

(2013) 10 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 454 of 2008

Anand S. Lad

APPELLANT

Vs

Ms. Amira Abdul Razak and Others

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 1 ABR 190 : (2014) 2 ALLMR 139 : (2014) 3 MhLj 218

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : S.G. Desai and S.D. Padiyar, for the Appellant; J.E. Coelho Pereira and S. Karpe, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—Heard Mr. S.G. Desai, learned Senior Counsel appearing for the petitioner and Mr. J.E. Coelho Pereira, learned Senior Counsel appearing for the respondents. The above Writ Petition inter alia challenges the judgment dated 27.06.2007 passed by the learned Administrative Tribunal dismissing the Eviction Appeal No. 17/05 filed by the petitioner/tenants against the judgment and order dated 20.05.2005 passed by the Rent Controller at Panaji, in case No. ADDL/RENT/4/94 filed by the respondents for the eviction of the petitioner's mother/original tenant.

2. Briefly, the facts of the case as stated by the petitioner are that by a lease agreement executed in September, 1967, the grandfather of the respondents leased the suit premises to the petitioner's father for residential purpose. By virtue of a family settlement entered into on 24.01.1989, the respondents became the owners of the property in which the suit premises are located on the first floor of one of the residential houses out of the other residential houses located in the property. The property came to be partitioned in the Inventory Proceedings No. 80/89 and inter alia the suit premises were allotted to the respondents. On 23.09.1993 the respondents issued a legal notice to the petitioner's mother to vacate the suit premises on the ground that it was

required by the respondents for their personal occupation. By a reply dated 25.10.1993, the said mother of the petitioner inter alia expressed her inability to reply to the legal notice in the absence of the description of the property which was allotted to the respondents. On 27.10.1993 the respondents supplied the description of the property allotted to them to the mother of the petitioner. By subsequent reply dated 22.11.1993, the mother of the petitioner challenged the bona fide of the respondents in seeking her eviction and inter alia contended that there are four vacant residential premises which they could occupy and an eviction application was filed by the respondents on 31.03.1994 against the petitioner's mother which was registered as Rent Case No. 4/1994. Thereafter, an amendment was carried out by the respondents inter alia claiming that their need as stated in the eviction application does not subsist and raising a new ground of requirement of personal occupation only in relation to respondent No. 1 stating that she has completed her LL.B. in April, 1995 and has obtained a sanad and is working in the Chamber of an Advocate at Panaji and needs the suit premises for her own occupation. The application for amendment was opposed but however allowed by order dated 08.01.1997. An Additional Written Statement was filed thereafter to the amended application by the petitioner's mother. Thereafter, after recording of evidence of both the parties, the learned Rent Controller by judgment dated 20.05.2005 allowed the eviction application and inter alia directed the petitioner to be evicted from the disputed premises. An appeal was preferred before the Administrative Tribunal by the petitioner herein which also came to be dismissed by judgment and order dated 27.06.2007. Being aggrieved by the said judgments of the authorities below, the petitioner has preferred the above Writ Petition.

3. Mr. S.G. Desai, learned Senior Counsel appearing for the petitioner has assailed the impugned judgments on three main different propositions. The contention of the learned Senior Counsel is that the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (hereinafter referred to as "the said Rent Control Act") does not permit the authorities to allow an amendment of the eviction proceedings. The learned Senior Counsel as such submits that the Rent Controller was not justified to allow the amendment preferred by the respondents and in case the said order is set aside nothing survive in the eviction proceedings as the respondents themselves have admitted that the original claim for eviction no longer survive. The learned Senior Counsel further points out that by averments in the amendment filed by the respondent No. 1, the original cause of action no longer survive as it had completely disappeared on completion of the studies by the respondents and as such, the original application ought to have been dismissed by the Rent Controller. The learned Senior Counsel further points out that the amendment sought by the respondents suggest that a fresh cause of action arose to the respondents on 08.08.1995 which cannot be the subject-matter of the original proceedings as the ground mentioned in the original eviction application has itself got extinguished. In support of his submissions, the learned Senior counsel has

relied upon the judgment of the Apex Court reported in Vinod Kumar Arora Vs. Surjit Kaur, to advance his contention that it is not open to the party to give up the original claim and set out a new case.

4. Next contention of Mr. Desai, learned Senior Counsel appearing for the petitioner is that it was incumbent upon the respondents to describe all the four houses/buildings which are located in the same property and allotted to the respondents in the Inventory Proceedings and to plead that the other houses were vacant or not at the relevant time. Mr. Desai, learned Senior Counsel has taken me through the material on record and pointed out that the respondents have not done such exercise and as such, the question of claiming the disputed premises for bona fide occupation does not arise at all. The learned Senior Counsel has relied upon the judgment of the learned Division Bench of this Court reported in 2000 (1) GLT 154 in the case of Dr. Mulla Khemani v. Avelino Gregorio D'Souza wherein it has been held that the pleadings of the application for eviction on the ground contemplated u/s 23(1)(a) of the said Rent Control Act should disclose the facts which show the requirement of the premises as well as the bona fide need of occupation. The learned Senior Counsel further points out that initial burden to prove the need of the premises is upon the landlord and as the respondents have failed to discharge such burden the authorities below are not justified to direct the petitioners to vacate the premises. The learned Senior Counsel further points out that the respondents have absolutely failed to show that the other buildings in the same property except the building required for personal occupation are not available for the occupation of the respondents. The learned Senior Counsel has further submitted that the cause of action is essentially a bundle of facts on which the respondents have put up their claim to seek the eviction of the petitioner on the ground of personal occupation which facts have not been established by the respondents. The learned Senior Counsel has thereafter taken me through the judgment of the learned Rent Controller and pointed out that the Rent Controller could not have proceeded with the main eviction application without considering the amendment application filed by the petitioner. The learned Senior Counsel further submits that there is no material on record to show that M/s. Jaffar and Sons are running a lodge in four tenements under Chalta Nos. 139, 140, 141 and 142 and that the lodge is being run in Chalta No. 131. The learned Senior Counsel further points out that the claim that there is a lodge in the said premises is a fraud put up by the respondents. The learned Senior Counsel further points out that the authorities below have failed to appreciate the material on record in a proper perspective and erroneously disbelieved some of the witnesses of the petitioner on untenable consideration. The learned Senior Counsel has particularly taken me through the evidence of Advocate Nigalye and pointed out that on the basis of such evidence adduced by the petitioner the claim of the respondents is totally misplaced. The learned Senior Counsel further submits that the learned Administrative Tribunal has misconstrued the evidence on record while re-appreciating the material on record and as such, the impugned judgment deserves to be quashed and set

aside. The learned Senior Counsel has thereafter taken me through the findings of the learned Tribunal and pointed out that such findings stand vitiated as they are based on misreading of the evidence on record. The learned Senior Counsel further points out that the judgment of this Court dated 16/17 April, 1984 in the case of *Mattu Subha Rao v. A.H. Jaffar and Sons* has been misconstrued by the learned Tribunal. In support of his submissions the learned Senior Counsel has relied upon the judgment reported in *Shri Camilo Cardozo Vs. Remedio D'souza (Since Deceased) Through His Legal Heirs and Others*, , *Panduronga Timblo Industries Vs. Cosme Matias Menezes Ltd.*, , *Vinod Kumar Arora Vs. Surjit Kaur*, , 2000 (1) GLT 154 in the case of *Dr. Mulla Khemani v. Avelino D'Souza*, *Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others*, , *State of Rajasthan Vs. Smt. Kalki and Another*, , *Keshoram Bora Vs. State of Assam*, , *Ashok Kumar Pandey Vs. State of Delhi*, , *Mst. Dalbir Kaur and Others Vs. State of Punjab*, , *Amar Singh Vs. State of Haryana*, , and *Ugar Ahir and Others Vs. The State of Bihar*, . The learned Senior Counsel as such submits that the impugned judgments passed by the authorities below deserve to be quashed and set aside.

5. On the other hand, Mr. J.E. Coelho Pereira, learned Senior Counsel appearing for the respondents has supported the impugned judgments. The learned Senior Counsel has pointed out that all the authorities relied upon by the learned Senior Counsel appearing for the petitioner are not applicable to the facts and circumstances of the present case. The learned Senior Counsel has pointed out that both the Courts below have concurrently come to the conclusion that the respondents have established on the basis of the evidence on record that they are entitled to evict the petitioner on the ground of bona fide occupation. The learned Senior Counsel further pointed out that these concurrent findings of fact cannot be re-appreciated by this Court in the Writ Petition. The learned Senior Counsel has taken me through the impugned judgments passed by the authorities below and pointed out that every piece of material which has been relied upon by both the parties has been minutely considered by the authorities below and such findings cannot be said to be perverse. The learned Senior Counsel further pointed out that in view of the judgment passed in the reference by the learned single Judge the question of now contending that the Rent Controller has no powers to grant an amendment of the eviction application cannot be accepted. The learned Senior Counsel further pointed out that the reference has been answered by the Division Bench of this Court to the effect that the Rent Controller has also powers to allow the amendment of the original eviction application. The learned Senior Counsel further submitted that with regard to the judgment of the Division Bench of this Court relied upon by the learned Senior Counsel appearing for the petitioner that the said judgment is not applicable to the facts of the present case. The learned Senior Counsel has taken me through the facts therein and pointed out that it was an admitted fact that the landlord therein had obtained possession of another rented premises prior to the filing of the eviction proceedings. The learned Senior Counsel further pointed

out that in this context the Division Bench of this Court has found that suitability of the said premises available to the landlord ought to have been pleaded by them while filing the application for bona fide occupation. The learned Senior Counsel has pointed out that in the present case, the alleged other buildings referred to by Mr. Desai, learned Senior Counsel appearing for the petitioner are occupied by M/s. Jaffar and Sons. The learned Senior Counsel as such submits that there is nothing produced by the petitioner to suggest that any other premises were in exclusive possession and occupation of the respondents at the time of the filing of the eviction proceedings. The learned Senior Counsel further pointed out that it is well settled that the tenant cannot dictate terms to the landlord as to where he has to reside and in what type of premises. As such, according to the learned Senior Counsel, the petitioner is not entitled to dictate terms to the respondents who are admitted to be the landlords of the premises. The learned Senior Counsel has taken me through the judgments of the authorities below and pointed out that there is no reason for any interference in the impugned judgments. The learned Senior Counsel further submits that it is now well settled that the assessment of the bona fide occupation is on the date of the filing of the eviction proceedings and as such it cannot be said that as on that date the bona fide need of the respondents was not existing. The learned Senior Counsel further points out that merely because the proceedings have been delayed for such a long period does not in any way entitle the petitioner to debar the respondents from their own occupation of the suit premises. The learned Senior Counsel has taken me through the material on record and pointed out that there is no case made out by the petitioner for any interference in the impugned judgments and as such, the petition deserves to be rejected.

6. Upon hearing the learned Senior Counsel for the parties and on going through the records, as far as the contention of Mr. Desai, learned Senior Counsel appearing for the petitioner that the Rent Controller has no powers to allow the amendment of the eviction application, such aspect is no longer res integra as the Division Bench of this Court referred to herein below has answered the reference of the learned single Judge of this Court and held that the Rent Controller has powers to allow the amendment of the original eviction application. Hence, the contention of Mr. Desai, learned Senior Counsel appearing for the petitioner cannot be accepted. The contention of Mr. Desai, with regard to the fact that the cause of action does not survive will be dealt with while considering the claim of the respondent No. 1 that she requires the rented premises for her bona fide occupation.

7. Before proceeding to deal with the rival contentions with regard to the findings of the authorities below, in connection with the claim of the respondents that respondent No. 1 requires the rented premises for her bona fide occupation, it would be appropriate to refer to some of the observations of the Apex Court with regard to the interference by this Court in a Writ Petition on such findings. The Apex Court in the judgment reported in Ms. Celina Coelho Pereira and Others Vs. Ulhas Mahabaleshwar Kholkar and Others, , wherein it is observed at Paras 30,

31 and 32 thus:

30. In AIR 1975 1297 (SC) this Court held: (SCC p. 865, para 7)

7. ...The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts.

31. In *State v. Navjot Sandhu* this Court explained the power of the High Court under Article, 227 thus: (SCC pp. 656-57, para 28)

28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

32. The aforesaid two decisions and few other decisions, namely, *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, , *State of Maharashtra Vs. Milind and Others*, and *Ranjeet Singh Vs. Ravi Prakash*, came to be considered by this Court in *Shamshad Ahmad and Others Vs. Tilak Raj Bajaj (Deceased)* through LRs. and Others, and this Court held: (*Tilak Raj* case SCC pp. 10-11, para 38)

38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a Court of appeal or a Court of error. It can neither review nor re-appreciate, nor reweigh the evidence upon which determination of a subordinate Court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior Court or tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Courts and inferior tribunals within the limits of law.

8. In the light of the aforesaid legal position, I will proceed to examine the findings of the authorities below and ascertain whether any interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is necessary. On perusal of the records, the respondents had filed an eviction proceeding against the petitioner u/s 23(1)(a)(i) of the said Rent Control Act, 1968 stating inter alia that their grandfather had given on lease to the father of the petitioner a house bearing No. 9/177/4 located on the first floor to occupy as a tenant for residential purpose. The respondents have further stated that they are residing at Margao and have no other house of their own in or around Panaji city. It is further their case that they are pursuing their studies in Panaji and that the respondent No. 1 is studying at the Institute of Hotel Management and is also pursuing her three years degree of law course. They have further stated that in the course of time, there are changes about the needs of the respondents and that the respondents are no longer students and as such, their need as students in the eviction application does not subsists but as far as the respondent No. 1 is concerned, she has completed her course of LL.B. in April, 1995 and has obtained a sanad and is working in the Chamber of an Advocate at Panaji. They have further stated that they need the suit premises for bona fide personal occupation of the respondent No. 1 for the purpose of residence as well as for her office. They have further stated that they have no other house in or around Panaji city to avoid daily inconvenience of travelling. On such grounds the eviction application was filed by the respondents. The petitioner has filed his written statement disputing the said contention of the respondents. It is further his case that the application is not maintainable and is premature. The petitioner has further stated that the respondents have residential premises suitable for their residential accommodation which are lying vacant and neither the respondents nor their family members have let out such premises. The petitioner has further stated that the respondents intend to rebuild the building wherein the disputed premises are located. The petitioner has further stated that comparative hardship are more to the petitioner than to the respondents. The petitioner has also denied for want of knowledge that the respondents are pursuing their studies and that they are compelled to travel by bus from Margao.

9. With regard to the contentions introduced by the respondents pursuant to the amendment the petitioner has inter alia stated that he does not admit that the respondent No. 1 had completed her law degree course. He has also not admitted that she has started her practice in the High Court at Panaji. It is further stated that the respondents own four spacious premises constructed on the land bearing Chalta Nos. 125 to 130 and 131A, 132 to 142 of PT Sheet No. 66 situated at Panaji city and that each of those premises are suitable for her occupation.

10. The learned Rent Controller after recording of evidence and appreciating the material on record has examined the matter minutely and considered the evidence of each of the witnesses examined by both the parties and found that the respondent No. 1 is the only applicant whose interest survives and that it is

established that the respondent No. 1 who is residing in Margao is in need of the premises in Panaji city for her residence and for her office as she is an Advocate. The Rent Controller has further found that though it is established that the respondents own other premises in Panaji city, the same are occupied by different tenants for residential purpose and also for commercial purpose but however, the suit premises is one having a larger area compared to the other premises and is most suitably located for the residence-cum private office of the respondent No. 1. The learned Rent Controller has also noted that the evidence on record discloses that the disputed premises have maximum area of 110 metres as compared to the other premises occupied by other tenants. The Rent Controller as such directed the petitioner to hand over the possession of the disputed premises located on the first floor of "Yasmin Manzil" situated in the property surveyed under Nos. 125 to 130, 131, 131A, 132 to 142 of PT Sheet No. 66 of Panaji city.

11. While disposing of the appeal preferred by the petitioner, the learned Administrative Tribunal by judgment dated 27.06.2007 has re-appreciated the evidence on record and has noted that RW 1 though has stated that there are four vacant premises has not specified which are the said premises. The learned Tribunal also noted that while giving details the premises were referred to the lodging house "Hospedaria Republica". The learned Tribunal has further noted that the vacancy in the lodging house which is not a residential premises is totally irrelevant as the eviction is sought for residential premises. The learned Tribunal further noted that in view of the facts and circumstances which occurred during the pendency of the proceedings the respondents were no longer students and consequently restricted their need to occupy the said disputed premises only for the residence of the respondent No. 1. The learned Tribunal has rejected the contention of the petitioner that the need did not survive on the basis of the original cause of action. The learned Tribunal has also noted that the premises under Chalta Nos. 128 and 129 of house No. 179 are subject-matter of the eviction proceedings against the tenants Shetye who was a witness of the petitioner and the remaining premises in Chalta Nos. 126 to 130 of house No. 179 are occupied by another tenants on the first floor. The learned Tribunal as such noted that there are no vacant premises which the respondents could occupy and the respondents are not occupying any residential building of their own in Panaji city and therefore, the learned Tribunal held that the provisions of Section 23(1)(a)(i) have been satisfied. The learned Tribunal also noted that as such the question of proceeding to ascertain comparative hardship could not arise in terms of Section 23(3) read with Section 25 of the said Rent Act. The learned Tribunal has further noted that the respondents do not occupy any residential premises in Panaji city. The learned Tribunal has also considered the judgment of the Division Bench of this Court reported in 2000 (1) G.L.T. 154 in the case of Dr. Mulla Khemani v. Avelino Gregorio D'Souza and found that the respondents have no vacant premises on the first floor of the building although the petitioner had made a general statement that there are four spacious

premises which he has failed to prove that any of the said premises are residential and are vacant. The learned Tribunal has also noted that the attempt made by the petitioner to show that guest house is vacant has no legal consequence since such premises are used for commercial purpose. The learned Tribunal has also noted that the petitioner has failed to establish that there were vacant premises which the respondents could occupy for residential purpose. The learned Tribunal also rejected the contention of the petitioner that there was no finding that the respondents require the premises for bona fide occupation and for other reasons stated in the said judgment the Tribunal found that there was no infirmity in the judgment of the Rent Controller and consequently dismissed the appeal.

12. On going through the findings of fact of the authorities below, it has been concurrently held that the respondent No. 1 was a student of law at the time of the filing of the eviction proceedings. It has also been concurrently held that the respondent No. 1 has no other residential premises in the city of Panaji which are vacant. The authorities below also found that the claim of the petitioner that there are vacant premises available to the respondent No. 1 have not been established by the petitioners. The authorities below have also noted that as the respondent No. 1 was a practicing Advocate in Panaji, the bona fide need has been established on the basis of the material on record. The learned Tribunal also noted that the premises which the petitioners claimed to be vacant are in occupation for a lodging house which is used for commercial purpose. The authorities below as such found that the provisions of Section 23(1)(a)(i) of the Rent Control Act of 1968 have been duly satisfied by the respondents which entitled them for the eviction of the petitioner.

13. In a judgment reported in Julieta Antonieta Tarcato Vs. Suleiman Ismail, , the Apex Court has observed at paras 11 and 12 thus:

11. Having noticed the evidence on record and the findings recorded by the Courts below we have come to the conclusion that this appeal must be allowed. The finding of bona fide personal need recorded by the appellate Court is a finding of fact based on the evidence on record. We have considered the evidence on record and we find that the finding recorded by the appellate Court did not deserve to be set aside. In fact, the High Court also was of the same view, but in the changed circumstances having regard to the events that took place during the pendency of the writ petition, the High Court interfered with the order of the appellate Court. We hold that the High Court was not justified in doing so.

.....

12. The High Court was in error in holding that since the appellant became a co-owner of the premises upon the death of her brother Lawrence, she had a right to reside in those premises and, therefore, her need for the premises owned by her exclusively did not subsist. The appellant has brought to our notice the fact

that in September 2003, the appellant and her sister gave their consent for the transfer of the flat in Ashoka Apartments in the name of Tito, their brother, who was a co-owner of the flat along with her late brother Lawrence. Even if we ignore this fact, one cannot compel the owner of the premises which exclusively belongs to her to share accommodation with a co-owner of hers in another premises. The appellant being the owner of the suit premises, her need being bona fide and reasonable, it would be unfair to compel her to share the accommodation in another premises with its co-owner. We must therefore hold that the High Court was in error in coming to the conclusion that the bona fide personal need of the appellant did not subsist.

14. In the present case, the main contention of the petitioner is that the respondents have vacant premises which are available to them for their residential purpose. Both the authorities below have concurrently found that the petitioner has failed to establish that any residential premises are vacant. Mr. Desai, learned Senior Counsel appearing for the petitioner was strongly relying upon the premises which have been given to run a lodge claiming that there was no lodge existing and as such, the respondents were free to occupy the said premises. The learned Senior Counsel even produced a sketch to show the location of the said lodge and the disputed premises. It cannot be disputed that the premises which are used for lodge are not meant for residential purpose. Such premises are given for commercial purpose. Section 23(1)(a)(i) requires that the landlord should not occupy a residential building of his own. Apart from that, the material on record suggest that the said other premises are being occupied by M/s. Jaffar & Sons and not by the respondents. The findings of the authorities below have established that there is nothing on record to suggest that the respondents had any vacant premises of a residential building at their disposal at the time of the filing of the eviction proceedings. In the light of the judgment of the Apex Court in Ms. Celina Coelho Pereira and Others Vs. Ulhas Mahabaleshwar Kholkar and Others, referred to hereinabove, these concurrent findings of fact cannot be re-appreciated by this Court in the present writ petition. The contention of Mr. Desai, learned Senior Counsel that such findings are by mis-reading the evidence by the authorities below cannot be accepted. There was nothing pointed out by the learned Senior Counsel that any material piece of evidence has not been considered by the authorities below while coming to such conclusion. The Tribunal has re-appreciated the evidence on record and has come to the conclusion that there is nothing on record to suggest that the respondent No. 1 had vacant residential premises available to her at her disposal at the time of the filing of the eviction proceedings. Another aspect to be noted is that the facts finding Court also found that the disputed premises were most suitable for the residence of the respondent No. 1 as opposed to the other premises which are being occupied by the other tenants. It is well settled that the landlord is the best judge of his residential requirement and as such, it is for him or her to decide how and in what manner she should live. If the landlord desires the beneficial enjoyment of her own premises when the other premises

are occupied, she cannot be subjected to an inconvenience as she has no other premises at her exclusive disposal. It is not the duty of the Court to dictate to her to continue occupy such other premises which cause her inconvenience. In the present case, the records reveal that it is the contention of the respondent No. 1 that grave inconvenience is caused to her as she has to travel from Margao from where she is presently coming to Panaji to pursue her legal profession. This will have to be accepted as the petitioner has not adduced any evidence to show that the respondents have other vacant residential premises.

15. The Apex Court in the judgment reported in Dinesh Kumar Vs. Yusuf Ali, has clearly held that the bona fide need of the land-lord is to be assessed as on the date of the filing of the eviction proceedings. In the present case, as on that date the respondents were students and were not occupying any premises in the city of Panaji and in fact were studying in Panaji or in the nearby places. Hence, in such circumstances, it cannot be said that the need of the respondent No. 1 has not been established or does not survive as the respondents are not students and have completed their studies.

16. In this context, the Apex Court in the judgment reported in Maganlal Godha Vs. Nanasaheb Gadewar, has observed at paras 20, 24, 25 and 26 thus:

20. During the pendency of the eviction proceedings, the Rent Controller vide order dated 8-7-1985 allowed the application of the appellant landlord for amendment of the pleadings. In Para 5(a) of the amended application, the appellant landlord stated that his son Pradeep Jain has since qualified M. Tech examination in Chemical Engineering and the applicant has also applied for licence to manufacture Oxalic acid in Bhandara District.

24. In Pratap Rai Tanwani and Another Vs. Uttam Chand and Another, it was held that the bona fide requirement of the landlord has to be seen on the date of the petition and the subsequent events intervening due to protracted litigation will not be relevant. It was held that the crucial date is the date of petition; therefore, the normal rule is that the rights and obligations of the parties are to be determined on the date of petition and that subsequent events can be taken into consideration for moulding the reliefs, provided such events had a material impact on those rights and obligations. It was further observed that it is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. Therefore, the Courts have to take a very pragmatic approach of the matter.

25. It is common experience in our country that especially landlord-tenant litigations prolong for a long time. It is true that neither can the person who has started the litigation sit idle nor can the development of the event be stopped by him. Therefore, the crucial event should be taken as on the date when the suit for eviction was filed, unless the subsequent events materially change the ground of relief.

26. In Gaya Prasad v. Pradeep Srivastava this Court held that the landlord should

not be penalised for the slowness of the legal system and the crucial date for deciding the facts of the requirement of the landlord is the date of his application for eviction. It is also observed that the process of litigation cannot be made the basis for denying the landlord relief unless the litigation at least reaches the final stages. However, it is further added that subsequent events may, in some situations, be considered to have overshadowed the genuineness of the landlords' needs but only if they are of such nature and dimension as to completely eclipse such need and make it lose the significance altogether.

Considering the ratio laid down by the Apex Court in the said judgment, as the amended plaint was allowed by the Rent Controller to specify the need of the respondent No. 1 on the basis of the subsequent events which the authorities below have concurrently found that such need has been established, I find that this Court in the present Writ Petition cannot re-appreciate the said material to draw any contrary conclusion. Nothing has been pointed out that such findings have been arrived at by misreading the evidence on record or by not considering any clinching evidence produced by the petitioner.

17. The main contention of Mr. Desai, learned Senior Counsel appearing for the petitioner is that the respondent No. 1 has not shown any bona fide need to seek eviction of the petitioners. It is sought to be contended that the alleged bona fide need of the respondent No. 1 is whimsical and not genuine. The authorities below have held otherwise and have come to the conclusion that the respondent No. 1 has established that she required the disputed premises for her own occupation. The Rent Control Legislature generally leaves in favour of the tenants but only in cases in which the eviction is sought of the tenant on account of bona fide requirement of the landlord for its own occupation when it treat the landlord with some sympathy as observed by the Apex Court in the judgment reported in *Siddalingamma and Another Vs. Mamtha Shenoy*, . In such circumstances, if one examines the findings of the authorities below on the given facts proved by the evidence on record the need to occupy the disputed premises by the respondent No. 1 can be said to be natural, real, sincere and honest. In such circumstances, the interference by this Court under Article 227 of the Constitution of India on the basis of evidence on record and the findings of the authorities below is not at all necessary. To ascertain whether the findings of the authorities below are in accordance with law, this Court can ascertain whether on the basis of the facts on record the conclusion arrived at by the authorities below are wholly unreasonable or are one which no responsible person acting with objectivity could have arrived at such conclusion on the basis of material on record. Only in cases in which the findings of the Courts below on the basis of established facts would betray lack of reason can such findings of the authorities below be held to be not in accordance with law. In the present case, even in the written statement filed by the petitioner there was no serious challenge to the averments of the respondents that they were students at the relevant time and that respondent No. 1 has completed her studies and is a practicing lawyer in Panaji city. The fact that she was not having any other premises vacant for her exclusive occupation

has also found favour by the authorities below. On such material on record, only reasonable conclusion which could be drawn is that the respondent No. 1 has established that her need to occupy the tenanted premises is bona fide and as such has satisfied the requirements of the provisions of Section 23(1)(a)(i) of the said Rent Control Act, 1968. The contention of Mr. Desai, learned Senior Counsel appearing for the petitioners that the authorities below have misconstrued the evidence on record and have drawn erroneous conclusion cannot be accepted. The conclusion drawn are reasonable and in accordance with law.

18. Dealing with the said judgments relied upon by Mr. Desai, learned Senior Counsel appearing for the petitioner namely in the case of Camilo Cardozo (supra) and Panduranga Timblo (2010 (5) AIR Bom R 520) (supra), the fact that the Rent Controller has got powers to allow the amendment of the application for eviction under the Rent Control Act is no longer res integra in view of the order of Division Bench of this Court passed in a reference made in Writ Petition No. 302 of 2010 dated 11.09.2012 wherein the Division Bench has observed at para 19 thus:

19. Having regard to the statutory schemes before us, we are of the view that the Rent Control Act which confers jurisdiction on the original authorities to decide the application for eviction made by the landlord, confers by implication the power of permitting the amendment of pleadings by the landlord as well as the tenant and that when such a power being implied, it is not possible for the original authority to decide the matter on the basis of law, truth and good conscience.

19. As such, the said judgments do not advance the contention of the petitioner that the Rent Controller has no powers to grant the amendment of the pleadings.

20. The contention of Mr. Desai, learned Senior Counsel appearing for the petitioner that the cause of action would change by allowing the said amendment also cannot be accepted as the ground for eviction that the respondents require the disputed premises for bona fide occupation remains the same though in view of passage of time the need has changed as referred to in the amended petition. The judgment of the learned Division Bench of this Court in the case of Dr. Mulla Khemani (supra) is not applicable to the facts of the present case as in the present case as pointed out herein above there are enough particulars to suggest the bona fide need of the respondents to occupy the disputed premises. Apart from that, both the authorities below have concurrently found that the remaining premises claimed by the petitioner to be available to the respondents are not residential premises and as such not referring to such premises in the application for eviction would not disentitle the respondents from seeking the relief. The authorities below have concurrently found that the petitioner was not in a position to show any availability of any residential premises to the respondents at the relevant time. The judgment of the Apex Court in the case of Vinod Kumar Arora Vs. Surjit Kaur, is not applicable to the facts of the present case. As already referred to hereinabove, the concurrent findings arrived at by the authorities

below are based on the evidence on record and not on conjectures. The judgments in the case of Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, , State of Rajasthan Vs. Smt. Kalki and Another, , Keshoram Bora Vs. State of Assam, , Ashok Kumar Pandey Vs. State of Delhi, , Mst. Dalbir Kaur and Others Vs. State of Punjab, , Amar Singh Vs. State on Haryana, , Ugar Ahir and Others Vs. The State of Bihar, are not applicable to the facts of the present case. The observations relied upon by the learned Senior Counsel are with regard to appreciating evidence of the witnesses in the context of the facts of the said cases. In the present case, the authorities below have appreciated the evidence on record in accordance with law. Most of the judgments relied upon by Mr. Desai, learned Senior Counsel appearing for the petitioner are in the context of appreciating the evidence in criminal cases.

21. For the aforesaid reasons, I find no merit in the above writ petition and as such, the writ petition stands rejected. Rule stands discharged.

22. After pronouncement of the judgment, Mr. K. Dessai, learned Counsel appearing for the petitioner seeks eight weeks time to vacate the disputed premises. Mr. Coelho Pereira, learned Senior Counsel appearing for the respondents submits that such time be given subject to undertaking. Hence, the petitioner is given eight weeks time to vacate the disputed premises subject to furnishing an usual undertaking to the satisfaction of the Registrar (Judicial) within one week.