

(2006) 01 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No's. 356, 547 and 582 of 2000

Ismailbhai Gulam Hussain

APPELLANT

Vs

Additional Collector and Others

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
Constitution of India, 1950 — Article 14, 19(1)
Evidence Act, 1872 — Section 116

Citation : (2006) 3 ALLMR 231 : (2006) 4 MhLj 695

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : B.N. Mohta and Sajjad Hussain, for the Appellant; G.B. Lohiya for Respondent Nos. 4 to 7(D), M.L. Somalwar for Respondent No. 3 and Assistant Govt. Pleader, for Respondent Nos. 1 and 2., for the Respondent

Judgement

B.P. Dharmadhikari, J.—These writ petitions are filed by landlord Ismailbhai challenging the reversing orders passed by Appellate Authority thereby refusing permission to him to terminate tenancy of respective tenants and rejecting his claim on account of bona fide need under Clause 13(3)(vi) of C. P. and Berar Rent Control Order, 1949; hereinafter referred to as Rent Control Order in two cases and under Clauses 13(3)(v) and (vi) thereof in one matter. The suit premises are situated at Akola and has got house number 75. It is a four storeyed building in which there are four blocks on ground floor facing main road and godowns behind these blocks. The last block situated on right-hand side corner of the building admeasuring 8 feet x 6 feet was in occupation of one Sultan Dastgir (as tenant) who vacated the same during pendency of proceedings. The remaining three blocks are having frontage of 14 feet each on main road while their depth is 17 feet i.e. each is having area of 238 square feet. The shop block on extreme left side is occupied by tenant Firozabad Bangles and a portion having further depth of 17 feet and length of about 48 feet spread behind all these four blocks is also used by said tenant as godown. Shop block

adjacent to Firozabad Bangles is occupied by tenant Bengal Crockery Mart while shop block between Bengal Crockery Mart and one which was with Sultan Dastgir is occupied by tenant Narendra Stores. A portion admeasuring 17 feet x 48 feet situated still behind the godown of Firozabad Bangles is used by landlord for godown and repacking of his business M/s Asghar and Co. The landlord claimed that he got the said four storeyed building in partition in 1979 and required ground floor portion in possession of tenants for various business concerns of his family. He also contended that one of the tenants has secured alternate accommodation. Three separate applications filed by him before Rent Controller, Akola were allowed by said Authority while the Appellate Authority has reversed it. In writ Petition number 356/2000 filed against tenant Bengal Crockery Mart, the order of Rent Controller is dated 30-5-1994 while the order of Appellate Authority i.e. respondent No 1 is dated 10-12-1998. In Writ Petition number 547/2000 filed against tenant Narendra Stores the order of Rent Controller is dated 27-9-1993 while the order of Appellate Authority is dated 27-10-1998. In Writ Petition 582/2000 filed against tenant Firozabad Bangles the order of Rent Controller is dated 23-9-1993 while the order of Appellate Authority is dated 27-10-1998. In fact this order of Appellate Authority is common order passed in 3 Appeals filed by tenants Narendra Stores, Firozabad Bangles and Sultan Dastgir respectively.

2. According to the respective tenants/respondents before this Court, the landlord has failed to prove his need and the alleged partition is a mala fide exercises undertaken only with a view to evict them. The landlord in all three writ petitions is same, need pleaded by him is almost identical, the defence of tenants is also identical and in fact impugned order in two writ petitions passed by Appellate Authority is common (in two appeals). Hence, as per request made by parties, all these three writ petitions are heard together.

3. In all three cases landlord sought permission under Clause (vii) on the ground that the premises could not be put to the use sought for without alterations and repairs. It is apparent that landlord wishes to effect these alterations and repairs to make the premises suitable and useful for business purposes of either himself or his family members. Thus, after securing eviction of tenants, alterations and repairs are desired by him. No alterations or repairs are proposed if he does not get permission to evict them. In short, it is not the case of applicant landlord that necessary repairs/alterations are to be carried out and hence, there is no question of seeking permission under Clause (vii) independent of permission under Clause (vi). In writ petition 356/2000 tenant concerned is Bengal Crockery Mart. Landlord sought permission under Clauses 13(3)(vi)(vii) of Rent Control Order. He contended that he got suit house in a registered partition in the 1979 and needed the tenanted premises for locating office of Company by name M/s Asghar and Co. He stated that he has married sons who stay with him as members of joint family and he along with them is doing business of selling wholesale spirit under the name and style M/s Asghar and Co. by forming partnership. He stated that godown of said company is situated in the back

portion of suit house while its office is located at Deepak Chowk, in the building of Jafarbai who wants his premises to be vacated by applicant and applicant also wants to shift office in his own building. By amendment he has mentioned that his brother Jafarbai got the office premises vacated and the office is shifted to rented premises. In defence, tenant contended that landlord had filed earlier one case against Bengal Crockery Mart and Kailash Chandra which came to be dismissed and said decision operated as bar to institution of fresh case. It was further contended that all the partners in the tenant firm were not joined as parties and therefore also proceedings were not tenable. Tenant pleaded that landlord has huge building at his disposal and how area in it was being utilised was not disclosed. It was further stated that even after alleged partition the rent was being accepted as before by five persons and therefore theory of partition was bogus and a nominal document was prepared to get rid of tenants. It was stated that the applicant/landlord could not have alone maintained the proceedings and his alleged business by name M/s Asghar and Co. was also denied. It was further contended that since 14-9-1990 his sons residing jointly with him had started business of wholesale fireworks under the name "J.A. and Company". It was stated that certified copies of municipal assessment revealed that applicant was possessing other houses at Akola.

The Rent Controller found that the tenant Bengal Crockery Mart had filed fair rent case only against applicant and they also admitted that the rent was being paid to applicant against receipt. It therefore held that there was Landlord-Tenant relationship between parties. It further found that the landlord by examining Shri Harun Habeeb Kediya, trustee and manager of Hasam Seth Trust proved that one shop block of trust was let out to applicant. From the excise record he found that office of M/s Asghar and Co. was at Deepak Chowk. He also found that upper floors of suit house were used for residential purpose. It further found that applicant/landlord is the best person to decide where office is to be located and need of the firm was need of landlord. It therefore granted permission under Clauses 13(3)(vi) and (vii) of Rent Control Order on 30-5-1994. In appeal filed by Bengal Crockery Mart, Appellate Authority found that landlord was to charge rent from M/s Asghar and Co. and therefore his intention was to lease out the premises on more rent. It further found that Jafarbai was member of joint family along with applicant and in partition applicant would have retained the portion in which his office at Deepak chowk was located. It found that partition deed was devised only to oust tenant. It further found that shop having roofing tiles admeasuring 298 sq ft was available with landlord and he could have converted that structure for use as office. The suit house was multi-storeyed and office could have been located even on first floor and there was ample space available. It therefore allowed the appeal.

4. In W.P. 547/2000, the landlord mentioned that business in name and style M/s Jafarbai Akbarali and Co. is carried on by his wife Smt. Fatmabi w/o-Ismaibhai with his two sons namely Saifuddin and Jamil. The said business is in the premises of his brother Jafarbai and said premises are insufficient. He further

stated that his wife and sons want to shift the business to their own premises and Jafarbai also needs vacant possession. It was further stated that tenant Narendra Stores secured alternative accommodation and does not need the suit block. The tenant opposed the application by pointing out that it had no notice of any partition. It further stated that the business of M/s Jafarbai Akbarali and Co. was carried by his wife and his two sons as partners. Tenant stated that business was done in the premises of Jafarbai. It was denied that premises were unsuitable for the business. Securing alternate accommodation was also denied. Tenant stated that business of M/s Jafarbai Akbarali and Co. was carried at new premises and accommodation in Hasamseth market and the need was not in existence. The other defences raised were identical as mentioned above in Writ Petition 356/2000. It was stated that applicant has constructed multi-storied house in other area by name Kalal Chawl and he has business at Niagaon and MIDC area at Akola. Rent Controller after appreciation of evidence recorded a finding that the firm M/s Jafarbai Akbarali and Co. was carrying on business in tenanted premises and ration card revealed that applicant and his sons were members of joint family. The tenant did not lead any evidence but examined one Abdul Hafiz to show that applicant let out other premises at Rs. 300/- per month to him. The Rent Controller found that these other premises are old and kutchha construction which was not convenient to the landlord. It found that the tenant has started other shop at Hasamseth Trust Market and by referring to municipal assessment list it found that Amrutbai Padia secured alternative accommodation by closing Narendra Stores and granted permission as prayed to the landlord. In Appeal of tenant, the Appellate Authority found that applicant is landlord and his business is in rented premises. It found that he has properties even in MIDC area and he inducted two tenants which revealed absence of bona fides. He occupied portion of ground floor and upper floors of suit house and explosives cannot be stored in suit building. It held that the partition deed revealed material contrary to the claim of witnesses in the matter. It is to be noted that this finding of Appellate Authority is common and also holds good as Appeal of third/remaining tenant M/s Firozabad Bangles is also decided by very same order. Appellate Authority therefore quashed and set aside the order of Rent Controller.

5. In Writ Petition 582/2000, the case of Applicant/landlord before Rent Controller was that he was doing business in the name and style of M/s Asian Explosives(resale wing) and his son Saifuddin, Smt. Suraiyabai w/o Jamil(his daughter in law) were partners with him in it. He further stated that the business was located in the premises of his brother Jafarbai and they wanted to shift it to their own property. This brother Jafarbai also wanted vacant possession of his own premises. Tenant Firozabad Bangles opposed the request who denied the partition deed and the partnership of applicant, his son and his daughter-in-law. Tenant pointed out that business of other concerns and sons was carried at Hasamseth market in newly acquired premises. He stated that there was no concept of partition in the family of applicant/landlord and application could not have been made by applicant for such need.

Rent Controller after appreciation of evidence recorded a finding that the firm M/s Asian Explosives(resale wing) was carrying on business in rented premises owned by Hasamseth trust and that applicant and his sons were living jointly. The applicant was found to be owner and landlord of premises in occupation of tenant. The tenant did not lead any evidence but examined one Abdul Hafiz to show that applicant let out other premises at Rs. 300/- per month to him. The Rent Controller found that these other premises are old and kutchha construction which was not convenient to the landlord. It therefore granted permission to the landlord.

As already stated above in paragraph 4, the findings reached by Appellate Authority are common as mentioned while discussing facts of Writ Petition 547/2000. The Appellate Authority has reversed the judgment of Rent Controller.

6. I have heard Adv. B. N. Mohta with Adv. Sajjad Hussain for petitioner landlord, Adv. B. G. Lohiya for tenants Bengal Crockery Mart in writ petitions 356/2000 and Adv. M. L. Somalwar for Narendra Stores (547/2000)and Firozabad Bangles(582/2000) respectively, and learned AGP for respondent Nos. 1 and 2 Authorities in all matters. Learned Advocates completed their respective oral arguments on 22nd December but as per leave sought they filed their respective written notes on 10th and 12 January, 2006.

Adv. Mohta after inviting attention of Court to pleadings of respective parties in Writ Petition 356/2000 stated that the Appellate Authority i.e. Respondent 1 has reversed the well reasoned order of Rent Controller i.e. Respondent 2 on totally irrelevant and also erroneous grounds. Change of partners in the family partnership firm is according to him internal matter of family and respondent No 1 could not have examined the same with prejudiced mind. He further argues that the inference that partition of August 1979 in which Applicant/Petitioner got the suit house was manipulated or that it was sham and bogus document as drawn by said respondent is equally misconceived and unsustainable. Even respondent No 3 tenant has got no locus to question it. He further states that alleged availability of ample space on upper floors of suit house was again not relevant to judge the need of petitioner inasmuch as petitioner wanted to use ground floor only for business and office of his and his family member's firms. The Appellate Authority could not have taken any exception to this desire of landlord and could not have dictated him in the matter of its user. He has relied upon the judgment of Hon''ble Apex Court in case between Lingala Kondala Rao Vs. Vootukuri Narayana Rao, to contend that tenant cannot question the motive behind execution of the document conferring title on landlord so long as the document has been executed and registered in accordance with law and transaction is otherwise legal. In the facts of case, he states that burden to show that need of present petitioner was not genuine was upon tenant and tenant has failed to discharge it. He draws support from judgment of this Court reported at 1987 Mh.LJ. 487 between Madhusudan Singh L Chouhan v. Bhaskar G. Deshpande. Judgment in Kammancheri Janki v. Karattu Govindan Nair reported

at 2003 AIHC 4139 of Kerala High Court has been relied upon to state that expression "Family" in such circumstances is to be given wider meaning and permission sought for by petitioner-landlord for need of business of his family members was very well covered in it and Appellate Authority ought to have maintained permission granted by Rent Controller to him on that ground. He relies upon the judgment of this Court in case of Sardar Amolak Singh v. Sewakram T. Lalwani reported at 7952 Mh.LJ. 174 to show that need for carrying on the partnership business in which landlord is vitally interested is regarded as his bona fide need. To show that neither respondent No. 1/2 nor tenant can dictate to landlord the mode and manner in which he should use his premises he relies upon the old judgment of this Court reported at 1971 Mh.LJ. (NOC) 16 between Parashram v. Manikchand and also the judgment of Hon"ble Apex Court reported at 1997 (1) Mh.LJ. 121 Meenal Eknath Kshirsagar v. Traders and Agencies. He also relies upon the judgment delivered by me in case between Dinesh Dande Vs. Somani Radio Corporation and Others, to state that normally first floor premises have not been held to be suitable for business and after the need of landlord is found to be genuine, the Courts leave the selection of premises to the domain of subjective choice of such landlord. In writ petition 547/2000, he states that the acquisition of alternate accommodation by tenant Narendra Stores was also established and Appellate Authority could not have interfered with that finding.

Adv. Somalwar and Adv. Lohiya both have supported the impugned order of Appellate Authority. Their contention is that if the applicant was vitally interested in building allotted to his brother Jafar because of his office or shop of his relatives therein, he could have very well obtained that building for himself in partition in August 1979 instead of suit building. According to them deliberately suit building is shown to have been taken by present petitioner only to enable him to maintain proceedings against tenants therein on the ground of bona fide need. Attention is invited to rent receipts on record to show that prior to August 1979 rent was being collected by 5 brothers and thereafter also rent is collected by 5 brothers. It is further stated that Abbas Ali, brother of landlord has not been given any share in alleged partition. One brother by name Hamjabhai is occupying 11 rooms on first floor of suit building since several years without any rent and in spite of alleged partition of 1979, he has not been asked either to vacate or to pay the rent. According to them there is no partition actually and only a farce has been staged with a view to evict tenants from suit building. According to them this aspect can be gone into by any Authority to find out genuineness of the need or to examine bona fides of landlord. It is further argued that the need of adult sons who are not dependent upon applicant/petitioner/ landlord cannot be treated as need of "family" of such landlord and he has not sought the premises for his personal need but the need pleaded is that of concern/firm of his relatives or of his own. According to them this is not need personal to landlord and as such his application before Rent Controller was liable to be dismissed. Attention is also invited to his cross-examination to demonstrate

that the petitioner/landlord is going to lease out the premises to such firms/ concerns and therefore intention is to secure more rent and need is not bona fide. It is further stated even in past cases were filed for eviction and withdrawn after rent was increased. It is stated that this design to increase rent has not been considered by Appellate Authority though the impugned order is in favour of tenants. It was further stated that the petitioner did not disclose all his houses in Akola and also did not prove need of any particular house only. It was argued that when other premises were available to landlord, he ought to have demonstrated that for certain special reasons he needed only tenanted premises. According to both learned Counsel, the need ought to have been pleaded with specific reference to such other house properties and ample space available on upper floors in suit building itself and it ought to have been demonstrated as to how and why present accommodation in occupation of landlord could not be used or was insufficient to meet that need. It is contended that there was no such pleading or evidence and the map produced with writ petitions was not produced before lower authorities. These are objective factors required to be disclosed to satisfy the Rent Control Authorities and to judge the genuineness of desire of landlord and there cannot be any subjective element in it. It is pointed out that the firm in which petitioner has become partner is doing business since 1956 and has been registered in 1958. The petitioner has become partner for the first time in 1983 after 10 partners retired on 8-11-1983. The firm had continued its business without any change in spite of alleged 30/8/1979 partition. After becoming partner, the present proceedings have been filed by landlord. In 1979 shop premises admeasuring 290 square feet on the main road were let out to Habib on monthly rent of Rs. 300/ for his trunk business and landlord would have used and occupied said premises as they are adjacent to suit building. It is stated that Jafarbhai and sons of landlord ought to have been examined to substantiate the contention and as that has not been done, adverse inference needs to be drawn. It is stated that one son of landlord is involved in TADA case and is not available for doing business. His other sons carry the business from godown only and do not require any separate accommodation. The story of the vacation of building of Jafar by landlord or occupation of Hasamseth Trust building by him is without any pleadings. It is stated that premises in Hasamseth Trust building are not taken on rent by petitioner but by his two sons. It is further stated that one table and chair of M/s Asghar and Co. is also accommodated in those premises. It is contended that photographs produced before lower authorities demonstrated that offices are located on first floor in that area. It is further stated that tenant Gulam Dastgir surrendered possession during pendency of proceedings to petitioner but petitioner has still not put those premises to use even for putting table and chair of M/s Asghar and Co. Tenant Rajabhau Mitkari is also stated to have vacated subsequently but his premises are also not put to any use. It is further argued that the Rent Control Order does not define "Family" and the requirement of Clause 13(3)(vi) is that of landlord himself and hence need of family stands excluded. It is also argued that provisions of Clause 21(2)(a) permit landlord to approach Appellate Authority in

review and as alternate remedy is available, writ petitions should not be entertained. It is further argued that Maharashtra Rent Control Act 1999 contains provision requiring the authorities to consider "comparative hardship" and as in present case, the lower authorities have not looked into said aspect at all; the petitioner is not entitled to permission. It is stated in the alternative that as several such vital aspects are not considered by Appellate Authority, even if this Court is inclined to allow the writ petitions, permission cannot be granted and matter needs to be sent back to Appellate Authority to reconsider those aspects. Adv. Lohiya argued that against his client similar proceedings were filed in 1984 but the same were dismissed as all partners were not joined as parties before Rent Controller and landlord did not challenge that dismissal and hence it operated as res-judicata in present matter. According to both the counsel there is no perversity or jurisdictional error in the findings recorded by Appellate Authority and therefore no case is made out for interference in writ jurisdiction and all writ petitions therefore need to be dismissed. Advocate Lohiya has relied upon proviso to Clause 13(3)(vi) and also upon the judgment of this Court reported at 1982 Mh.LJ. 84 between Sheshrao Raghoba Suryawanshi v. Sonchand Darda to contend that petitioner is not entitled to permission at all. It is contended that as petitioner is co-owner with Jafar, he has in occupation other house of his own and therefore he cannot maintain proceedings under Clause 13(3)(vi) of Rent Control Order. Ruling of Hon'ble Apex Court in Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs., is pointed out in this respect. Devi Dass Vs. Mohan Lal, is also cited by him to canvass that bogus character or sham nature of partition deed through which present petitioner derived exclusive title to suit building can be pleaded and established by the tenant. Judgment of Hon'ble Apex Court reported at Maqboolunnisa Vs. Mohd. Saleha Quaraishi, is also pressed into service to state that petitioner has not pleaded that he vacated the premises in the Jafar building and took premises on rent at Hasamseth market and hence evidence in this respect cannot be looked into. It is also contended that as Appellate Authority has not considered the entire evidence of record, matter needs to be remanded by to it for fresh hearing in the light of arguments advanced above and for that purpose support is drawn from 1977 Mh.LJ. 859 between Rukminibai Thakur v. Bhaiyaji Wankhede.

In reply arguments Adv. B.N. Mohta states that proviso to 13(3)(vi) of Rent Control Order is held to be unconstitutional in later rulings and reliance upon 1982 Mh.L.J. 84 between Sheshrao Raghoba Suryawanshi v. Sonchand Darda is misconceived. He points out 1983 Mh.L.J. 190 Vikram Madhoba Ghodkhande v. Medical Officer, Research cum Training Centre, Wardha and 7956 Mh.LJ 445 Sheshrao Raghoba Suryawanshi v. Sonchand Darda in support.

7. The dispute about Landlord-Tenant relationship raised seems to be rightly adjudicated upon by Rent Controller and also by Appellate Authority. Only one rent receipt has been pointed out by tenant Bengal Crockery Mart to show that even after 1979 partition the rent has been collected by five brothers. The said

rent receipt is for period 1-11-1980 to 28-2-1981 and is dated 6-2-1981. It mentions names of 5 brothers(printed at top) as persons executing it though it is signed/executed only by present petitioner. The next rent receipt produced is for period 1-6-1981 to 31-7-1981 and it is dated 25-6-1981. The receipt is identical in all respects but names of other 4 brothers i.e. Jafarbai Akbarali, Hamjabai Akbarali, Mohammadali Akbarali and Asgarah Akbarali printed at its top are scored off and name of only present petitioner i.e. Ismailbai Gulamhussain is retained on it. In none of the cases instituted against these tenants landlord sought permission on the ground that tenants were irregular in payment of rent or were habitual defaulters. No permission was therefore sought under Clause 13(3)(i)(ii) of Rent Control Order. It was also not the case of tenants that landlords were not issuing rent receipt regularly. Hence it can safely be presumed that all tenants have paid rent as per agreement with landlord. They have not made any grudge or protest against the other rent receipts. In such circumstances, production of only one rent receipt and only by one tenant does not cast any cloud on the partition and arguments of learned Counsel for tenants therefore need to be rejected. It is apparent that all other rent receipts either for period prior to November 1980 or after February 1981 are issued correctly without any error.

Partition is again disputed on the ground that one brother Abbas Ali Akbarali has not been given any share in it. The perusal of registered document of partition of 1979 is itself sufficient to negate this contention. Said brother expired on 27-5-1971 and his legal heirs had already separated on 13-1-1975 and these facts are mentioned in registered document. The argument therefore is misconceived and deserves to be rejected. Fact that Hamjabai is occupying 11 rooms of first floor in suit building is also pointed out to contend that partition is bogus and sham document. This fact by itself does not show that partition is bogus and has not been acted upon. Issue of locus of tenants in this respect is being considered latter on.

Bona fides of landlord are sought to be challenged on the ground that tenant Rajabhau Mitkari vacated subsequently but his premises or premises vacated by tenant Gulam Dastgir are not occupied by Petitioner and hence, there is no need at all. The premises from which tenant Gulam Dastgir vacated are comparatively small i.e. 8 feet x 6 feet. The location and area of shop vacated by Rajabhau Mitkari is not pointed out and also it is not clear whether he vacated from suit building or from some other building. These are the questions of fact and tenants ought to have put the questions to petitioner during his cross-examination. No inference can be permitted to be drawn merely from such facts without giving landlord opportunity in this respect. It is not in dispute that the business activity in building of Jafarbai is now shifted by landlord/his sons to rented premises procured by them at Hasamseth Trust Market. Adjacent structure of 290 square feet on the main road let out to Habib on monthly rent of Rs. 300/-for his trunk business is found to be Kutchha and unsuitable for landlord. It is also not in dispute that no activity of any of the firms in which petitioner landlord is

interested, is going on now in building of Jafarbai. It is also not proved by tenants that any activity of any of the firms stated to be going on earlier in Jafar building by petitioner landlord were not so going on or were going on in suit building itself or were being conducted in any other building belonging to Petitioner/Landlord. In this background, no inference as sought to be contended by respective counsel for tenants can be drawn. On the contrary, if any such facts existed respective tenant ought to have confronted Landlord with it. No adverse inference can be drawn against the petitioner for not examining Jafar or any of his sons. Judgment of Hon''ble Apex Court reported at Maqboolunnisa Vs. Mohd. Saleha Quaraishi, is also not applicable here because after vacating the premises in the Jafar building and taking premises on rent at Hasamseth market the petitioner amended his application before Rent Controller and brought these facts of record. The tenants have effectively cross-examined the landlord and his witnesses in this respect and have not pointed out any prejudice in the matter. In reported judgment, the landlady/Appellant before Hon''ble Apex Court moved authorities pointing out need of shop measuring 10" x 15" in possession of tenant for her son. During pendency of these proceedings identical adjacent block of same area was vacated by another tenant and for the first time during trial landlady stated that she desired to break the wall between two shops so as to make available one big shop to her son. The Hon''ble Apex Court has observed that such evidence could not have been allowed to be let in since it was beyond the pleadings. The facts of present case are entirely different. It is also contended that as Appellate Authority has not considered the entire evidence of record, matter be remanded to it for fresh hearing by relying upon 1977 Mh.L.J. 859 between Rukminibai Thakur v. Bhaiyaji Wankhede. However, this argument which is coming after about five years before this Court cannot be accepted. Even on merits, it cannot be said that Appellate Authority has not considered the arguments of the parties or has not recorded the findings upon it. The impugned judgments in appeal are well reasoned one and do not suffer from the vice as noted in reported judgment Rukminibai Thakur v. Bhaiyaji Wankhede (supra).

8. The next bone of contention is that the deed of partition is fabricated only with a view to enable present petitioner to move eviction proceedings against tenants in suit building. The previous history of the firm right from year 1956 is pressed into service to show this ulterior motive behind partition. Having paid rent to him, whether such a plea can be raised by tenants is the question which would be considered little latter. Contention is after execution of alleged partition, petitioner joined the firm as partner and thereafter immediately filed these proceedings on account of need of business of said firm. The registered document of partition is dated 30-8-1979 and petitioner has joined the firm in November 1983. If there was any such conspiracy, it. would definitely be prior to registering the document of partition. If landlord and his brothers had conspired and created a farce of partition, the landlord would have entered the firm immediately in 1979 and would not have waited for 4 years for that purpose or to institute present proceedings. The facts on record show that the said firm or

other concern in which present petitioner had interest because of his sons or daughter-in-law or wife are not functioning in Jafar building but have shifted to tenanted premises at Hasamseth Market. The document of partition is proved on record of Rent Controller. It is registered document executed on 30-8-1979 and registered with Sub-registrar, Akola. It is valued at Rs. 2,10,240/- only and stamp duty of Rs. 4210/- is paid on it. It gives the details of properties partitioned between 5 brothers. First four brothers are sons of Akbarali while the present petitioner is their cousin. This document mentions that Akbarali executed a unregistered Will on 3-3-1958 and there were 2 agreements between parties on 12-5-1964 in which equal share of present petitioner in the property was admitted. Akbarali died on 8-8-1965. Perusal of document reveals that properties are partitioned equally and shortfall in or excess coming to the share of any brother has been compensated for by making provision of cash reimbursement and distribution. Property received by Jafarbai in which the firms mentioned by petitioner had their establishment show that it is only 1021 square feet in area and its value with house upon it is Rs. 45500/- only. As against this, suit property is having area of 4229 square feet with 4 storeyed building on it and its value is stated to be Rs. 90,000/- only. Thus property with Jafarbai appears to be more valuable. Perusal of partition deed reveals that parties have with great difficulty amicably effected the partition by making provision for cash payments whenever necessary. Bare reading of document shows that it was difficult to divide immovable properties equally by metes and bounds and hence, the properties appear to have been divided looking to the needs of each claimant and also by compensating the others whose share had less value in market. It is difficult to doubt the motives of parties to such document or to attribute mala fides to them. The tenants have not brought any material on record to show that the properties have not been accordingly transferred and mutated. When large number of properties, house as well as field, situated at Akola and outside have been partitioned; various considerations were bound to come into play and why particular property was given to particular person or was not given to particular person cannot be relevant factors while considering challenge to it at the instance of tenants. In any case, ground of mala fides cannot be formulated and advanced on that account. Desire of Petitioner/landlord to have office of his firm or establishment of other firms of his sons or wife or daughter-in-law in his own building cannot be labelled as mala fide. The finding of Appellate Authority that landlord ought to have secured premises in which said firms were having office or establishment in partition and partition deed is a device to eject tenant is perverse and misconceived. Moment this finding is reached, it is apparent that the petitioner/landlord is not co-owner with his cousin Jafar of Jafar building and the judgment of Hon'ble Apex Court in *Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs.*, will not have any application. In this judgment the provision considered i.e. Section 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 reads : "in case it is any other non-residential building, if the landlord or (any member of his family) is not occupying for purposes of a business which he or (any member of his family) is

carrying on, a non-residential building in the city, town or village concerned which is his own". The last underlined words have been interpreted to mean that even if he happens to be a co-owner of such other non-residential building, he would not be entitled to seek eviction of tenant. By virtue of partition petitioner/landlord has ceased to be co-owner with Jafar and hence, this ruling is not relevant here.

Whether tenants can question the motives of joint owners and therefore the said partition deed is question which falls for consideration here. No doubt the ill motives attributed to petitioner/landlord are found to be absent actually but can tenants call upon the Rent Control Authorities to undertake such exercises? Hon''ble Apex Court has in Lingala Kondala Rao Vs. Vootukuri Narayana Rao, held that in eviction suit motive behind execution of document conferring title on landlord cannot be gone into. Relevant observations are contained in paragraph 11 and the same are :

11. It was submitted by the learned Counsel for the appellant that the respondent's requirement cannot be said to be bona fide. It was submitted that a Full Bench of Andhra Pradesh High Court rendered its decisions in Vidya Bai and Another Vs. Shankerlal and Another, on 24-9-1987 wherein the Court took the view that availability of non-residential building belonging to joint family was a relevant factor for denying recovery of possession by landlord u/s 10(3)(a)(iii) of the Act and shortly thereafter on 24-6-1988 the late father of the respondent executed and registered the deed of settlement conferring title on the respondent. In the year 1991, the father of the respondent died and then the present proceedings were initiated by the landlord. This shows that exclusive ownership over the suit premises vesting in the landlord-respondent is a manipulation pointing out to mala fides Suffice it to observe that it is, too far-fetched an inference to draw that the object behind execution of the registered deed of settlement was the eviction of the tenant-appellant, more so, when there is no material available on record to base such an inference. The execution and registration of the deed of settlement is not disputed. In an eviction suit between the landlord and the tenant the motive behind execution of the document conferring title on the landlord cannot be allowed to be gone into so long as the document has been executed and registered in accordance with law and the transaction is otherwise legal. It is pertinent to note that no member of the family adversely affected by the deed of settlement has chosen to lay any challenge to it. Incidentally, it may be...therefore, of doubtful authority.

Devi Dass Vs. Mohan Lal, is also cited by tenants to support their action of challenge the motives/ bona fides of joint owners in executed partition deed. The case before Hon''ble Apex Court was of sale deed executed by power of attorney holder in favour of his own son after he failed in his several attempts to evict tenants as such power of attorney holder. Hon''ble Apex Court observed :

2. ...The tenant's case, as set out in the judgment of the appellate authority, was as follows :

learned Counsel for the appellant while challenging the finding of the trial court under issue No. 1 has further contended that the sale deed Ex. A1 is a sham transaction and no right, title or interest passed to Mohan Lai under this document. In this context it has also been argued that the sale consideration was not received by Jagiri Lai and Vasudev and in fact Jugal Kishore, father of Mohan Lai executed the sale deed in the name of his son Mohan Lai, acting as Mukhtiar of Jagirilal and Vasudev and this was done in order to have a ground for ejectment created against Devi Dass, as earlier several applications filed by Jugal Kishore as Mukhtiar of the landlords, Jagirilal and Vasudev for ejectment of Devi Dass, the tenant from the premises in dispute, had failed.

3. The appellate authority rejected the tenant's case on the view that tenant could not challenge the validity of the sale deed executed in favour of Mohan Lai because the tenant was not a party to it. We do not think this was a correct view to take. An allegation had been made that in reality there was no sale and the sale deed was a paper transaction. The court had to record a finding on this point. The appellate authority however did not permit counsel for the tenant to refer to evidence adduced on this aspect of the matter. The High Court also did not advert to it. We, therefore, allow this appeal, set aside the decree for eviction and remit the case to the trial court to record a finding on the question whether the sale of the building to respondent Mohan Lai was a bona fide transaction upon the evidence on record. The trial court will allow the parties to adduce further evidence on the point if the court considers it necessary. We do not disturb the other findings recorded in the suit....

It is thus clear that sale deed in favour of Mohanlal was not executed by original owners but by their power of attorney holder who happened to be his father. It was stated that there was no sale and no consideration had passed. If original owners were not aware of such sale and they had not received sale consideration at all, the position would be entirely different. The authorised attorney i.e. father had earlier made unsuccessful attempts to get rid of tenants. Thus there was every possibility of original owners not being aware of such sale in favour of Mohan Lai. The Rent Control Authorities therefore could not have refused to look into this angle. The finding of Hon'ble Apex Court is thus in view of the peculiar facts of the case before it. As is apparent here no such peculiar facts exist and except for the alleged challenge by tenants, the document of partition is perfectly in accordance with law. There can be and there is no dispute about the partition deed between the parties thereto. No inherent error in document itself is being pointed out by tenants. Hence, *Devidas v. Mohanlal* (supra) has no application here. In this regard the decision of the Hon'ble Apex Court reported in *Sri Ram Pasricha Vs. Jagannath and Others*, can also be relied on where it has been observed that in view of the provisions of Section 116 of the Evidence Act after accepting the landlord and tendering rent to him in a suit for eviction the tenant is estopped from questioning the title of landlord. The respondents in respective writ petitions as tenants paid rent to present petitioner and accepted him as landlord. The landlord had establishment/office of concerned firms in the building

of his cousin Jafarbai and he has already vacated those premises and handed over possession to Jafarbai. The respective partners i.e. his two sons procured premises on rent in Hasamseth Trust Market and it is proved on record that the business is being done in tenanted premises. In such circumstances, the landlord can ask tenants to vacate for accommodating the firms in which he is vitally interested. The view taken by Appellate Authority therefore cannot be sustained and the findings of Rent Controller in all matters need to be restored.

9. The ample space found by Appellate Authority is in the suit building itself. Appellate Authority has not considered any other structure or building as suitable or available to landlord. According to it the adjacent building i.e. Kutchha structure can be suitably converted by landlord for his use. Thus, Appellate Authority has not found that landlord is owner of any other building/structure which he occupied to satisfy his need. Advocate Lohiya has relied upon proviso to Clause 13(3)(vi) which reads "provided he is not occupying any other house of his own in the city or town concerned" and also upon the judgment of this Court reported at 7952 Mh.L.J, 84 between Sheshrao Raghoba Suryawanshi v. Sonchand Darda. In said case, this proviso was found to be not applicable as it stood declared void earlier on account of fundamental right to property as contained then in Article 19(1)(f) of Constitution of India. This court found that after 44th amendment to Constitution, said proviso revived and would apply to cases after 20-6-1979 and not to pending matters. In 1983 Mh.L.J. 190 Vikram Madhoba Ghodkhande v. Medical Officer, Research cum Training Centre, Wardha the learned Single Judge of this Court found that above mentioned proviso any Clause 13(3)(vi) makes hostile discrimination between needy landlords and the proviso has been held to be ultra vires Article 14 of Constitution of India and it has been struck down 7956 Mh.L.J. 445 Sheshrao Raghoba Suryawanshi v. Sonchand Darda is in fact a judgment delivered by Division Bench in LPA from above mentioned 1982 judgment between same parties. The Division Bench while dismissing said LPA observed that the proviso is violative of Article 14 and has been held to be void. The judgment of learned Single Judge in case between Vikram Madhoba Ghodkhande v. Medical Officer (supra) has been approved in it. In this view of matter, the arguments of tenants by placing reliance upon 1982 ruling being erroneous are rejected. Even otherwise, in the facts of present case, as already observed above, Appellate Authority has not found that landlord is occupying any other house of his own for these purposes. He is occupying upper floors of suit house for residential purpose and part of ground floor for non-residential purpose. He is requiring the entire ground floor for business of three firms and these firms are presently doing their business in tenanted premises. Before that these firms were occupying the building belonging jointly to present landlord/petitioner with his cousins but after partition, petitioner/landlord ceased to have any share or interest in it. Thus it is not shown that petitioner is occupying any other building of his own for same purposes and hence, even otherwise said proviso would not have been applicable in this case.

10. The alleged ample space available to landlord has been pointed out as upper

floors of suit building. No other building similarly situated has been shown as available to him for said purpose. Adjacent building containing 290 square feet was let out for trunk business to other person and it is not comparable with accommodation in suit building. Even Appellate Authority has advised landlord to get it suitably altered for his needs. The landlord is not using upper floors for any non-residential activity. After vacating premises from building of Jafarbai the said firms have taken premises at Hasambhai market on rent. The Appellate Authority has not applied its mind correctly to the controversy. *Sardar Amolnk Singh v. Sewakram T. Lalwani* reported at 1982 Mh.LJ. 174 in paragraph 10 states that "Requirement of premises, either for residence or for business, is always a personal factor and landlord's statement in that behalf ordinary deserves great weight. In the present case, respondent Sewakram resides on the first floor and it has been found by the authorities below that his need for occupation of the shops on the ground floor is genuine inasmuch as he would be able to pay greater and closer attention to his business by having his shops on ground floor in the building where he resides." The High Court did not interfere in that matter also in view of the fact that it was a concurrent finding. In 1971 Mh.L.J. (NOC) 16 between *Parashram v. Manikchand*, the tenant had already surrendered the godown portion on rear road to landlord in a three storeyed structure. Thereafter landlord with extensive agricultural land required place to store and also wanted to start Adat business and therefore wanted ground floor portion in possession of tenant on main road. The premises in occupation of tenant on main road were found to be more suitable for the business of landlord than the portion on backside. Though the intention of landlord to start Adat business was denied in; his written statement, in evidence tenant said nothing about it. The Rent Control Authorities held that landlord honestly intended to start that business and therefore granted him permission. This Court held that landlord could not be directed to start his business in godown on rear road and no case was made out for interference in writ jurisdiction. The judgment of Hon'ble Apex Court reported at 7997 (1) Mh.LJ. 121 *Meenal Eknath Kshirsagar v. Traders and Agencies* in paragraph 12 onwards also are helpful in this respect. The question of availability of other premises to landlord is also examined in it and it has been held that landlord must have legal right to such accommodation. It was held that landlady was entitled to stay with her husband in premises of which her husband was tenant but as her husband parted with possession of those premises and same were occupied by her husband's brother, the premises were not available to her. Relevant discussion is as under :

12. In *Joint Women's Programme Vs. State of Rajasthan and Others*, , to which our attention has been drawn by the learned Counsel for the appellant this Court has pointed out the correct test which has to be applied in finding out whether the requirement of the landlord is bonafide or not. It has held that:

The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner he should live or to prescribe for him a residential

standard of their own.... There is no law which deprives the landlord of the beneficial enjoyment of his property.

13. It is further held therein that what is to be considered is not merely the availability of a alternative accommodation but also whether the landlord has a legal right to such accommodation.

14. The following decisions of the Bombay and Calcutta High Courts relied upon by the learned Counsel for the appellant are also helpful in deciding the question of bona fide requirement of the landlord. In *Dinshaw Billimoria v. Rustomji Master* 23 Bom.LR 850 AIR 1921 Bom 34 the Bombay High Court has held that :

Ordinarily speaking, an owner of premises, if he says he wishes to use them for his own purposes, is entitled to do so. What the Rent Act endeavors to provide for is the case of a landlord who evicts the existing tenants in order that he may let them to another tenant at a higher rent, or extract a higher rent from the tenant on a threat of eviction. It seems to me that the question in that case whether the plaintiff was reasonably dissatisfied with the premises which he rented in Girgaum is irrelevant, because in any event the plaintiff was entitled to live in his own premises. He was not bound to continue to rented premises with all the uncertainties of that tenure.

16. The High Court has also observed therein that while considering the question of bona fide requirement the nature and character of the landlord's temporary accommodation at the time when he is asking for a decree for possession, the insecurity or otherwise of the tenure that he might be holding at the time, the fact that he himself is under a notice to quit, the scope, size and character of his requirement are all relevant factors that the Court has to consider.

17. In *Ramendra Mohan Guha Sarkar v. Smt. Bedana Paul*. A I R 1987 (2) 154, the Calcutta High Court has observed that if a person is in occupation of other premises on leave and licence, they are obviously not available to the landlord for occupation and, cannot be taken into account for negating the claim of the landlord for the premises in question. After referring to the decision of this Court in *Phiroze Bamanji Desai Vs. Chandrakant N. Patel and Others*, , it further observed that possession of a licensee is precarious and cannot be considered suitable alternative accommodation.

18. In view of the rival submissions, what we have to consider is whether the Appellate Bench and the High Court applied the correct test while determining the question whether the appellant, requires the suit premises bona fide and reasonably for her occupation. The fact that the appellant is the owner of the suit premises and that she does not own any other premises in the City of Bombay is not in dispute. She does not possess, even as a tenant, any premises in Bombay. No doubt, she would be entitled to stay in the premises of which her husband is a tenant but if for any reason her husband had parted with possession of such premises and the same were occupied by her husband's brother, it cannot be said that the said premises were available to her and by not referring to those

facts she had come to the Court with unclean hands and that by itself was sufficient to disentitle her from getting a decree of eviction. If the appellant believed that the "Olympus" flat of which her husband was a tenant was not available for occupation as the same was vacated by her husband many years back and was occupied by Sridhar and his family and that it was not possible or convenient for her and her family to go and stay there, it was not absolutely necessary for her to refer to those facts in her plaint. It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she is able to prove that she requires reasonably the suit premises for her occupation. We are, therefore, of the opinion that the Appellate Bench and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was mala fide and not bona fide as required by law.

19. The finding recorded by both the Courts" that the "Park View" flat was available to her and her husband for occupation is the result of not applying the correct test to the facts of the case. Eknath was undisputedly not a tenant of the said flat. The tenant of the said flat is M/s A. F. Ferguson and Co. of which Eknath is only a Director. Mrs. Kalra is the owner of that flat and after it was taken on lease by the firm it was given to Mr. Kalra, another Director of the firm for his occupation and use. The firm allowed Eknath to use the said flat temporarily on leave and licence basis in October 1972, as Mr. Kalra was then temporarily transferred to Delhi. The evidence produced by the appellant did disclose that the firm had required Eknath to vacate the same and it was not right for the appellate Bench and the High Court to brush aside that evidence on the ground that it was "internal correspondence of the company." Eknath could not have occupied the said flat as a matter of right and in view of the arrangement between the firm and Mr. Kalra as disclosed by the evidence on record it cannot be said, in the context of judging the bona fide requirement of the appellant, that the said flat was available to her and her husband for occupation even after 1984. Even if it is believed that Eknath had not really vacated the said flat in 1984, and continued to be in possession, it cannot be said that the possession of the said flat was such as would disentitle the appellant to get a decree of eviction. Being a licensee Eknath's possession of that flat was precarious and, therefore, could not have been considered as suitable alternative accommodation.

20. As regards the "Olympus" flat the evidence discloses, and it is not in dispute, that Eknath left that flat in October, 1972, and since then only Sridhar and his family members have been staying in that flat. It is a two bed room flat having an area of 1100 sq. ft. Sridhar has a wife and two children and the family of the appellant also consists of four persons. In the suit for eviction filed by the landlady of that flat a partial decree has been passed and Eknath has been ordered to hand over half the portion of that flat. Both Eknath and landlady have challenged the said partial decree and their respective appeals are pending before the Appellate Court. In this context the Courts had to consider whether it

can be said that the appellant and Eknath are having suitable alternative accommodation and, therefore, the appellant's claim that she requires the suit premises for her occupation is not reasonable and bonafide. The Appellate Bench and the High Court considered the possibility of Eknath going back to that flat and occupying it along with Sridhar and also the possibility that in case the landlady's appeal is dismissed and Eknath's appeal is allowed the flat, in its entirety, will become available to Eknath and on that basis held that the appellant's claim that she requires the suit premises reasonably and bona tide is not true. As pointed out by this Court it is for the landlord to decide how and in what manner he should live and that he is the best judge of residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis either insecure or inconvenient it is not for the Courts to dictate him to continue to occupy such premises. Though Eknath continues to be the tenant of the "Olympus" flat, as a matter of fact, it is being occupied exclusively by Sridhar and his family since October 1972. For this reason and also for the reason that because of the partial decree passed against him Eknath is now entitled to occupy the area of 550 sq. ft. only, it is difficult to appreciate how the Appellate Bench and the High Court could record a finding that the "Olympus" flat is readily available to the appellant's husband and that the said accommodation will be quite sufficient and suitable for the appellant and her family.

He also relies upon the judgment delivered by me in case between Dinesh Dande Vs. Somani Radio Corporation and Others, to state that normally first floor premises have not been held to be suitable for business and after the need of landlord is found to be genuine, the Courts leave the selection of premises to the domain of subjective choice of such landlord. In said case petitioner wanted to start business of selling rubber parts and for that purpose sought permission to terminate tenancy of respondent Somani Radio Corporation. One of the defences of tenant Somani Radio Corporation was that premises on first floor occupied by Dr. Bose were available to landlord. While holding that landlord is the best judge of his need and has power to choose between two or three accommodation which are available to him and ask tenant in accommodation selected by him to vacate, this Court has relied upon Meenal Eknath Kshirsagar v. Traders and Agencies (supra) and also the judgment of Hon''ble Apex Court in R.C. Tamrakar and Another Vs. Nidi Lekha, . In latter judgment the Hon''ble Apex Court held that landlady cannot be forced to stay with her doctor son who has constructed his own house. Dhannalal Vs. Kalawatibai and Others, has also been cited in it to demonstrate that shop on first floor cannot be said to be alternative suitable accommodation in comparison to shops on ground floor. The choice of accommodation is therefore subjective choice of landlord. The Appellate Authority or tenant cannot force the landlord to start using first floor of suit building for non-residential purposes. The Appellate Authority has not recorded a finding that alternate or adequate space is already vacant for use of landlord on ground floor.

Thus finding of ample space is misconceived and without jurisdiction. The Rent Controller has considered the nature of business of said firms and also their customers and has accepted that landlord is the best judge in exercising the choice in this respect. The Appellate Court has not at all evaluated this application of mind by Rent Controller and has acted mechanically in observing that the landlord has ample space. Judgment of this Court reported at 1987 Mh.LJ. 487 between Madhusudansingh L. Chouhan v. Bhaskar G. Deshpande is sufficient to demonstrate that burden to prove otherwise was upon tenants and in present case they have miserably failed to discharge it.

11. It is also argued that need of landlord stood extinguished because of acquisition of alternate premises on rent and as one son is not available due to TADA against him. The fact that petitioner/landlord vacated the premises of his cousin Jafar and shifted to Hasamseth building does not mean that he has no desire to bring said concern firm to suit building. The said son is only one of the partners and business can be taken care of by other partners. The ground as made is therefore without any merit.

Dismissal of earlier proceedings against tenant Bengal Crockery Mart was not on merits and it appears that the petitioner/ landlord was not aware of all the partners in said tenant firm. Hence all such partners were not joined as parties in those proceedings and landlord's effort to obtain details of other partners failed. Said proceedings were therefore given up by landlord. The Appellate Authority itself has rejected this plea of tenant on the ground that those proceedings were abandoned by landlord since names of all partners were not mentioned and the same were not finally decided on merit. There is nothing wrong in this approach of Appellate Authority.

12. Whether need of his firm or of firms in which his sons or his wife or wife of his son are partners can be treated as bona fide need of Petitioner landlord so as to be covered under Clause 13(3)(vi) of Rent Control Order also needs to be answered. Either landlord himself or his blood relations are partners in the firm for whom the premises are sought by him. Said clause permits landlord to determine tenancy if he needs the house on portion thereof for the purpose of his bona fide occupation. This position is considered in case of Sardar Amolak Singh v. Sewakram T. Lalwani reported at 1982 Mh.LJ. 174 There the landlord sought permission to terminate tenancy of 2 tenants under this clause and said permission was granted by Rent Controller and it was maintained by Appellate Authority. Review preferred by tenant was also dismissed. Need pointed out by landlord Sewakram was that he needed the premises to start his own business as well as partnership business. In said judgment after paragraph 4 the question whether the words "his bona fide occupation" would cover need of partnership business of landlord has been considered. In paragraph 5 it is pointed out that the firm is not separate legal entity and thereafter it has been held that the word "own" means something in which landlord or his family have pecuniary interest. Judgment in 1951 NU 250 between V.M. Deshmukh v. K. M. Kothari has been

relied upon to support it. After considering the position in this respect, conclusion is reached in paragraph 8 to the effect that need contemplated can also be that of partnership business in which landlord is vitally interested. Word "his" has been interpreted not to mean "his alone" but also that of his partnership business. Judgment in Kammancheri Janki v. Karattu Govindan Nair reported at 2003 AIHC 4139 of Kerala High Court has been relied upon to state that expression "Family" in such circumstances is to be given wider meaning. However, as is apparent the said judgment is under provisions of Kerala Buildings (Release and Rent Control) Act, 1965 which contains definition of "family". The question was whether a Doctor daughter-in-law of landlord can be considered to be his family member so as to enable him to maintain application for need of starting independent practice and separate consultation centre for her. Various judgments on which the Hon"ble Division Bench of Kerala High Court relied also consider similar provisions in which said phrase has been defined. It is in this background that the Division Bench has given wider meaning to said expression and held that daughter-in-law is the member of family of landlord. Here, the need is of Petitioner/ landlord himself and of his blood relatives. It is not necessary to refer to both these judgments in detail because of the judgment of Hon"ble Apex Court in case between Joginder Pal Vs. Naval Kishore Behal, . In this landmark judgment on the point, similar words "for his own use" appearing in Section 13(3)(a)(ii) of East Punjab Urban Rent Restriction Act (3 of 1949) are interpreted and while so doing in paragraph 12 words "his bona fide occupation" used Clause 13(3)(vi) of Rent Control Order are also considered. Division Bench ruling 1951 NU 250 between V.M. Deshmukh v. K.M. Kothari AIR 1951 Nag 51 (supra) as also be subsequent judgment in 1955 NLJ 233 AIR 1953 Nag 144 between Balbhadra Beharilal v. Premchand Udchand in which need of widowed daughter and her children was held to be "his own" need of landlord have been quoted with approval. The interpretation of upon words "for occupation by himself appearing in Section 13(l)(g) of Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 put by this High Court in Nanalal Goverdhandas and Co. v. Smt. Samratbai Lilachand Shah is also quoted. The Hon"ble Apex Court in this judgment considers similar provisions appearing in various Rent Control enactments in different States and interpretation thereof by various High Courts and declare that these words cannot be narrowly construed. It has also settled the viewpoint to be adopted by court of law while interpreting such provisions. Paragraphs 23, 31 and 32 of this Apex Court judgment are important for present purposes.

23. We are of the opinion that the expression "for his own use" as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord

can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the *pari materia* provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own " requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular Section of society or a particular region, to which the landlord belongs, it may be, obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see him economically independent. The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.

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 crystallised 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 meanings 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.

(ii) 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.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord for his own use" within the meaning of Section 13(3)(a)(ii).

In all three writ petitions here need proved is that of Petitioner/landlord himself. In firm M/s Asghar and Co, he himself and his two sons are partners. In firm M/s Asian Explosives(resale wing) he himself with his son Saifuddin and his daughter-in-law Smt. Suraiyabai w/o Jamil are partners. In firm M/s Jafarbai Akbarali and Co. his wife Smt. Fatmabi with his two sons Saifuddin and Jamil are partners. Thus in each firm, he has direct and substantial interest of personal nature. It is not in dispute that though the sons are adult, they are staying jointly with applicant in same house. Hence, even if above tests are applied to the facts of present case, the answer received is in favour of Petitioner/landlord.

13. Insofar as the ground under Clause 13(3)(VII) of Rent Control Order is concerned, it permits landlord to seek permission if he desires to make essential

repairs for alterations which cannot be made without the tenant vacating the house/premises. Here, landlord has not pointed out any essential repairs or alterations required to be carried out in the premises in possession of respective tenants as part of maintenance operations of suit building. Need pleaded in this respect is to adopt the premises to his business requirements after tenants vacate it and before landlord can start his activities therein. He is not interested in such modifications or repairs if he is not successful in evicting them. The repairs or alterations sought for by him are not essential i.e. not warranted because of condition of tenanted premises. Hence, if permission under Clause 13(3)(vi) is granted to him, he can undertake suitable alterations or repairs in those premises and permission under Clause 13(3)(vii) is not at all necessary for it. Request for permission itself under said clause is therefore misconceived. The impugned order passed by Appellate Authority therefore does not call for any interference in this respect.

14. Rent Controller granted permission under Clause 13(3)(v) to petitioner on the ground of acquisition of alternate accommodation by Narendra Stores. The Appellate Authority, while reversing it, has observed that in cross-examination landlord as also his son admitted that Narendra stores has been functioning in suit shop. They also admitted that said stores does not have any house or shop in Akola. They did not make any inquiry as to who is conducting the business of the Dinesh stores. No material about Amrut stores could be brought on record by them. The son of landlord also accepted that Amrut stores does not have business elsewhere. Appellate Authority found that tenant has not been transacting business either in Dinesh stores or Amrut stores. It is also found that Dinesh stores is in name of persons other than the tenant. These findings of Appellate Authority are not demonstrated it to be perverse. Rent Controller has specifically given a finding that during relevant time and for continuous period of more than four months business of Narendra stores was closed as it was shifted to newly acquired premises by tenant in Hasamseth Trust Market. Amrutbhai Padia carried on business under the name Amrut stores in that market. His brother was examined by tenant who stated that Dinesh stores in his concern and Amrut stores or Narendra stores were not concerned with it. He could not disclose about the business of Narendra stores or Dinesh Stores. He admitted that Amrutbhai purchased the premises from one Khetan. He suppressed information about shop belonging to Amrutbhai and about other shop though all were situated adjacent to each other. However witness of landlord Shri Harun Abdul Habib who deposed on behalf of said Trust stated that Amrut Stores did not continue as their tenant and it had vacated. The Appellate Authority however overlooked the ingredients of said Clause (v) of Rent Control Order. Clause 13(3) (v) reads : "that the tenant has secured alternative accommodation or has left to the area for continuous period of four months and does not reasonably need the house;". The case of petitioner was specific and Rent Controller had applied his mind in that light to examine the situation as prevailing on the date of application. It is to be noted that respondent No 3 tenant did not enter the

witness box to clear himself in this respect. The Appellate Authority could not have taken different view of the matter without first pointing out as to how finding of Rent Controller was vitiated. But it cannot be ignored that landlord as also his son admitted that Narendra stores has been functioning in suit shop and this admission is not properly evaluated by Rent Controller. It means that they could not establish the leaving of shop by tenant for continuous period of four months or that tenant does not need the same. Hence, this finding reached by Appellate Authority on 27-10-1998 in appeal BRA-13(3)/AKL 42/93-94 file by M/s Narendra Stores (respondent No 3 in W.P. 547/2000) is not unsustainable and deserves to be maintained.

15. Need proved is that of landlord himself. In firm M/s Asghar and Co., he himself and his two sons are partners. In firm M/s Asian Explosives(resale wing) he himself with his son Saifuddin and his daughter-in-law Smt. Suraiyabai w/o Jamil are partners. In firm M/s Jafarbai Akbarali and Co. his wife Smt. Fatmabi with his two sons are partners. Thus in each firm, he has direct and substantial interest. It is not in dispute that though the sons are adult, they are staying jointly with applicant. Entire family is occupying upper floors of suit building for residence. Rear portion of ground floor is used by them as godown and repacking work of firm M/s Asghar and Co. The office of this firm and entire business of other two firms are not located in premises owned by landlord. He therefore wants tenants to vacate and to shift the same to ground floor of suit building. The landlord and his family residing on upper floors can attend to their business and also domestic obligations more effectively and conveniently if business is on ground floor of same building. The arrangement by which landlord will make ground floor available to these firms is internal arrangement and if he charges rent from firms for accounting purposes, that would not derogate from his bona fides. The tenants cannot object to the arrangement worked out by family in this respect. The provisions of Rent Control Order does not require consideration of "Comparative Hardship" at all and even otherwise, in the facts of present case the said consideration has to lean in favour of landlord.

16. It is therefore apparent that order of Appellate Authority impugned in these writ petitions cannot be sustained fully. Same are accordingly quashed and set aside only to the extent of rejection of permission under Clause 13(3)(vi). Orders passed by Rent Controller granting permission to present petitioner only under Clause 13(3)(vi) of Rent Control Order are restored.

17. Rule made absolute in above terms with no order as to costs.