinath Gujar vs. Smt.**

***Krishnabai Dhaniram Ugvekar and Ors., reported in 2001 (4) All MR 45,
(4) Gaya Prasad vs. Pradeep Shrivastava, reported in 2001 AIR SCW 598,***

27. Per contra, the learned Advocate appearing on behalf of the respondents submits that the appellant has not pressed the point of subletting and therefore the issue in that regard is not discussed and the appeal was confined to the rest of three grounds.

28. The learned Advocate for the respondents submits that the Appellate Court has correctly rendered findings of acquisition of alternate premises that the respondent/tenant has not acquired suitable alternate accommodation as he has not constructed any structure over the market yard.

29. the learned Advocate for the respondents submits that the plot is returned to the APMC, Latur and the same is transferred to another person. He further submits that the distance between the suit premises and the market yard is about 600 meters and that he is doing business in various activities apart from agriculture produce business and in the light of surrender of plot in market yard it

cannot be said that the respondent has secured alternate accommodation. This being a subsequent event, requires to be taken into consideration.

30. On the ground of demolition and reconstruction, the learned Advocate for the respondents submits that the tenant would have a preferential right after reconstruction but in the pleadings it is not mentioned and even during the course of the examination in chief applicant does not express his intention to give preference to respondent/tenant. Therefore, the Appellate Court has also rightly rejected the contention of the landlord as regards eviction on the ground of reconstruction. The learned Advocate for the respondent has submitted that the father and the mother of the applicant are dead, and as such, in the circumstance, the Vora bungalow is inherited by the applicant which is sufficient to satisfy the requirement of the applicant and his bona fide requirement is totally eclipsed.

31. As regards the business premises, the applicant was partner in Hemant Ice Factory, a business owned by applicant and his father. The applicant was looking after the business of ice factory and he

was having business at the relevant time of filing suit. Thus the contention of bona fide requirement of business premises does not sustain.

32. The learned Advocate for the respondents further submits that the bona fide need of the landlord is completely eclipsed by the subsequent events. The learned Advocate for the respondents submits that the parameters of the revisional jurisdiction is altogether different. He further submits that the jurisdiction of revision is much narrower than the exercise of jurisdiction under Article 227 of the Constitution of India.

33 The learned Advocate for the respondents also relied upon the Judgment in ***Hinduastan Petroleum Corporation Limited vs. Dilbahar Singh, reported in (2014) 9 Supreme Court Cases 78,*** wherein it is held that the findings of the facts of Appellate Court, the Revisional Court is not entitled to substitute his own conclusion. The learned Advocate for the respondents submits that the Appellate Court has rightly appreciated the evidence and recorded appropriate finding, and as such, present civil revision application be dismissed.

34. Heard the rival submissions. As regards the giving up of ground of sub-letting, in absence of the affidavit by the advocate for the petitioner as to what has transpired in the Court, it is not possible for me to hold that the ground of subletting was not given up. I have to take the statement in the Judgment as the correct representation of facts that have transpired in Court. As regards the ground of reconstruction, the petitioner has not submitted that he would be willing to give constructed portion to the tenant in preference. As such, the ground is not available to the landlord. To my mind, the most important grounds for eviction in the present case is a ground of bona fide requirement of the landlord and second the ground of acquisition of alternate accommodation by the tenant. I have to also examine whether the above grounds are made out and would entitle the landlord in the instant case to seek the decree of eviction, and if the answer to the above question is yes, whether this Court in exercise of its revisional jurisdiction would be justified in passing the order of eviction.

35. The questions thus that arises for consideration in this matter are as under : -

(1) Whether the landlord is entitled to seek eviction of his tenant under Section 15 (2) (v) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 as the tenant has secured an alternate house.

(2) Whether the landlord is entitled to seek eviction of his tenant under Section 15 (3) (a) (I) and (iii) of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, on the ground of bona fide need.

(3) In the event that the answer to the above questions are in affirmative, what is the scope of interference of this Court while exercising the revisional jurisdiction under Section 26 of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954.

36. As regards the first question of law, whether the landlord is entitled to seek eviction of the tenant under Section 15 (2) (v) of the Rent Act since the tenant has secured an alternate house, **Section 15 (2) (v)** reads as under : -

"Section 15 (2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied :-

"(v) that the tenant has secured alternative house or

ceased to occupy the house for a continuous period of four months without reasonable cause,”

The admitted fact in the instant case is that the tenant was allotted a plot by the APMC, Latur in the market yard, which is around 600 meters away from the existing office in 1980-1981. The said plot was transferred to a third person Mr. Satishkumar Pandya on 04/02/1989, by the tenant.

37. In case of ***Prabhakar Vs. Suresh, reported in 1985 (2) BomCR 293***, while interpreting the provisions of Section 15 (2) (v) of the Hyderabad Rent Act, this Court at paragraph No.6 has held as under :-

"6. The learned Counsel for the petitioner then contended before me that in view of the provisions of section 15(2)(v) of the Act, the alternative accommodation must be such which satisfy the requirements of the premises which are being used for the purpose for which the accommodation is required. The learned Counsel contended that the alternative house to be secured by the tenant must be a house which must be capable of being used for the business purpose. His main contention was that since he has acquired the premises for residential purpose, it is not

possible to convert the same into business premises. So, according to him, it cannot be said that it is an alternative accommodation within the meaning of section 15(2)(v) of the Act. The wording of section 15(2)(v) of the Act does not admit any such interpretation. If we look to the provisions of the Act the words used are "that the tenant has secured an alternative house". The definition of 'house' is given in section 2(h) of the Act which means any building or hut or part of a building or hut let or to be let separately for residential or non-residential purpose..... According to this definition, acquiring any alternative house would include even non-residential premises. It is not necessary that the alternative house should be secured for the same purpose for which the disputed premises are being sought by the landlord. The contention of the learned Counsel for the petitioner that the petitioner has secured residential premises and they cannot be compared with the disputed premises is, therefore, rejected."

38. This Court has held that the word 'acquired any house' would mean both residential and non-residential, and that the suitability of the alternate accommodation is not what is contemplated in Section 15 (2) (v) of the Act, and need not be exactly same as the one under occupation. In the instant case, the tenants are in business of

trading of agricultural products and APMC plot was also used for purchase of agricultural products. The exact comparative assessment is not the requirement and the alternate premises acquired need not be the same as the tenanted premises. Thus, the landlord is entitled to seek eviction of the tenant once the tenant acquires an alternate premises within the meaning of Section 15 (2) (v) of the Act. The fact that the landlord has transferred the same after initiations of the proceedings under the Tenancy Act and that the tenant is not holding the plots currently is of no consequence, since the tenant become liable for eviction on acquisition of alternate premises.

39. Coming to the next question of reasonable and bona fide requirement of the landlord. **Section 15 (3) (a) (i) and (iii)** of the Act provides for eviction on the ground of bona fide need of the landlord and is quoted below :-

"15 (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 house--

(i) in case it is residential house, if the landlord requires it for his own occupation and if he is not

occupying a residential house of his own in the city, town or village concerned;

(iii) in case it is any other non-residential house, if the landlord is not occupying for purpose of a business which he is carrying on, a non-residential house in the city, town or village concerned which is his own or to the possession of which he is entitled;"

The landlord has put up a case that he is residing with his parents, and in partition, the suit premises has been given to the share of the landlord. The landlord has further submitted that it has become difficult to live with his family members and that he needs the premises for residential and business for his own occupation and business. As regards the residential part is concerned, it is noticed that the at the appellate state, the father of the applicant has expired and the Will was produced on record that the 'Vora Bungalow' in which the applicant was residing with his parents was allotted to the mother of the landlord under the Will.

40. During the pendency of the appeal, the mother also expired. However, no further facts are brought on record as to the succession of the 'Vora' bungalow. There are no pleadings in that regard. Nevertheless the contention is raised that the need of the landlord is

extinguished on the demise of both father and mother and the property in which the landlord is presently residing i.e. 'Vora Bungalow' is now fully available for the use, of the landlord.

41. The Appellate Court while examining the evidence has taken into consideration the fact that the appellant was staying with his parents, and that it is not brought on record that the father has asked the landlord to search for an alternate accommodation and not to reside with him. The approach of the Appellate Court is completely erroneous. It is but natural that the need of the children to establish an independent house cannot be overlooked. It is not for the tenant or the Courts to direct the landlords/children to stay with their parents. It is not necessary that the child has to have a visible strained relations with his parents. The child may stay independently and he may also be supportive of the parents. It is not for the Court to direct that the children should stay in the house of their father when they have an available tenanted premises. The need of the landlord cannot be said to be lacking of bona fides. The entire approach of the Appellate Court in assessing the evidence of bona fide need, is erroneous, and consequent finding rendered thereon is perverse. It is not the case established that the landlord himself has

another premises, and thus, the finding rendered by the Appellate Court that the landlord can stay with the parents of the landlord in 'Vora Bungalow', and the need of the landlord is not bona fide is completely erroneous and perverse.

42. The Hon'ble Supreme Court in the case of ***D. Sasi Kumar Vs. Soundararajan, reported in AIR 2019 Supreme Court 4525***, relying upon the earlier Judgment of the Supreme Court in case of ***Gaya Prasad v. Pradeep Srivastava, (2001) 2 SCC 604***, has held at ***paragraph No.11*** as under :-

"11. Further the High Court has also erroneously arrived at the conclusion that the bona fide occupation as sought should be not only on the date of the petition but it should continue to be there on the date of final adjudication of rights. Firstly, there is no material on record to indicate that the need as pleaded at the time of filing the petition does not subsist at this point. Even otherwise such conclusion cannot be reached, when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process if the benefit is declined it would only encourage the tenants to protract the litigation so as to defeat the right. In the instant case it is noticed that the petition filed by the landlord is of the year 2004 which was disposed of by the Rent Controller only in the year 2011.

*The appeal was thereafter disposed of by the Appellate Authority in the year 2013. The High Court had itself taken time to dispose of the Revision Petition, only on 06.03.2017. The entire delay cannot be attributed to the landlord and deny the relief. If as on the date of filing the petition the requirement subsists and it is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. This Court in the case of *Gaya Prasad v. Pradeep Srivastava*, (2001) 2 SCC 604 : (AIR 2001 SC 803) has held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bona fide requirement of landlord is the date of application for eviction, which we hereby reiterate.”*

43. The Hon’ble Supreme Court in the case of ***D. Sasi Kumar (Supra)*** has held that, the crucial date for deciding the bona fide requirement of the landlord is the date of application for eviction, and thus, any subsequent events cannot be considered. In the case of ***P. V. Papanna v. K. Padmanabhaiah, reported in 1994 (2) SCC 316***, the Supreme Court has held that, bona fide need has to continue till the date when the High Court deals with the order of eviction in appeal or in revision. However, subsequent Judgments in ***Gaya Prasad v. Pradeep (Supra)*** and ***D Sasi Kumar v. Soundararajan (Supra)*** has taken the view that the need has to

be as on the date of filing of the application, and the subsequently the Supreme Court has taken into consideration in the case of **Gaya Prasad (Supra)** and **D. Sasi Kumar (Supra)** that the long pendency of the process there are bound to be changes in the bona fide need and that the subsequent events, if taken into consideration, would only benefit the person who merely keep on filing appeals.

44. The Hon'ble Supreme Court in the case of **Joginder Pal Versus Naval Kishore Behal, reported in AIR 2002 Supreme Court 2256**, also referred a Judgment in **Arjun Khiamal Makhijani Versus Jamnadas C. Tuliani and Ors. (1989) 4 SCC 612**), wherein it is held that the provisions of Rent Control Legislations are capable of being categorized into two : those beneficial to the tenants and also beneficial to the landlord, and that the legislative provision beneficial to the landlord should not be interpreted in such a manner so as to benefit the tenants. In the Judgment of **Joginder Pal (Supra)** the Hon'ble Supreme Court also dealt with the test of bona fide requirement and what constitutes for his own use. The Hon'ble Supreme Court has observed at **paragraphs No.5, 6, 31 and 32** as under :-

"5. In *Malpe Vishwanath Acharya and Ors. Vs. State of Maharashtra and Anr.* (1998) 2 SCC 1 this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society". While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenants is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation must have a holistic perception and not a short-sighted parochial approach. Power to legislate socially progressive legislations is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also result in constitutional invalidity."

"6. In *Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani and Ors.* (1989) 4 SCC 612, this Court dealing with Rent Control Legislation observed that provisions contained in such legislations are capable of being categorized into two : those beneficial to the tenants and those beneficial to the landlord. As to a legislative provision beneficial to landlord, an assertion that even with regard to such provision an effort should be made to interpret it in favour of the tenant, is a negation of the very principle of interpretation of a beneficial legislation."

"31. We have already noticed that the purpose of the Act is to

restrict increase of rent and the eviction of tenants in urban areas. Still the Legislature has taken care to provide grounds for eviction, one of them being the requirement of the landlord. We have to strike a balance between the need of protecting the tenants from unjustified evictions and the need for eviction when ground for eviction is one such as the requirement of the landlord. If we do not meaningfully construe the concept of requirement the provision may suffer from the risk of being branded as unreasonable, arbitrary or as placing uncalled for and unreasonable restrictions on the right of the owner to hold and use his property. We cannot place a construction on the expression 'for his own use' in such a way as to deny the landlord a right to evict his tenant when he needs the accommodation for his own son to settle himself well in his life. We have to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words which the Legislature has not itself chosen to define. The Indian society, its customs and requirements and the context where the provision is set in the legislation are the guides leading to acceptance of the meaning which we have chosen to assign to the words 'for his own use' in Section 13 (3)(a)(ii) of the Act."

"32. Our conclusions are crystalise as under:

- (i) the words 'for his own use' as occurring in Section 13 (3) (a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.*
- (ii) The expression __ landlord requires for 'his own use', is not confined in its meaning to actual physical user by the landlord*

personally. The requirement not only of the landlord himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as inter-relationship and inter-dependence __ economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim. (iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

45. From the discussion of the evidence above and the law on the subject, the finding rendered by the Appellate Court that there is no bona fide need, cannot be accepted as the same is based on a complete wrong application of principles of law governing the bona fide need of the landlord. The need of the landlord should be considered to be bona fide unless the same is an excuse to merely evict the tenant and subsequent events are not required to be taken into consideration. In any event, the subsequent event as to the demise of the mother and how the "Vora Bungalow" property is inherited is not brought on record. The applicant has five sisters and it is not brought on record whether the 'Vora Bungalow' is willed to any of the siblings or inherited by all. Thus, even otherwise it cannot be said that the need of the landlord is completely eclipsed.

46. It has come in evidence that the landlord along with his father as a partner were running an ice factory which was located adjoining to the 'Vora Bungalow'. However, it cannot be said that the landlord has ownership of the premises which was with the father of the landlord. It cannot be said that the applicant does not require his own premises, for running of his own business.

47. The Revisional Jurisdiction of this Court under **Section 26** of the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, is as under : -

"26. Revision :-

Notwithstanding anything contained in this Act or any other law for the time being in force, an application for revision shall lie to the High Court from any final order passed on appeal by an appellate authority on the following grounds :

- (a) that the original or appellate authority exercised a jurisdiction not vested in it by law, or*
- (b) that the original or appellate authority failed to exercise a jurisdiction so vested ; or*
- (c) in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity."*

48. Clause (c) of the Section 26 of the Act provides that the revisional jurisdiction can be exercised by the Revisional authority if the appellate authority has failed to follow the procedure in passing the order or acted illegally or with material irregularity. In the instant case, while appreciating the evidence on bona fide need of the landlord and acquiring alternate premises by the tenant the appellate Court erred in not applying the settled principles of law in

considering the bona fide need of the landlord and the provisions of law on the aspect of securing alternate accommodation and has thus rendered a perverse finding of bona fide need, and also erred on the aspect of securing alternate accommodation.

49. Thus, this petition is allowed and the direction of eviction is passed against the tenant/respondent on the ground of bona fide need and securing alternate accommodation by tenant.

50. The petition is allowed in above terms. Pending application stands disposed of.

(ARUN R. PEDNEKER, J.)

51. After pronouncement of the Judgment, the learned Advocate for the applicant prays for stay to the operation of this order, for a period of ten weeks.

52. Stay to the operation of this order is granted for a period of ten weeks from today.

(ARUN R. PEDNEKER, J.)

vj gawade/-.