

(2008) 12 AP CK 0063

In the Andhra Pradesh High Court

Case No : C.R.P. No. 1430 of 2007 and Batch

Khursheed Sultana and Others

APPELLANT

Vs

Mir Asif Ali and Others

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(2), 10(3), 14(3), 8, 8(2)

Citation : (2009) 2 ALT 103

Hon'ble Judges : Vilas V. Afzul Purkar, J

Bench : Single Bench

Advocate : K.K. Waghray, for the Appellant; Mohd. Nasarulla Khan and P. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzul Purkar, J.—This batch of revisions is concerned with the correctness of the common judgment of lower appellate Court on the eviction petitions filed by the landlords and the petitions u/s 9 filed by the tenants. These cases covered two different tenants but the same landlords. Both the tenants had filed Section 9 petitions under the A.P. Buildings (Lease, Rent and Eviction) Control Act (for short "the Act").

2. For the sake of convenience the parties are referred to as "landlords" and though there are two tenants of two portions, collectively, they are referred to as "tenants" as facts in respect of both matters are similar. The exhibit numbers, referred to hereinafter, are exhibits marked in R.C. No. 698 of 1999, which is one of the eviction petitions under consideration filed by the landlords herein against Mir Yousuf Ali.

3. The chronological events which led to filing of these revision petitions are set out as under:

(a) One Mrs. Khursheed Sultana was the original owner of building bearing M.No.

20-4-226/1/1 (Old No. 20-4-226/1), situated at Motigalli, Khilwath Road, Hyderabad, and its sub numbers, which comprise of one residential portion and five mulgies (shops). Out of the said five mulgies, premises No. 226/1/1 is in occupation of tenant, Asif Ali and the other tenant, Yousuf Ali was in occupation of adjacent mulgi. The rents payable are Rs. 2507/- and Rs. 300/- per month, respectively. Further, Yousuf Ali had paid Rs. 22,000/- as deposit, whereas Asif Ali paid Rs. 15,000/- as deposit to the previous landlady. Both the tenants had filed petitions u/s 8 of the Act seeking permission of the learned Rent Controller to deposit the rents on 24-03-1999 being R.C. Nos. 143 and 144 of 1999. The said petition, R.C. No. 143 of 1999 is marked as Ex.P-8. They had sought permission to deposit rent from January 1999 to March 1999 onwards, on the ground that the landlady was not receiving the rent.

(b) Prior thereto, the said landlady had sold the entire building to the present landlords, petitioners herein, under six different sale deeds, Exs.P-2 to P-7, dated 16-10-1998. The previous landlady Khursheed Sultana, had filed a counter in R.C.C. Nos. 143 and 144 of 1999, referred to above, stating that she has sold the entire building in favour of the present landlords in October, 1998 and both the tenants were informed of the said sale immediately and were directed to pay the rents from January, 1999 onwards to the new landlords and opposed the said deposit of rent petition. The said counter of landlady is marked as Ex.P-9.

(c) The present landlords gave a legal notice, Ex.P-10, dated 14-10-1999 to the tenants once again attorning the tenancy and calling upon the tenants to pay the arrears of rent. Under reply of the tenants, Ex.P-11, dated 22-10-1999, the tenants denied that the landlords are joint owners of the property as mentioned in the notice and required the landlords to furnish attested true copies of the alleged sale deeds and reserved their right to give a detailed reply.

(d) The tenants received another notice, Ex.R-2, dated 28-10-1999, from one Md. Farooq, asserting that he is an agreement holder of same property to the extent of 1/6th share and required the tenants to pay proportionate rent to him. Under Ex.R-3, dated 09-11-1999, the tenants replied to the said notice refuting the claim made by the said Md. Farooq.

(e) Meanwhile on 01-11-1999, under Ex.R-5, another claimant by name Mrs. Tahseen Sultana, issued a similar notice to the tenants asserting that she is 1/6th share holder in the property and required the tenants to pay the proportionate rent to her. Under reply of the tenants, Ex.R-6, dated 15-11-1999, the tenants refuted her claim also.

(f) Meanwhile it appears that Md. Farooq who had given Ex.R-2, notice, had filed a suit for specific performance in O.S. No. 4261 of 1999 to enforce his agreement. The said suit is said to be pending.

(g) While so on 19-11-1999, the tenants filed Ex.P-12, memo, in Section 8 petitions, that they have received conflicting claims from three different claimants and as such the tenants are required to invoke Section 9 of the Act and

on that ground sought withdrawal of Section 8 petitions.

(h) Later, both the tenants filed R.Cs. 630 and 631 of 1999 in November 1999 impleading the landlords, and third party claimants including the previous landlady as parties and sought permission of the Rent Controller to deposit rents.

(i) On 28-12-1999 the landlords herein filed R.C.No.698 of 1999 against the tenant Yousuf Ali and R.C.No. 699 of 1999 against the tenant Asif Ali. All the four petitions are subject matter of these revisions.

4. In the eviction petitions, the landlords raised a ground of wilful default in payment of rents from January, 1999 to November, 1999 as well as bona fide requirement of the tenanted premises on the ground that the landlords are carrying on business in a rented premises, and they need to shift the said business to the petition schedule premises.

5. The learned Rent Controller tried Section 9 petitions of both the tenants as well as eviction petitions filed against both the tenants, simultaneously, and while dismissing Section 9 petitions, allowed the eviction petitions of the landlords on both the grounds. Questioning the same, both the tenants filed rent appeals against eviction orders as well as against the dismissal of Section 9 petitions. In addition, one of the third party claimants, Tahseen Sultana filed two rent appeals questioning Section 9 orders with respect to both the tenants. Under the impugned common order, the learned Chief Judge, City Small Causes Court, Hyderabad, has allowed Section 9 petitions of both the tenants and has dismissed eviction petitions filed against both the tenants. The appeals filed by third party claimants were also allowed. The said common order is questioned by the landlords herein by filing six revision petitions. The details of the same are given in the table below:

----- S. No.									
R.C.	No.	Filed	by	Provision	of	law	R.A.	No.	CRP No.
----- 1. 630 of									
99 Asif Ali	Section 9	242 of 04	1430 of 07	2. 630 of 99	Smt. Tahseen	-do-	237 of		
04 1473 of 07	Sultana	3. 631 of 99	Yousuf Ali	-do-	243 of 04	1431 of 07	4. 631		
of 99 Smt. Tahseen	-do-	238 of 04	1678 of 07	Sultana	5. 698 of 99	Landlords			
Section 10(2)(i)	230 of 04	1454 of 07	& 10(3)	6. 699 of 99	-do-	-do-	231 of 04		
1455			of				07		

6. In this batch of revision petitions, I have heard Sri K.K. Waghray, learned Counsel appearing for the landlords, Sri Md. Nasarullah Khan, learned Counsel appearing for the tenants and Sri Polavarapu Srinivas, learned Counsel appearing for claimant, Smt. Tahseen Sultana.

7. Learned Counsel for the landlords has criticised the judgment of the lower appellate Court on the ground that the attornment of tenancy has not been appreciated by the lower appellate Court in proper perspective and contended

that though the tenants were informed of the purchase by the present landlords orally as well as by the previous landlady, further, under Ex.P-9, wherein the previous landlady filed a counter to that effect in Section 8 petitions, referred to above, as well as written attornment notice, Ex.P-10, dated 14-10-1999. In spite of that, the conduct of tenants was not bona fide in persisting on seeking orders for depositing rent either u/s 8 or u/s 9 of the Act. He further contends that the tenants have not paid the rents to the landlords from January, 1999 onwards which establishes the default being clearly wilful. He has drawn my attention to the replies of the tenants Ex.R-3 as well as Ex.R-6, whereunder the tenants refuted the claims of the two third parties who asked the tenants to the extent of 1/6th share in the rent. He has also contended that none of the third parties have established any legal right inasmuch as Md. Farooq, one of the claimants, merely claims to be an agreement holder with respect to 1/6th share and has filed a specific performance suit which is pending and the other claimant Tahseen Sultana has not taken up any proceedings before a competent Civil Court seeking declaration that she is entitled to 1/6th share in the property. He has further contended that Tahseen Sultana is the daughter of previous landlady and she is also daughter-in-law of the tenant Mir Yousuf Ali and consequently contends that the tenants have collusively instituted Section 8 proceedings followed by Section 9 proceedings and are deliberately withholding rents, which clearly establishes wilful default on their part. He also contended that the reply notices and pleadings of the tenants clearly show that they have mala fide denied the title of the present landlords and contends that even if such a ground is not raised in the eviction petition, the same being evident from the pleadings and evidence on record, the landlords are entitled to decree of eviction on the said ground itself. In support of his aforesaid submission, the learned Counsel has cited a decision of this Court in Hyderabad Polmers Private Ltd. and Another Vs. Smt. B. Rajani and Others, as well as the decision of the Supreme Court in Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased) by Lrs., .

8. Per contra, the learned Counsel for the tenants contends that the tenants had a bona fide doubt as they received more than one claim conflicting with each other viz., one from the landlords and two sets of claimants, each of whom, are claiming 1/6th share and therefore, the tenants were justified in approaching the Court u/s 9 of the Act. He further contends that even before the conflicting claims were received by the tenants, the tenants had already filed Section 8 petitions in R.C. Nos. 143 and 144 of 1998 which were pending. He, therefore, contends that since the permission to deposit the said rents covers the said default period, it cannot be said that the tenants are wilful defaulters, as they have taken prompt steps to protect themselves against such claim of wilful default by making appropriate applications seeking permission to deposit rents. He has also relied upon a decision of the Supreme Court in Modern Hotel, Gudur, Represented by M.N. Narayanan Vs. K. Radhakrishnaiah and Others, . He contends that even assuming that there is any default, the landlords are admittedly having substantial deposit of Rs. 22,000/- with respect to tenancy of

Yousuf Ali and Rs. 15,000/- deposit with respect to tenancy of Asif Ali, which can always be adjusted as arrears and thereby it cannot be said that there is any wilful default.

9. So far as bona fide requirement pleaded by the landlords is concerned, the learned Counsel for the landlords submits that para-4 of the eviction petition clearly sets out the requirement. For the sake of convenience, para-4 in the eviction petition is extracted hereunder:

That the 1st petitioner is doing cloth business. He is doing business in a rented Mulgies bearing Municipal Nos. 3-5-784/2/8 and 3-5-784/2/9, situated at King Koti, Hyderabad. Now the petitioners want to shift their business in the petition schedule mulgi and in the adjacent mulgies., of the petition schedule mulgies. Except the said property, the petitioners are not occupying any other owned non-residential premises within twin cities of Hyderabad and Secunderabad. Thus for personal bona fide requirements of the petitioners also the respondent is liable to be evicted from the petition schedule mulgi.

The learned Counsel contends that the requirement is for the entire property and since the landlords are carrying on business in a rented premises, they cannot be denied their requirement. In support of his aforesaid contention, he has relied upon a decision of the Supreme Court in Boorgu Jagadeshwaraiah and Sons Vs. Pushpa Trading Co., as well as Kailash Chand and Another Vs. Dharam Das, . The learned Counsel would further contend that the concept of attornment as understood by the lower appellate Court is legally unsustainable inasmuch as attornment of tenancy is automatic on the transfer of property. In support of the said contention, the learned Counsel relied upon a Division Bench decision of this Court in Shankaramma and Others Vs. Mohammed Abdul Hameed and Another,

10. In reply, the learned Counsel for the tenants contends that the requirement pleaded by the landlords is not clear. Further, the evidence established that the landlords are in possession of three mulgies adjacent to the petition schedule premises, which has not been explained and it is further contended that in such a case, the requirement would clearly fall u/s 10(3)(c) of the Act and not u/s 10(3) (a) or (b) of the Act. Learned Counsel also would contend that in the event of requirement pleaded as u/s 10(3)(c) of the Act, the relative hardships have to be considered. It is also contended that the 1st landlord who is petitioner No. 1, has not been examined and out of the sons of the landlords only one son is examined. He, therefore, contends that the requirement pleaded does not subsist. He also contends that in Ex.P-10, notice, dated 14-10-1999, given by the landlords, there was no reference to the requirement now pleaded, which shows that the requirement is neither bona fide nor is eminent. In support of his submissions, the learned Counsel relied upon various decisions reported in D. Devaji Vs. K. Sudarashana Rao, , Smt. Vidayavathi Bai and Anr. v. Shanker Lal and Anr. 1987 (2) ALT 550 (F.B.), Ali Bin Mohammed (died) by LRs. Vs. Khaja Moinuddin (died) by LRs., , Omer Bin Salam Askari Vs. Dr. Yousuf, , Narayanam Venkata Chalamaji Vs. Bairundan Amarsingh, and Nikkanti Ramakrishna Vs.

Atmakuri Sasikiran and others, as well as Karri Krishnaveni Vs. Batchu Nookaraju Reddi,

11. In the light of the above rival contentions, the points for consideration arise in this batch of revisions are as follows:

1. Whether the findings of the lower appellate Court permitting the tenants to deposit rents u/s 9 of the Act is justified?
2. Whether the finding of wilful (sic. No wilful) default reached by the lower appellate Court is justified on the facts and circumstances of the case?
3. Whether the landlords have established bona fide personal requirement as pleaded?
4. Whether the tenants have denied the title of the landlords and if so, whether it is mala fide? and whether eviction of the tenants can be ordered though the same is not one of the grounds raised in the eviction petitions?

12. Point No. 1: The facts of the case disclose the pleading of the tenants in Section 9 petitions, filed by the tenants, that even during the period of the previous landlady, the tenants undisputedly had filed petitions u/s 8 of the Act being R.C. Nos. 143 and 144 of 1999 seeking deposit of rents for the months of January, 1999 onwards. The pleadings in the Section 9 petition further state that they had regularly paid the rent up to December 1998 and when son of the landlady did not come to collect the rent for the month of January 1999, the same was remitted through money order, which was refused by the landlady and thereupon after complying with provision of Section 8(2) and 8(4) of the Act, the petitions for seeking permission to deposit were filed u/s 8(5) of the Act. It is also alleged that interim orders permitting the deposit rents were granted in favour of the tenants and the tenants have deposited the monthly rents to the credit of said R.C. It is further alleged that thereafter, the landlady filed a counter stating that she has sold away the property to the present landlords and falsely claimed that these tenants were informed of the same in January 1999 itself. Further, the tenants received written legal notice from the present landlords under Ex.P-10, dated 14-10-1999, by which time, the R.Cs. filed by the tenants u/s 8(5) of the Act were already pending. Similarly the tenants received two other claims from Md. Farooq as well as from Tahseen Sultana (respondents 8 and 9 respectively in Section 9 petitions of the tenants). Whereupon, the tenants had a reasonable bona fide doubt as to which of the claimants is entitled to receive the rent and thereupon they withdrew Section 8 petitions by filing a memo, Ex.P-12, dated 19-11-1999, to that effect, and filed the present R.Cs. u/s 9 of the Act.

13. It is true that when all the three claims were received by the tenants viz., one from the present landlords, one from Md. Farooq and another one from Tahseen Sultana, and the tenants refuted all the three claims under their respective replies, Ex.P-11, Exs.R-3 and R-6.

14. The contention of the learned Counsel for the landlords that the said rejection of claims of third parties by the tenants itself shows that there is no reason to doubt about the title of the landlords and thereafter the conduct of the tenants in filing petitions u/s 9 of the Act, as if there is a reasonable doubt, is thus unsustainable

15. The learned Counsel for the tenants explains the above by contending that so far as the present landlords are concerned, the tenants sought attested copies of the alleged sale deeds and had reserved their right to give a suitable reply in due course and so far as the other two claimants are concerned, the tenants had rightly replied that in the absence of any direction from their landlady, they could not have accepted the 3rd party claims for sharing the rent with them. The learned Counsel therefore contends that the doubt entertained by the tenants was fully justified on the facts and circumstances of the case as they wanted no fault on their part against any charge of the default in payment of rent at the instance of any claimant in future.

16. In the totality of the circumstances, keeping in view the fact that the tenants had already approached the Court for permission to deposit the rent u/s 8 of the Act, in the first instance, and the interim order obtained thereunder, for depositing the rents to the credit of the said R.C. from January 1999 onwards, is required to be taken into consideration, for at least, the limited purpose, that the tenants were not withholding the rents and had made efforts to deposit the rents. Secondly, the further conduct of the tenants in withdrawing the said petitions and filing Section 9 petitions thereafter, in view of three separate claims having been received by them, would also be consistent with their conduct and it cannot be said that the tenants were not justified in entertaining the bona fide doubt as to who was entitled to the rents among the three conflicting claimants. To my mind, therefore, the action of the tenants in resorting to filing petitions for depositing of rents, initially, u/s 8 of the Act and later u/s 9 of the Act, is, therefore, fully justified. The order of Rent Controller in dismissing the petitions of the tenant u/s 9 of the Act, is, therefore, not sustainable.

17. However, so far as the lower appellate Court is concerned, while considering the said order of the learned Rent Controller, so far as Section 9 petitions are concerned, the lower appellate Court has, however, gone into the veracity and tenability of the third party claimants' claim and has made several observations on merits of their respective claims. The lower appellate Court has gone into the genuineness and validity of the release deed Ex.R-15 under which Tahseen Sultana had released of her claims over her share of 1/6th. The lower appellate Court also proceeded to consider the claim of other claimant Md. Farooq, through his alleged agreement of sale, for another 1/6th share though all those questions are subject matter of suit for specific performance in O.S.No. 4261 of 1999, which is said to be pending.

18. The learned Counsel for the landlords has made serious criticism of the approach of the lower appellate Court in examining the third party claims while

considering the appeals against orders of Rent Controller u/s 9 of the Act.

19. For appreciating the same, it is apt to extract Section 9 of the Act, which is as under:

9. Right of tenant to deposit rent in certain cases:

(1) Where the address of the landlord or his authorized agent is not known to the tenant, he may deposit the rent lawfully payable to the landlord in respect of the building, before such authority and in such manner as may be prescribed, and continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the address of the landlord or his authorized agent becomes known to the tenant.

(2) The amount deposited under Sub-section (1) may subject to such conditions as may be prescribed, be withdrawn by the person held by the Controller to be entitled to the amount on application made by such person to the Controller in that behalf.

(3) Where any bona fide doubt or dispute arises as to the person who is entitled to receive the rent for any building the tenant may deposit such rent before such authority and in such manner as may be prescribed and shall report to the Controller the circumstances under which such deposit was made by him and may continue to deposit any rent which may subsequently become due in respect of the building before the same authority and in the same manner until the doubt is removed or the dispute is settled by the decision of a competent Court or by a settlement between the parties or until the Controller makes an order under Clause (b) of Sub-section (4) as the case may be.

(4) (a) The Controller to whom a report is made under Sub-section (3) shall, if satisfied that a bona fide doubt or dispute exists in the manner, direct that, pending removal of the doubt or settlement of the dispute as aforesaid, the deposit be held by the authority concerned.

(b) If the Controller is not so satisfied, he shall forthwith order payment of the amount deposited to the landlord.

(5) Where the Controller passes an order under Clause (a) of Sub-section (4) any amount or amounts deposited under Sub-section (3) may be withdrawn only by the person who is declared by a competent Court to be entitled thereto, or in case the doubt or dispute is removed by a settlement between the parties, only by the person who is held by the Controller to be entitled to the amount or amounts in accordance with such settlement.

It would be noticed that the said provision is an enabling provision where, if the tenant entertains a reasonable doubt as to who among the landlords is entitled to receive the rent, he can approach the Court seeking permission to deposit the rents till conflicting claims are resolved among various persons claiming to be landlords.

20. Notwithstanding the fact that the tenants had refuted all the three conflicting claims whenever they called upon the tenants to pay the rents, it cannot be denied that the tenants were faced with a situation where the present landlords were making exclusive right to receive the rents, under Ex.P-10, dated 14-10-1999, Md. Farooq was making a claim to the extent of 1/6th share of the rent under Ex.R-2, dated 28-10-1999, and Tahseen Sultana was making a similar claim for 1/6th rent under Ex.R-5, dated 01-11-1999. The tenants, therefore, were justified in seeking permission of the Court u/s 9 of the Act.

21. The several observations and findings of the lower appellate Court testing the veracity of the third party claims with reference to each of the parties viz., considering lease deed, Ex.R-15, vis-a-vis, the date of birth of Tahseen Sultana under Exs.R-18 and R-16 as well as marriage certificates, Exs.R-20 and R-21 etc., would be going beyond the scope of Section 9 of the Act. All the said findings and conclusions of the lower appellate Court including the observation that the landlords herein must file an appropriate suit for title and declaration etc. are therefore wholly beside the issue. The lower appellate Court had only to confine itself to examine as to whether the tenants had a bona fide doubt and if the answer to the said question was in the affirmative, the Section 9 applications had to be ordered. The all the said observations and findings of the lower appellate Court, except the conclusion reached on Section 9 petitions, are therefore, completely, unjustified and beyond the scope of Section 9 of the Act.

22. In the light of the discussion as above, therefore, the order of the learned Rent Controller rejecting Section 9 petitions filed by the tenants being already held as unjustified, and the conclusions of the lower appellate Court allowing Section 9 petitions filed by the tenants being justified, but for different reasons as mentioned above, the C.R.Ps. filed by landlords are liable to be dismissed.

23. The revisions petitions filed by the landlords in C.R.P. Nos. 1430, 1431, 1473 and 1678 of 2007, to the extent of challenging the impugned order permitting the tenants to deposit the rents u/s 9 of the Act, are therefore, dismissed.

24. Point No. 2: The plea of wilful default raised by the landlords is for the period from January 1999 onwards. The aforesaid plea is indirectly linked with the Section 9 petitions moved by the tenants, as discussed above, as the same period is involved in both the said proceedings. While discussing Section 9 of the Act under point No. 1, referred to above, it is already held that the conduct of the tenants is bona fide and it further shows that they have not deliberately withheld the rents. In order to establish wilful default, a supine indifference on the part of the tenants is essential. The facts of the case, as discussed in point No. 1 above, clearly show that even from January 1999 onwards, the tenants had taken effective steps to protect themselves from the allegation of default by approaching the Court, initially, u/s 8 of the Act and later u/s 9 of the Act. Thus, in view of the finding under point No. 1 above, it cannot be said that the plea of wilful default raised by the landlords is justified. The finding of the lower appellate Court in favour of the tenants on the said ground is therefore justified

and requires no interference. Even otherwise and even assuming that there is any default on the part of the tenants, substantial amount is lying in deposit with the landlords, viz., Rs. 22,000/- with respect to tenancy of Yousuf Ali and Rs. 15,000/- with respect to tenancy of Asif Ali. Following the dictum in Modern Hotel's case (supra), the finding of the lower appellate Court on the said point warrants no interference.

25. Point No. 4: While it is true and I respectively agree with the Division Bench decision of this Court in Shankaramma's case (supra) that the attornment of tenancy is automatic on transfer of the property. Thus, when Exs.P-2 to P-7, registered sale deeds, were executed in favour of the present landlords, the tenancy of both the tenants stood automatically attorned in favour of present landlords. Leaving aside the controversy as to whether intimation of said purchase was given to the tenants or not, the attornment of tenancy takes place, in law, as soon as the transfer of ownership is effective. The tenancy, therefore, stands automatically attorned to the present landlords. The plea of the landlords that the tenants have mala fide denied the title, particularly, when they gave reply Ex.P-11, dated 22-10-1999 to the landlords' notice, Ex.P-10, dated 14-10-1999, categorically shows that the tenants had denied the title, is therefore to be considered. In para-1 of the said notice, no doubt, the tenant had completely denied that the present landlords are joint owners of the property under purchase as alleged, but the tenants had also called upon the landlords to furnish attested true copies of the alleged sale deeds and have reserved their right to give a detailed reply after examining the attested true copies. They had, however, denied that there was any prior intimation of the purchase to them and they have further stated that the tenants are not supposed to entertain any claim by 3rd party without proper procedure of attornment being made. The pleadings of the tenants in the eviction petitions filed by the landlords are also on similar manner. It is however to be appreciated that in the eviction petitions filed by the landlords no such ground of mala fide denial of title was raised though by the time of filing of eviction petition, the landlords had received the aforesaid reply of the tenants, Ex.P-11, dated 22-10-1999. In the counter filed by the tenants, they have alleged that their tenancy was not attorned by the previous landlady in favour of the present landlords and she has never asked the tenants to pay the rent to any other person much less to the present landlords, the tenants had to approach the learned Rent Controller u/s 8 of the Act. The tenants assert that they are regular in paying rents to the credit of the said R.C. from January 1999 onwards. No doubt in paragraph-5 of the counter, the tenants had stated that there is no jural relationship of landlord and tenant and thus, landlords have no locus standi to file the eviction cases and the said eviction cases are collusive one between the present landlords and previous landlady.

26. The ratio of Majati Subbarao's case (supra) as well as Hyderabad Polimer's case (supra), however, clearly supports the legal plea of the learned Counsel for the landlords that even if the tenants deny the title of the landlords mala fide in the counter in the eviction petition, the same furnishes a ground for eviction. In

the aforesaid decisions, it has been authoritatively held in Majati Subbarao's case (supra) that the denial need not be anterior to the eviction petition and any such denial in the very said proceedings itself, can be taken note of and on that ground eviction can be ordered. However, the decisions before the Supreme Court in Majati Subbarao's case (supra) and in the decision of this Court in Hyderabad Polimer's case (supra), on facts, it was noticed, that the tenant had resorted to Section 9 and was found not depositing the rent therein and the very filing of Section 9 petition there, was found to be total unjustified. However, on the facts of our case, it cannot be denied that the tenants were confronted with three conflicting claims and as held above, they were justified in entertaining the bona fide doubt and it has also been held as above that the tenants' petitions u/s 9 were rightly allowed by the lower appellate Court. As consequence, therefore, it cannot be said that the order of eviction is warranted on the ground of mala fide denial of title by the tenants, especially, when the said ground though available was not raised by the landlords in the eviction petitions. The said contention of the landlords is therefore, rejected.

27. Point No. 3: In para 4 of the eviction petition, it would be noticed that the requirement pleaded by the landlords is with respect to the entire petition schedule mulgies and adjacent mulgies. The requirement, therefore, is not as if confined only to the schedule mulgies. The lower appellate Court has apparently misread para-4 of the eviction petition and has completely gone wrong in its conclusion by thinking as if the landlords have not mentioned the possession of the other mulgies and that the landlords have not mentioned that they require all the shops and their requirement is not for all the mulgies. The appreciation of the pleadings by the lower appellate Court with respect to this ground is clearly erroneous. The landlords have stated specifically that they want to shift their business to the petition schedule mulgi and the adjacent mulgies and except this property they are not having any other non-residential premises. The landlords further pleaded that they are doing cloth business in a rented mulgi and need to shift to their own premises.

28. Further, petitioner No. 5 who is one of the sons of the landlords is examined as P.W.1. He deposed that his father is the 1st petitioner, mother is the 2nd petitioner, petitioner No. 3 is his elder sister and petitioners 4 and 6 are his brothers. Ex.P-1 is the sketch showing the respective mulgi in the red colour. He has further stated that his father is the businessman and he is doing business in cloth in a rented premises in Door No. 3-5-784/2/8 at King Koti, Hyderabad, and also super market in a rented premises in Door No. 3-5-784/2/8/9 at King Koti, Hyderabad. He further states that they want to shift their cloth business and super market from King Koti to the schedule mulgi and other mulgies and further they require the schedule mulgies for their requirement. During cross-examination, he has stated that the schedule mulgi and other four mulgies are adjacent to each other with the passage in between them and all mulgies are road facing. He further stated that they have not applied for licence etc. to run super bazaar as the tenants have not vacated the mulgi and further suggestion is given to him

that they do not require the schedule mulgi for their personal requirement, therefore, they have not taken any steps.

29. It would be noticed that the entire cross-examination is directed towards the notices from other claimants and payment of rents etc., all of which relate to the wilful default ground and Section 9 petitions, except to the extent indicated as above.

30. The tenant in R.C.No. 698 of 1999, as R.W.1, stated:

...The petitioners are not in requirement of schedule property for their alleged business.

In cross-examination he stated:

...There are other five mulgies of Khursheed Sultana abutting the schedule mulgi. Those mulgies were in the occupation of tenants. Those tenants vacated those mulgies. Three mulgies out of those five mulgies are in the occupation of the petitioners at present....

I do not know whether the petitioners are doing business in any rented premises or not. It is not true to say that the petitioners require the schedule mulgi for their personal requirement which is to shift their super bazaar business from King Koti.

31. Thus, it is evident from the above evidence that the requirement pleaded by the landlords for the entire premises including the suit mulgi is not seriously controverted except giving suggestion. In fact, the statement of the tenant that they do not know whether the landlords are carrying on business in a rented premises itself speaks that the tenant is evading to give truthful answers to these questions. Right from the beginning, the landlords have stated that they are carrying on business in rented premises, and have given the municipal numbers and stated that the adjacent mulgies are kept vacant and not let out. The said conduct on the part of the landlords is consistent with the requirement pleaded by them. The bona fide requirement of this nature is clearly permissible in law as held by the Hon''ble Supreme Court in Boorgu Jagadeshwaraiah's case (supra) as well as in Kailash Chand's case (5 supra). The aforesaid decisions are discussed in the context while dealing with the decisions relied upon by the learned Counsel for the tenants.

32. The learned Counsel for the tenants relied upon the decision of Full Bench of this Court in Vidayavathi Bai's case (supra) as well as D. Devaji's case (supra) of the Supreme Court. In Devaji's case, referred to above, the Full Bench decision of this Court in Vidayavathi Bai's case, referred to above, was approved. However, Devaji's case was not accepted later by three Judges' Bench of the Hon''ble Supreme Court in Boorgu Jagadeshwaraiah's case (supra), referred to above, wherein, It was held, in Paragraphs 7 and 8 as follows:

7. It, thus, become evident that there is no conflict as such between the said

decisions and they have gone on in the context of their own facts and the provisions of law. Even so, the argument of the appellant's learned Counsel carries weight that the intention of the legislature in *D. Devaji Vs. K. Sudarashana Rao*, has been scuttled by putting an extremely narrow and literal construction on the provision. It has been observed therein as under:

The landlord should not be in possession of another non-residential building or of which he is entitled to be in possession in the city, town or village concerned. The intendment of the legislature thereby is clear that a landlord who is in occupation of a non-residential building which is his own or to the possession of which he is entitled to under the Act or any other law should not be permitted to recover possession of another non-residential building belonging to him by evicting the tenants therefrom.

8. The aspects of quality, size and suitability of the building have been totally put out of consideration. We think this would frustrate the purposes of the Act. Here was a claim set up by the landlord that the non-residential premises he owned did not serve the purpose of his need of setting up a textile and cloth business and that the need could only be met in seeking eviction of the tenant from the premises sought. As we view it there is no difficulty in *D. Devaji Vs. K. Sudarashana Rao*, standing in the way of the landlord appellant to have the issue examined from the point of view which would carry out the purposes of the Act. We refrain from mentioning any facts on the basis of which the landlord's claim is based lest the manner they are recounted cause prejudice to either of the parties.

The same was further reiterated in *Kailash Chand's* case (*supra*) in para 20 thereof, which reads hereunder:

20. In short, availability of another residential building of his own in the same urban area would disentitle the landlord from seeking eviction of the tenant on the ground of his requirement for his own occupation if he is in occupation of such another building or has vacated such another building within five years. On a plain reading, the availability of another building by reference to the first proviso disentitles the landlord from seeking eviction if the building satisfies these tests: (i) it is another building; (ii) it is residential in nature; (iii) it is in occupation of landlord; (iv) it is owned by him; and (v) it is situated in the same urban area in which another building in occupation of the tenant is situated. The building referred to in the second proviso, availability whereof disentitles the landlord to seek eviction is not in occupation of the landlord. In all other manner it has to be a building satisfying the tests as above, and in addition, it must be a building vacated by landlord within five years of the date of filing of the application and that too without sufficient cause. The applicability of any of the two provisos would not be attracted if the landlord is occupying or has vacated another residential building which is rented or is not owned by the landlord.

Further in para-25 the Hon''ble Supreme Court has held:

Provisions like Section 14(3)(a)(i) of the Act should be so interpreted as to advance the cause of justice instructed by the realities of life and practical wisdom. While the tenants needs to be protected, the courts would not ordinarily deny the relief to the landlord, who genuinely and bona fide requires the premises in occupation of the tenant for occupation by himself or for the members of his family, unless they feel convinced that the so-called requirement of the landlord was a ruse for getting rid of an inconvenient tenant or was otherwise mala fide and did not fall within the four corners of the ground for eviction provided by the law.

Further in para-24, it was held:

Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for "his own occupation".

33. When the landlords plead and claim that they require the premises for the purpose of shifting the businesses, from rented premises to their own premises and for that purpose they require tenanted portion, it cannot be said that the requirement is not bona fide. The lower appellate Court firstly misread para 4 of the eviction petition and secondly found fault with the landlords in not mentioning about super bazaar along with the cloth business, which they are carrying on in rented premises. The appellate Court also found fault with the landlords in keeping the three adjacent mulgies vacant and still seeking eviction of the petition schedule mulgi. All these aspects are amply established by the evidence on the part of the landlords as referred to above.

34. It is well settled that the needs or requirements of the landlords are for them to judge. It would be highly inequitable (sic. Inequitable) and unjust to compel the landlords to carry on their business in a rented premises by denying eviction of the tenants from their own premises. The requirement pleaded by the landlords, therefore, to my mind, is justified and ought to have been allowed by the lower appellate Court. The further finding of the lower appellate Court and the contention of the learned Counsel for the tenants that the requirement falls u/s 10(3)(c) of the Act and not u/s 10(3)(a) or (b) of the Act is also liable to be rejected in view of the fact that the requirement is for the entire premises and not for the petition schedule mulgi alone. The bona fide requirement pleaded by the landlords and as established from the evidence, as referred to above, therefore, cannot be said to be not bona fide and as such I am of the view that the findings of the lower appellate Court on the said aspect, rejecting eviction petition on the said ground, are not justified and are liable to be reversed.

35. Therefore, the revision petitions C.R.P. Nos. 1430, 1431, 1473 and 1678 of 2007 of the landlords challenging the orders of the lower appellate Court u/s 9 of the Act are dismissed, though for different reasons. However, the revision

petitions preferred by the landlords in C.R.P. Nos. 1454 and 1455 of 2007, to the extent of eviction, are allowed to the extent of ground of personal requirement while rejecting the ground of wilful default and denial of title. Further, in view of dismissal of C.R.Ps. u/s 9 of the Act, the revision petitions preferred by the landlords with respect to the claim of Smt. Tahseen Sultana also are dismissed.

36. In the result, C.R.P. Nos. 1430, 1431, 1473 and 1678 of 2007 are dismissed and C.R.P. Nos. 1454 and 1455 of 2007 are allowed. There shall be no order as to costs.

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37. After pronouncement of the order, learned counsel for the tenants requested time to vacate the premises. In the interest of justice, it will be appropriate to grant time to the tenants to vacate the premises on or before 30-04-2009, subject to filing an undertaking on or before 31-12-2008 that they shall not alienate the premises and shall hand over the possession of the same on or before 30-04-2009 and shall continue to pay the rents during occupation of the premises.