
(2014) 01 KL CK 0025
In the High Court Of Kerala
Case No : R.C. Rev. No. 66 of 2013

M. Basheer

APPELLANT

Vs

Remani Gopalan and Others

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(1), 11(2), 11(2)(b), 11(3)
Registration Act, 1908 — Section 17, 17(1), 49
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(4)
Transfer of Property Act, 1882 — Section 105, 106, 106, 107, 107

Citation : (2014) 1 ILR 724 : (2014) 1 KHC 436 : (2014) 1 KLJ 492 : (2015) 2 RCR(Rent) 133

Hon'ble Judges : T.R. Ramachandran Nair, J;B. Kemal Pasha, J

Bench : Division Bench

Advocate : N.M. Mohammed Ayub, Advocate for the Appellant; Varghese C. Kuriakose, Basil Mathew and K.B. Sajan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The important question that is raised in these revision petitions is, whether in the absence of production of the alleged lease deed executed between the parties, which is an unregistered one, in evidence, the reliance placed on certain alleged admissions made by the respondent-landlady, is sufficient to presume a transaction of valid lease for a term exceeding one year so as to attract Section 11(9) of the Kerala Buildings (Lease and Rent Control) Act (for short, the "Act").

2. The respective petitioners are partners, doing business in the name and style of "Hotel Paragon" in a building of which the respondent is the landlady. Eviction is sought u/s 11(3) of the Act, namely, for the bona fide need of the landlady for residential purposes as well as to start a garment making unit in the petition schedule building. The Rent Control Court as well as the Appellate Authority

ordered eviction in favour of the landlady and hence the revision petitions have been filed by the petitioners-tenants, assailing the orders passed by the authorities below.

3. We heard the learned Senior Counsel Shri R.D. Shenoi, learned counsel Shri Vinod Bhat, Shri Basil Mathew, Shri N.M. Mohamed Ayub for the petitioners-tenants and learned counsel Shri C. Varghese Kuriakose appearing for the first respondent-landlady. The parties are referred to as arrayed in these revision petitions.

4. The learned Senior Counsel Shri R.D. Shenoi raised the following contentions:- The Act, is a complete code in itself. It is submitted that the definitions of "building", "landlord" and "tenant" in the Act are important and the learned Senior Counsel specifically referred to the word "let" provided in the definition u/s 2(1) of the Act, concerning "building". It is submitted that there can be a transaction for the purpose of the Act to bring out a relationship between the landlord and tenant and therefore, the admissions made by the landlady in the evidence of the terms of the lease can be relied upon by the court to examine and find in favour of the tenants on the plea u/s 11(9) of the Act. This is so, particularly, in the light of the provision u/s 11(9) of the Act which only indicates that the tenant will be entitled for the benefit of the provision where "the tenancy is for a specified period agreed upon between the landlord and the tenant". The learned Senior Counsel further elaborated the argument by submitting that an unregistered lease deed cannot be received as evidence of any transaction affecting the property going by the decisions of the Apex Court and this Court. In the case in hand, the document is not relied upon by the landlady and the same has not been produced. In such a case, the true nature of the transaction can be found by examining the other evidence in detail. It is submitted that the non registration of the document will not affect the transaction and, therefore, in a case like this, provisions of Section 107 of the Transfer of Property Act, 1882 and Section 17 and 49 of the Registration Act, 1908 need not be gone into. The principle of estoppel by conduct is attracted as the transaction has been proved independent of the lease deed. It is submitted that in the decisions relied upon by the Rent Control court, namely, Anthony Vs. K.C. Ittoop and Sons and Others, , Samir Mukherjee Vs. Davinder K. Bajaj and Others, and Paul Vs. Saleena, , the narration of the facts will show that in all those cases, the unregistered lease deeds were produced in evidence and, therefore, the conclusions and findings on the legal and factual aspects in those cases cannot have any application in these cases. It is submitted that admission by the party is substantive evidence and, in these cases, the admission by PW 1 about the transaction is there. As far as those aspects are concerned, it cannot be said that the principles under the Registration Act which refer to invalidity of the unregistered document will apply here. It is therefore submitted that Section 11(9) of the Act is squarely attracted to the facts of these cases.

5. On the merits of the findings regarding bona fide need also, the learned Senior

Counsel raised various arguments. It is submitted by referring to the pleadings in the eviction petition that the landlady is having own building in Kalathilparambil Road and even though one floor of the building is in the name of the husband against which certain proceedings for recovery of loans are there, as far as the portion owned by the landlady is concerned, it is free from any such recovery steps and, therefore, the first proviso to Section 11(3) of the Act is attracted and in the absence of cogent special reasons, eviction should not have been allowed. With regard to these aspects learned Senior Counsel referred to the alleged inherent contradictions in the pleadings and evidence adduced by the landlady. In this context, learned Senior Counsel referred to the evidence of PWs. 2 to 4 also it is submitted that as far as the property owned by her is concerned the loan transaction has also been cleared. It is submitted that the bona fide need pleaded is clearly a ruse to evict the tenants.

6. In support of his arguments that the Act is a complete code by itself, the learned Senior Counsel relied upon the following decisions:- Sivarama Menon Vs. Raghavan and Others, , A. I. Joy Vs. Stephen Jacob and Another, , Tresa Vs. Joseph, , V. Dhanapal Chettiar Vs. Yesodai Ammal, and Paul Vs. Saleena, . With regard to the scope of the first proviso to Section 11(3) of the Act, learned Senior Counsel relied upon the decisions in New Woodlands Hotel Vs. Varkey, , Chacko P. Mathew and Others Vs. Kuttappan and Janatha Drugs Vs. Maithri Construction and Others ; and with regard to the scope of revisional jurisdiction u/s 20 of the Act, learned Senior Counsel relied upon Abdul Salam Vs. Sebastian, .

7. Learned counsel Shri N.M. Mohamed Ayub appearing for the petitioner in R.C.R. No. 66/2013 supported all the arguments of the learned Senior Counsel Shri R.D. Shenoi and further submitted that it is for the second time that the landlady has moved against the tenants of the petition schedule building u/s 11(3) of the Act and on the previous occasion after the eviction was ordered, the building was rented out to the present tenants without occupying it. According to the learned counsel, it is a factor which should have been considered by the authorities below.

8. Learned counsel Shri C. Varghese Kuriakose appearing for the landlady submitted that this is not a case where Section 11(9) could be applied. It is clearly pleaded by the landlady that the tenancy is a month-to-month one. The learned counsel, after referring to the pleadings of the petitioners-tenants, submitted that their counter statement will show that they have admitted the existence of the lease deed and have relied upon the terms of the said lease deed in support of their contentions. It is not a case where there is a transaction independent of the lease deed. The lease deed is an unregistered one. It is therefore, submitted that in such cases, going by the provisions under the Transfer of Property Act, it can only be a month to month tenancy. The learned counsel therefore submitted that the authorities below have rightly relied upon the principles of the Apex Court in Anthony Vs. K.C. Ittoop and Sons and

Others, , Samir Mukherjee Vs. Davinder K. Bajaj and Others, and the decision of this Court in Paul Vs. Saleena, .

9. With regard to the first proviso to Section 11(3) of the Act, the learned counsel for the landlady submitted that it has been explained by the landlady in the eviction petition itself that, against the property and the building in Kalathilparambil Road proceedings for recovery are pending at the instance of the Financing Bank and the Sales Tax Department, for recovery of loan arrears from the husband of the landlady, whose whereabouts are unknown. It is a case where the landlady is conducting a Press in her building in Swamy Chinmayananda Road against which also recovery proceedings are pending. All these facts have been proved in evidence by examining PWs. 2 to 4.

10. Therefore, the learned counsel Shri C. Varghese Kuriakose submitted that special reasons have been attributed by the landlady in the pleadings which have been further proved in the evidence also. The evidence adduced with regard to the recovery proceedings in addition to what has been stated in the rent control petition will explain the predicament of the landlady and therefore as she wants a proper place to reside-since she is now residing in a rented building and also wants to start a garment making unit on a moderate basis, the plea u/s 41(3) of the Act has been fully established. She has explained that the printing press cannot be run profitably and therefore she wants to switch over to the garment making unit. Learned counsel also elaborately referred to the pleadings and evidence in the case in support of his arguments.

11. Shri C. Varghese Kuriakose relied upon several decisions of the Apex Court and this Court. The important ones are Anthony Vs. K.C. Ittoop and Sons and Others, , Samir Mukherjee's case (2001)5 SCC 259, K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd., , Paul Vs. Saleena, , Dasan v. Janardhanan 2009 (2) KLT 726 : 2009 (2) KHC 613, Aniyar T.V. and another v. T.K. Raveendran 2012 (4) KHC 811 (DB), M/s. Cannanore Drug House Vs. Cheriya Melat Abdul Azeez, , San Varghese and Another Vs. Avira Pappu, , Vayalilakath Abdul Nazar Vs. Paruthithodi Mammad Koya, , Jerry Joseph Vs. Selvaraj and M. Padmanabha Setty Vs. K.P. Papiiah Setty, .

12. He also relied upon the Black Law Dictionary 7th Edition to advert to the meaning of the words "let", lease etc. The meaning of the words "let" is the following: "to offer (property) for lease". Meaning of "lease" is given as "a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually, rent". The learned counsel also referred to the meaning "month-to-month lease" which is the following: "A tenancy with no written contract".

13. We will refer to the necessary pleadings of the parties in the context of the arguments on both sides. In the eviction petition in paragraph (1) the landlady has averred that the petition schedule building is under the possession of the respondents in the rent control petition as tenants and the building was let out

on 22/03/2004. It is a tenancy from month-to-month. To begin with the rent was Rs. 25,000/- and the present rent is Rs. 27,500/-. She has further averred as follows: "In fact, there is a lease deed dated 22/03/2004 which contains the original date of letting and the rent amounts." It is further averred in paragraph (2) that the landlady is running a printing press in her building at Swami Chinmayananda Road, Ernakulam and the building wherein the press is located and the land upon which the building is situated has been mortgaged with M/s. Kerala Financial Corporation in connection with another industry by name "Siva Krishna Minerals". The transaction became a defaulting one and the Kerala Financial Corporation has started revenue recovery proceedings against the said security property and, therefore, she is constrained to shift her press to another place. It is also averred that she has been residing in the house owned by her husband and the house and the property situated therein have been taken possession of by the Sales Tax Department for the sales tax dues under Kerala General Sales Tax Act of her husband. As the building has been taken over, she is residing in a rented flat, in the present address shown in the eviction petition itself. On account of the above two circumstances, she bona fide needs the petition schedule building to start her own business and to accommodate her dwelling needs. It is averred further that the printing industry run by her is under threat of stoppage at any moment and she wants to start a garment making unit of her own in which she is experienced. Apart from starting the said unit, she wants to accommodate her residence in the petition schedule building. In paragraph (5) it is averred that she is a co-owner of the building located at Kalathilparambil Road. The said building is jointly owned by her and her husband and for the dues of her husband, the said building and property have been attached by the Sales Tax Department. Apart from that the State Bank of Travancore from whom loan is contracted by the husband of the petitioner is also proceeding on the said property. Therefore, the said building cannot be put to the bona fide need of the landlady. She has no other building having full right or half right in Ernakulam City. Therefore, it is contended that the first proviso to Section 11(3) of the Act is not applicable.

14. We will now refer to the objections separately filed by the petitioners herein. In the objection filed by the first respondent in the rent control petition, namely, the petitioner in R.C.R. No. 66/2013, in paragraph (3), he has denied the averment of the landlady that the lease arrangement is on a month-to-month basis. It is stated that the tenants took the petition schedule building on rent on 22/03/2004, to conduct a hotel. The initial period of lease agreed between the parties was two years from the date of lease reserving the right of the tenants to get the lease period renewed for a further period of two years. He has also stated that there is a condition for enhancement of rent at the rate of 10% after every two years. The tenants are conducting a hotel in the petition schedule building in the name and style of "Hotel Paragon". In paragraphs (4) and (5) he has stated about the alleged expenditure incurred to make the building suitable for conducting their hotel business. In paragraph (6) it is averred further that the

tenants are entitled to renew the lease period for a further period of two years as per clause 14 of the lease deed on payment of rent at 10% above the existing rate. It has also been averred that after the initial period of two years, such enhanced rent is being paid. Various other allegations in the rent control petition have been denied. In the additional objection filed by the petitioner in R.C.R. No. 69/2013, in paragraph (3) it is averred that the building was taken on rent for conducting a hotel from 22/03/2004 and the initial period of lease agreed between the parties was two years from the date of lease/There is a further agreement to renew the lease period for a further period of two years with an enhancement by 10% after the initial period of two years. He has also denied the various other statements made by the landlady in the eviction petition.

15. First we will come to the important question, namely, one concerning the benefit pleaded by the tenants u/s 11(9) of the Act. We herein below extract Section 11(9) of the Act for easy reference.

Where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply to the Rent Control Court before the expiry of such period.

16. The admission made by PW 1 in the cross-examination is heavily relied upon by the learned Senior Counsel Shri R.D. Sheno. In the cross-examination she has given an answer that the original of the rent deed is in her possession and a specific question was put whether the same can be produced, to which she answered that it can be produced. According to her an amount of Rs. 5 lakhs was given as security and the period of agreement was two years. There is a clause that after the period of two years if 10% enhancement of rent is given it will be extended for a further period of two years. The rent initially fixed was Rs. 25,000/- and to a specific Question whether 10% enhancement has been given, she answered the negative. She maintained that the period of agreement has not been extended further.

17. RW 1 is the petitioner in R.C.R. No. 69/2013. His evidence was also relied upon by the learned Senior Counsel for the petitioners to contend that documents have been produced which will show that the enhancement of rent by 10% was given. Specific reference is made to Ext. B13 which will show payment of rent by cheque for some months after April 2006. It is explained that those payments are after deducting TDS. Thus it is contended that read along with the evidence of landlady these documents will definitely show that the period of lease has been extended by two more years, which will defeat the claim of the landlady.

18. The question raised is no longer res integra. The Act, namely, the Kerala Buildings (Lease and Rent Control) Act is one to "regulate the leasing of buildings and to control the rent of such buildings in the State of Kerala". The word "lease" is not there in the definition clause. Section 2(1) of the Act contains the definition of "building", S. 2(3) gives the definition of "landlord" and S. 2(6)

defines the "tenant". Section 11 of the Act starts with a non obstante clause, that "notwithstanding anything to the contrary contained in any other law or contract a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of this Act". The question is whether the provisions of the Transfer of Property Act are excluded or not.

19. We will straight away come to the decisions relied upon by the learned Senior Counsel Sivarama Menon Vs. Raghavan and Others, , the tenant claimed value of improvements. While examining the question as to whether, it could be considered by the Rent Control Court, in paragraph (1) it has been held as follows:

.....Decisions are uniform that the Rent Control Court is not expected to go into the question of value of improvements. It is not a matter falling within the jurisdiction of the Rent Control Court. The Act is a complete code on the rights and liabilities of the landlord and tenant in respect of matters falling within the purview of landlord and tenant in respect of the building and it is not permissible for a landlord or tenant in cases governed by the Act to fall upon the provisions of the Transfer of Property Act or the contract of tenancy or other extraneous circumstances.

Finally, it was held that "the tenant is not entitled to put forward the claim for value of improvements in bar of eviction and the Rent Control Court is not empowered to adjudicate such a matter, as it is not within its jurisdiction". We notice that only in the context of adjudication of a legality of the claim for value of improvements, the findings have been rendered to the effect that the tenant cannot fall back upon the provisions of the Transfer of Property Act or the contract of tenancy. Various decisions, viz., P. Chinnakannu Pillai Vs. Gomathi Ammal and Another , Appukuttan Pillai Vs. Thiruvadinatha Pillai and Another, , M/s. Panchmal Narayana Shenoy v. Basti Venkatesha Shenoy, (1966)2 MYS LJ 133 and Panchamal Narayan Shenoy Vs. Basthi Venkatesha Shenoy, holding similar views have been relied upon.

20. The next decision is A. I. Joy Vs. Stephen Jacob and Another, . The facts of the case show that pending a suit for declaration of the rights of the plaintiff, and recover the building of the landlord, a lease of the building was given, and the question was whether the tenant could be evicted in execution of the decree. In paragraph (5), the said question was gone into. In that context it has been held as follows:

...The non obstante clause contained in S. 11(1) has to be given its full effect. The rent control legislation is a self-contained statute and the rights and liabilities of the landlord and tenant are to be governed by its provisions and not by the provisions in the Transfer of Property Act or any other law. In other words, the provisions of Act 2 of 1965 will override the provisions of the Transfer of Property Act as far as landlords and tenants of buildings to which it applies....

The argument raised herein is that the above dictum will show that the

provisions of the Transfer of Property Act will stand excluded. We are of the view that the context under which the said dictum has been laid down will have to be considered to understand the true effect. It was mainly a case where the question whether a tenant in respect of whom the Rent Control Act will apply, could be evicted, without recourse to the provision of the Act arose for consideration. The suit for declaration of rights and the suit for recovery of the building has already been decreed also. But this Court did not agree that the tenant can be evicted without recourse to the provisions of the Rent Control Act. The said decision cannot be taken as an authority for the proposition that none of the provisions of the Transfer of Property Act will govern the transaction between the landlord and tenant coming under the Rent Control Act.

21. The next decision is by a Division Bench of this Court in Tresa's case, 2005 (4) KLT 435 wherein in paragraph 10 while referring to the provisions of the Act it has been held that it is a special statute. We extract the relevant dictum laid down therein:

The Kerala Buildings (Lease and Rent Control) Act is a special statute governing and regulating tenancy and sub-tenancy. The provisions of the Act supersede the general law of tenancy. Though Section 2(6)(ii) of the Act recognizes the principle of holding over, by including in the definition of tenant "a person continuing in possession after the termination of the tenancy in his favour", it excludes "a person placed in occupation of a building, by its tenant". S. 2(6)(ii) of the Act is incompatible with S. 116 of the Transfer of Property Act and therefore the Act supersedes the general law of tenancy, in the matter of holding over.

The context under which the said dictum has been laid down shows that by Ext. B1 letter, the landlord had agreed to sub-let the building for a period of one year to any person of the choice of the tenant. The petition for eviction for subletting u/s 11(4)(i) of the Act was resisted in the light of the said letter. This Court was of the view that a person inducted as per the permission granted under Ext. B1 cannot claim the right to hold over so as to bind the landlord. It is in that context, the above dictum was laid down. Therefore, only to understand the scope of Section 11(4)(i) of the Act, the legal position was explained. The same will not show that it will apply on all fours to each one of the circumstances.

22. V. Dhanapal Chettiar Vs. Yesodai Ammal, is a decision of the Constitution Bench consisting of seven Judges of the Apex Court. The important question, whether for evicting a tenant under the Rent Control Acts of the respective States, notice u/s 106 of the Transfer of Property Act is necessary or not, was answered therein and it was held that the same is not necessary. While answering the said question, the provisions of the Transfer of Property Act and certain provisions of the State Rent "Control Acts have been examined. But, while referring to the scheme of the State Rent Control Acts, the Apex Court has made the following conclusion in para (5):

Under Section 107 of the Transfer of Property Act a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. None of the State Rent Acts has abrogated or affected this provision.

The same is quite important in the context of the argument herein. In the Kerala Buildings (Lease and Rent Control) Act also there is no provision abrogating or affecting Section 107 of the Transfer of Property Act.

23. Now we will come to the important decision of the Apex Court, by a three Judges Bench in Anthony Vs. K.C. Ittoop and Sons and Others, with regard to interpretation of Sections 105 to 107 of the Transfer of Property Act and with regard to the proof of landlord tenant relationship in the face of an unregistered instrument. The question was considered under the Kerala Buildings (Lease and Rent Control) Act itself. In the light of the arguments raised by both sides herein, we will refer somewhat elaborately to the principles and the findings of the said Judgment.

24. Therein, the unregistered lease deed was meant for a period of five years. The trial court found that the appellant is not a tenant as the lease was void on account of non-registration of the lease deed. In the first appeal, the District Judge found that in spite of non-registration of the instrument there was a valid tenancy of the building and hence the appellant could not be evicted except in accordance with the provisions of the Rent Control Act. This was reversed by this Court in the Second Appeal by holding the view that the first defendant has not proved that independent of the void lease, a relationship of landlord and tenant has come into existence between the parties and, accordingly, decreed the suit for recovery of possession of the plaint schedule property.

25. While examining the related questions, the Apex Court in paragraph (6) referred to the definition of the words "tenant" and "landlord" u/s 2 of the Rent Control Act apart from the definition of "building" and held that the word "let" has only one meaning and that is to "demise on lease". We extract paragraph (6) of the Judgment below:

6. In spite of the chequered career of the litigation the only question which has now bogged down to be decided, is whether the suit building is held by the appellant under a lease or not. The word "tenant" is defined in Section 2(6) of the Rent Act as "any person by whom or on whose account rent is payable for a building....". Landlord is defined as including "the person who is receiving or is entitled to receive the rent of a building". Now the definition of "building" must be looked into. In clause (1) of Section 2 it is defined as "any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes..". In the above context the word "let" has only one meaning and that is to demise on lease.

In paragraph (7) it was held further as follows:

The above three definitions unmistakably point to the necessity for a building to be covered by a lease under law in order to bring such building within the purview of the Rent Act. If there is no lease of a building the Rent Act has no application. Thus what is important now is to know whether there has been a lease of the building in question.....

26. In paragraph (8) it was held that the unregistered instrument providing for a period of five years for the period of lease "cannot create a lease on account of three-pronged statutory inhibitions". Their Lordships considered the three inhibitions; namely (i) Section 107 of the Transfer of Property Act, 1882 (ii) Section 17(1) of the Registration Act, 1908 and, (iii) Section 49 of the Registration Act. It was held in paragraph 11 that in the light of the above, "the resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that appellant is a lessee by virtue of the said instrument. The court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker.

27. Thereafter, the true nature of the transaction in the case was examined and in paragraph 14 it was found that the jural relationship is only that of a lessor and lessee falling within the purview of the second paragraph of Section 107 of the Transfer of Property Act and in paragraph 16 it has been declared as follows;

.....Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains un-rebutted.

Finally, in paragraph 20 it was held that the provisions of the Rent Control Act are applicable.

28. Of course, that is a case where the unregistered lease deed was relied upon by the tenant.

29. In the next case, namely, Samir Mukherjee Vs. Davinder K. Bajaj and Others, the facts show that the suit was one for eviction and also for recovery of arrears of rent and damages/mesne profits. It was pleaded that the defendant was a monthly tenant and therefore, 15 days" notice terminating the tenancy, u/s 106 of the Transfer of Property Act alone was required and the tenancy was created by an oral agreement. It was contended before the Apex Court, by referring to the provisions of the Section 106 of the Transfer of Property Act, that since the lease was for a manufacturing purpose, six months notice is required. In that context, Their Lordships examined the relevant provisions, namely, Sections 106 and 107 of the Transfer of Property Act. In paragraph (7) it was declared as follows:

... In the absence of a registered instrument no valid lease from year to year or for a term exceeding one year or reserving a yearly rent can be created. If the

lease is not a valid lease within the meaning of the opening words of Section 106 the rule of construction embodied therein would not be attracted....

Even though the proceedings therein was a suit, the interpretation of Section 107 of the Transfer of Property Act is quite apposite to the context herein as S. 107 has not been abrogated by any State Rent Control Acts as held by the Apex Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, .

30. These decisions have been examined by a Division Bench of this Court in Paul Vs. Saleena, . There also a similar argument u/s 11(9) of the Act was raised. Of course the document, namely, an unregistered lease deed was produced as Ext. A2 in that case. The question whether such a document can be relied upon as a defence u/s 11(9) of the Act was examined. Learned Senior Counsel Shri R.D. Shenoi tried to distinguish it by pointing out that in that case the document was produced in evidence, which is different from the facts of this case. Learned Senior Counsel also relied upon paragraph (7) of the Judgment to show that there is also a finding that the Rent Control Act is a complete code in itself which will support the pleas of the petitioners herein. But, we notice that the Division Bench herein expressed the view that the provisions of the Transfer of Property Act are not fully excluded and in paragraph (7) it has been held as follows:

....The Act is a self contained statute and the rights and liabilities of the landlord and tenant are to be governed by its provisions. Rights available to the tenant and landlord under the general law and the Transfer of Property Act are substantially curtailed by the provisions of the Rent Control Act. Though Rent Control Act is a piece of social legislation mainly to protect tenants from frivolous eviction, certain salutary provisions have also been made in the Act in order to do justice to the landlord. The legislation is neither pro-tenant nor-pro-landlord. Rent Control Act does not clearly disable the provisions contained in the Transfer of Property Act as far as rights of parties are concerned. At the same time, it makes provision for eviction on such specified grounds and it cannot be resisted on the basis of rights conferred under the Transfer of Property Act. When eviction is sought by the landlord under the provisions of the Rent Control Act and once the requirement contemplated under the Rent Control Act are satisfied, tenant cannot claim total prohibition of eviction on the basis of the provisions contained in the Transfer of Property Act or the provisions contained in the Contract Act.

(emphasis supplied by us)

31. Their Lordships examined the provisions of the Transfer of Property Act, namely, Sections 105 to 107 and the Sections 17 and 49 of the Registration Act in paragraphs 10 and 11. Thereafter Their Lordships considered the dictum laid down in Anthony Vs. K.C. Ittoop and Sons and Others, as well as Samir Mukherjee Vs. Davinder K. Bajaj and Others, and held as follows in paragraph 12:

.... The above mentioned statutory provisions and the decisions would conclusively show in the absence of a registered instrument no valid lease from year to year or a term exceeding one year or reserving yearly rent can be

created.

It has been further held in paragraph 13 that "in the instant case, admittedly lease deeds are unregistered documents. Therefore, tenancy is to be treated as tenancy from month to month.

32. Thereafter, the further argument that even if the lease deed is an unregistered one, the period mentioned in the same is binding on the parties and an eviction petition filed before the expiry of the period is hit by Section 11(9) of the Act, was examined. The further question whether the same could be used for a collateral purpose, namely, to prove the period of lease was also examined in the light of various decisions of the Apex Court and other High Courts. It has been held in paragraphs 14 and 15 as follows:

14. The various provisions contained in Ss. 11(2) to 11(8) of the Rent Control Act are substantial provisions. Compulsorily registerable document, though unregistered and inadmissible as evidence of a transaction affecting immovable property, may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

15. The above mentioned judicial pronouncements and the principles laid down therein would clearly show that an unregistered document cannot be used for the purpose of establishing that document created or declared or assigned or limited or extinguished a right to immovable property. Period of lease is integral part of the agreement and not a collateral one. Unregistered lease deeds cannot be pressed into service to create, declare, assign, limit or extinguish any right, title or interest in or to the property comprised in the document. They create only month to month tenancy and only if the lease is registered under the Registration Act, it would create transfer of right to enjoy the immovable property for a specific term exceeding one year. We therefore hold that unregistered lease deeds by which rights of parties in these cases are governed would not stand in the way of the landlord from filing application under Ss. 11(2)(b), 11(4)(ii) or 11(4)(v) of Act 2 of 1965 and the application would not be hit by S. 11(9) of the Act.

33. We may notice that the Division Bench has emphatically held that "period of lease is integral part of the agreement and not a collateral one and unregistered lease deeds cannot be pressed into service" in such circumstances and the tenancy created is only month-to-month and only if the lease deed is registered under the Registration Act, it would create transfer of right to enjoy the immovable property for a specific term exceeding one year. It was held therefore, that Section 11(9) is not attracted.

34. K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd., is a Judgment of the Apex Court wherein the use of an unregistered document for consideration as evidence for any collateral transaction was considered. In paragraph 34, after referring to the various Judgments of the Apex Court, the legal position has been

explained thus:

34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:-

1. A document required to be registered is not admissible into evidence u/s 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

It was also held in paragraph 35 that the particular clause in the lease agreement relied on in that case cannot be called a collateral purpose.

35. A Division Bench of this Court in Aniyar T.V.'s case, 2012 (4) KHC 811 (DB), in the context of a similar argument u/s 11(9) of the Act, has examined the question as to whether any unregistered documents can be looked into for collateral purposes. Therein also the argument was by referring to the particular words in Section 11(9) of the Act, namely, "agreed upon between the landlord and the tenant" to justify the plea that an unregistered lease deed can be looked into for purpose of determining the terms of lease. The above argument was rejected in paragraph 16 as follows:

16. In this case, we are dealing with a question whether a particular clause contained in an unregistered lease deed can be looked into for the purpose of determining the terms of lease. Though the learned Senior Counsel for the revision petitioners gave thrust to the words "agreed upon between the landlord and the tenant" appearing in Section 11(9), the said agreement can only be a legal agreement. An agreement is said to be legal only if it is enforceable by law. The definite case of the revision petitioners is that the lease was for a for a period of 15 years. Being a lease of immovable property from year to year exceeding one year it is compulsorily registrable u/s 17 of the Registration Act, 1908.

It has been thus held that an agreement for the purpose of Section 11(9) can only be a legal agreement and an agreement is said to be legal only if it is enforceable by law. It was held in paragraph 21 that "as the term of lease imposes a limit on the interest of the parties, an unregistered document cannot be relied on for ascertaining the term of lease" and reliance was placed on K.B.

36. Another Division Bench in M/s. Cannanore Drug House Vs. Cheriya Melat Abdul Azeez, has followed the above dictum while considering the question whether an unregistered document (Ext. A1 produced in that case) could be relied upon by the tenant to contend that the eviction petition filed is premature. The answer was in the negative.

37. The legal principles which we have examined above will therefore show that the applicability of Section 107 of the Transfer of Property Act is not abrogated by the provisions of the Rent Control Act. If that be so, a lease exceeding for a period of one year can only be made by a registered instrument. Sections 17 and 49 of the Registration Act also will therefore come into the way of the tenant getting the benefit of an unregistered instrument. This in the nutshell is the dictum laid down in the Judgments we have discussed above, especially, in the context of Section 11(9) of the Act by the Division Bench in Paul Vs. Saleena, .

38. We will next examine whether the plea of the learned Senior Counsel Shri R.D. Shenoi that herein the transaction has been proved independently in view of the admissions of the landlady, could be accepted, even though the unregistered lease deed is not produced in evidence.

39. The learned Senior Counsel also invited our attention to page 1571 of commentary on the Transfer of Property Act, 1882 by Shri Darashaw Jivaji Vakil containing the following commentary:

S. 17 of the Registration Act deals only with documents and not with the validity of the transaction they embody. On the other hand, S. 107 of T.P. Act strikes at the validity of the transactions of leases.

We do not see anything in it contrary to the legal position already explained.

40. The fact that a lease deed is there, is evident from the pleadings in the rent control petition as well as in the objections filed by the tenants. In paragraph (1) of the eviction petition, the date of letting of the building to the tenants is given as 22/03/2004 and it is specifically stated that there is lease deed dated 22/03/2004 which contains the original date of letting and the rent amounts. The same is not denied in the objections filed by both the tenants. Going by the averments in the objections filed by the tenants which we have adverted to, it is clear that with regard to the date of letting there is no dispute and reference is made to the lease deed by the petitioner-tenant in R.C.R. No. 66/2013 in his objections, when we read paragraphs 3 and 6 of the objections together. The tenants' contention is also mainly that after the initial period of two years, the lease period is renewed for a further period of two years, going by the reservation in the lease deed under clause 14 by paying rent 10% above the existing rate. Clearly therefore, it is not a case where the tenants have also a case that there is a transaction independent of a lease deed, to create the relationship of landlord and tenant. In the chief affidavit, PW 1 has stated about

the lease deed and in cross-examination she was specifically asked whether the lease deed has been produced. The suggestions of the tenants while cross-examining the landlady have to be understood in the said context. It is not a case where the tenants have disputed the lease deed and wanted to establish that there is a landlord and tenant relationship which has come to stay independent of such a lease deed. No such contention is there and no efforts have been made by them in their evidence also to establish such a case.

41. Going by the proof affidavit filed by the second respondent in the rent control petition, namely, the petitioner in R.C.R. No. 69/2013, he has stated that there is no month-to-month tenancy and the building was taken on rent on 22/03/2004 for an initial period of two years. There is a clause in the rent agreement executed that on payment of 10% by way of enhancement of rent, the period will stand extended by two more years. In paragraph (8) it is stated that the period of lease has thus been extended upto 22/03/2008 and eviction petition filed before the said period is not maintainable. Further, while being examined as RW 1 in the cross-examination, the petitioner in R.C.R. No. 69/2013 has clearly stated that the lease agreement was executed in the joint names of both the tenants. To a specific question whether they are continuing even now under the said lease agreement, it has been answered "yes" and it is further stated that he does not remember whether the copy of the agreement is with him and the original rent agreement is with the landlady. He also does not remember whether it has been registered.

42. If we examine the pleadings and evidence in this case, as rightly submitted by Shri C. Varghese Kuriakose learned counsel for the respondent-landlady, there is no transaction independent of the unregistered lease deed. Therefore, even if the document has not been produced by both sides, they have mentioned about the existence of the lease deed in the pleadings and the tenants are fully relying upon the said lease deed to explain the terms of the lease like the initial period of lease, its renewal and with regard to the payment of enhanced amount of rent by 10%, it cannot be said that there is a transaction independent of the said unregistered lease deed. Therefore, even though the same is not produced in evidence, it cannot help to advance the contentions of the petitioners. Thus, in the light of the dictum laid down in *Anthony Vs. K.C. Ittoop and Sons and Others*, *Samir Mukherjee Vs. Davinder K. Bajaj and Others*, *K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd.*, and *M/s. Cannanore Drug House Vs. Cheriya Melat Abdul Azeez*, the arguments of the learned Senior Counsel cannot be accepted. Hence, we are of the view that the tenants are not entitled for the benefit of Section Kerala Buildings (Lease of the Act. The word "let" means "demise on lease" as held in *Anthony's case* (supra). In this case, the jural relationship of parties as lessor and lessee has not been disputed. Such being the situation and as the lease deed remained as an unregistered one and even though not produced in evidence, the period of tenancy will be only month-to-month, in the light of the combined effect of Sections 106 and 107 of the Transfer of Property Act. Section 107 of the Transfer of Property Act being not

abrogated by the Rent Control Court Act and as there is no provision contrary to Section 107 of the Transfer of Property Act, the same will be definitely attracted.

43. That brings us to the next issue, namely, regarding the finding under the first proviso to Section 11(3) of the Act. The first proviso to Section 11(3) of the Act reads as follows:

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons in any particular case it will be just and proper to do so.

44. The decisions relied upon by the learned Senior Counsel Shri R.D. Shenoi in this context are *New Woodlands Hotel Vs. Varkey*, *Chacko P. Mathew and Others Vs. Kuttappan and Janatha Drugs Vs. Maithri Construction and Others*. In the first of the decisions it has been held that "Really the existence of another building of his own in his possession in the City is a factor to be taken into account in arriving at a decision whether the landlord bona fide needs the building for his occupation.....The law requires that the Rent Control Court must be satisfied by such special reasons that the building in his possession is not sufficient for his occupation before ordering eviction of a tenant from the building in the latter's possession". The Division Bench in *Chacko P. Mathew's case* [supra] explained the legal question with regard to the first proviso to Section 11(3) of the Act, namely, with regard to the burden of proof that "We are of the view landlord need explain the circumstances and special reasons before the Rent Control Court only if it is established by the tenant that landlord has got other building of his own". In *Janatha Drugs*" case (supra) is a later decision of a Division Bench of this Court where one of us (Ramachandran Nair, J.) is a party; wherein it has been held that the burden is on the landlord to plead and prove special reasons when he gets possession of other rooms. The landlord has got a duty to explain the special reasons for not choosing to occupy the premises he has come into possession. Special reasons should be germane to the issue in question and should not be evasive reasons shown by landlord.

45. The decisions relied upon by Shri C. Varghese Kuriakose in the context of the first proviso to Section 11(3) are, *Jerry Joseph Vs. Selvaraj*, *Panoli Surendran Vs. P.M. Mammooty*, *Vayalilakath Abdul Nazar Vs. Paruthithodi Mammad Koya*, and *M. Padmanabha Setty Vs. K.P. Papiiah Setty*, .

46. In *M. Padmanabha Setty's case* (supra) with regard to Section 8(3)(a)(ii) of the Houses Rent and Accommodation Control Act, 1951 (Mysore), it has been held that landlord's possession of another building as a tenant is no bar to the eviction of tenant.

47. In *Jerry Joseph's case* (supra) it was held in paragraph 18 as follows:

It is now settled that even if the landlord failed to mention in the petition for eviction about the other premises belonging to him, if materials about those

alternate accommodation have been placed before the court and the matter has been adequately considered by the court without causing any prejudice to the tenant, the non disclosure of the availability of buildings in the petition is immaterial.

48. With regard to the acceptance of special reasons attributed by the landlord, the Division Bench in Dasan's case [supra], in paragraph (7) has held that it can be any reason which appeals to Rent Control Court's sense of justice, equity and good conscience and we extract the said portion herein below:

....But at the same time, as indicated by Division Bench of this Court in Raghavan v. Govindan Nambiar, 1995 (1) KLT 596 unless the Rent Control Court finds the existence of special reasons justifying an order of eviction landlord's possession of vacant building notwithstanding, order of eviction cannot be passed. Special reason, according to us, can be any reason which appeals to the Rent Control Court's sense of justice, equity and good conscience since that court is governed by the principles of justice, equity and good conscience as provided under the statutory rule 11(8) of Buildings (Lease and Rent Control) Rules while taking decision...

49. We will now analyse the evidence in these cases and the arguments of the learned counsel for the petitioners in the context of the legal position explained by various decisions noted above.

50. In the eviction petition, petitioner has pleaded in paragraph (5) that there is a building in Kalathilparambil road which is jointly owned by the petitioner and her husband and the property has been attached by the Sales Tax Department and the State Bank of Travancore is also proceeding with the property for the dues of her husband. It was pleaded that what exactly is the fate of interest of the petitioner over the said building is a fact not entirely at the disposal of the petitioner and hence, the said building cannot be used for the bona fide need urged by the landlady. In the chief affidavit, those aspects have been reiterated.

51. Learned Senior Counsel Shri R.D. Shenoji submitted by referring to the answers in the cross-examination that the ground floor is in the name of the landlady herein and the answer will show that at the time of filing of the eviction petition, both the floors were remaining vacant. It is submitted that since there is no evidence to show that even the portion of the husband has been sold finally, there is no impediment either at the time of filing of the eviction petition or thereafter for the landlady to occupy the same.

52. The above argument is met by the learned counsel Shri Varghese Kuriakose by stating that all the aspects with regard to the legal proceedings against the building have been explained in the eviction petition in the proof affidavit and through the three independent evidence of PWs. 2 to 4, and the relevant files concerning the proceedings have also been produced. It is submitted that as far as special reasons are concerned, the pleadings and evidence will satisfy the requirement of law.

53. In the cross-examination of PW 1 she has stated that the building in Kalathilparambil road is under attachment. Ext. A6 is the notice issued by the Ernakulam Co-operative Bank with regard to the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act in respect of the building. She has stated that each floors of the building has an area of 1000 square feet and that the ground floor was under the custody of the Co-operative Bank and the first floor with the State Bank of Travancore.

54. PW 2 is the Special Tahsildar (Revenue Recovery), Kanayannur Taluk who has produced the files relating the demand notice No. E6-742/ST/01-02. The evidence will show that the revenue recovery proceedings were initiated in the year 1999-2000 and the defaulter is her husband. The total arrears is to the tune of Rs. 1 crore and proceedings have been initiated against the properties having 3.164 cents in Survey No. 919/1 and 4.228 cents in Sy. No. 919/2 and 3.406 cents in Sy. No. 2549/1 and the building therein. With regard to the property in Survey No. 2549/1 and the building situated therein, it is stated that half of the property lying in the western side is in the name of the husband of the landlady, Shri Gopalan Nair and the remaining half is in the name of the landlady. Both are owned under separate documents. But, since the building is compact one, separate boundaries in respect of each person cannot be specified. In respect of the property in Survey No. 919/2, sale was conducted and the property in Survey No. 2549/1 has been attached and the sales proceedings are pending. There is no straight approach from the road to reach the building. Sale could not be held due to the above reason and as several cases are pending. The husband of the landlady is absconding. In the cross-examination it is stated that the property of the landlady is not under attachment and proceedings are pending against the husband. It is also stated that to the portion owned by the landlady there is road frontage.

55. PW 4 is the Senior Branch Manager of Ernakulam District Co-operative Bank in the Main Branch. She has produced the file relating to the loan sanctioned in favour of the landlady and the loan amount is Rs. 14,50,000/-, availed in 2001. Her evidence will show that proceedings have been initiated under the SARFAESI Act after which Rs. 7 lakhs have been remitted in two installments. The property offered as security is the property in Survey No. 2549/1, namely, 1.21 Are and the portion of the building situated therein and a Mortgage deed has also been executed. It is stated that the property has been taken possession by the Bank and Section 13(4) notice was issued under the SARFAESI Act (Ext. X2 notice) and the loan has not been closed so far.

56. In the cross-examination it is stated that the landlady has challenged the proceedings under the SARFAESI Act in W.P. (C). No. 23894/2009 and thereafter an application for one time settlement has also been submitted. There is a direction in the Judgment in the writ petition by the High Court to consider the application for one time settlement and, thereafter, Rs. 7 lakhs has been

remitted. It is further stated that possession has been taken of the property and not the building of the landlady, going by Ext. X2. In the re-examination, she clarified that in the property i.e. 1.21 Are, building portion is there.

57. PW 3 is the Chief Manager of the Kerala Financial Corporation, Kaloore Branch, who has produced the file relating to the loan transactions in the name of Siva Krishna Minerals. The said loans were availed of by the landlady and there are three separate loans of Rs. 6,02,000/- Rs. 1,00,000/- and Rs. 2,32,000/-. The security offered is 21/2 cents in Survey No. 701/1 and the loan account has been closed. There were revenue recovery proceedings pending against the said property for recovery of the loan amount and during the pendency of the same, under One Time Settlement Scheme, the amount was paid and the loan was closed on 13/10/2008.

58. The argument raised by the learned Senior Counsel Shri R.D. Shenoji is that going by the evidence of PW 3 it can be seen that the loan with the Kerala Financial Corporation has been closed and, therefore, there is no real need for eviction of the tenants as the said building is available. The case of the landlady, as we have already noticed in the eviction petition in paragraph (2) is that at that time, the revenue recovery proceedings has been started against that property by the Kerala Financial Corporation, she therefore wanted to shift the press to another place. The eviction petition was filed on 01/08/2006. The question is whether the conclusion of the revenue recovery proceedings during the pendency of the eviction petition will go against the said plea of the landlady, namely, the requirement u/s 11(3) of the Act for residence as well as for starting a garment making unit. The evidence of PW 1 will show that the building where the press is functioning is a small one with a tin sheet roofing which fact is disclosed in the re-examination. As far as the requirement of the landlady for the building sought to be evicted u/s 11(3) of the Act is concerned, the subjective satisfaction of the landlady is material. When she has asserted that the building is required for residence as well as for starting a garment making unit, even though on a small scale, the tenant cannot dictate that she should have the residence in the building where the press is located and the garment making unit can also be located there. The decision relied upon by the learned counsel for the landlady in this context is *Deep Chandra Juneja Vs. Smt. Lajwanti Kathuria (Dead) through L.Rs.*, wherein in paragraph 40 it has been held that "In *Gaya Prasad Vs. Sh. Pradeep Srivastava*, this Court held that the need of the landlord is to be seen on the date of application for release. In *Prativa Devi Vs. T.V. Krishnan*, it was held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live. In *Rishi Kumar Govil Vs. Maqsoodan and Others*, this Court while dealing with the provisions of Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and Rule 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, held that the bona fide personal need of the landlord is a question of fact and should not be normally interfered with". Herein the need projected is for residence and to start a garment making unit.

She has explained in the oral evidence that conduct of press itself has become difficult because of the change of circumstances and therefore she wants to have a garment making unit. With regard to these requirements, the landlady herself is the best judge and the tenant cannot dictate as to how the landlady will have to adjust. Therefore, we reject the contention of the learned Senior Counsel in this regard.

59. With regard to the building at Kalathilparambil road, the special reason attributed is that recovery proceedings are pending against the same. The building is a jointly owned one by the landlady and her husband. There is no reliable evidence that the building can be separately enjoyed, and it being a building in two floors, the question is whether the landlady could have ignored the revenue recovery proceedings against the portion owned by her husband, to start residence therein in the floor in her name and start a garment making unit. Evidence of PW 2 and PW 4 will show that separate recovery proceedings have been initiated with respect to property of the landlady as well as her husband. With regard to the portion in the name of the landlady, proceedings initiated by the District Co-operative Bank have not been finalized. Of course, in the eviction petition what she has pleaded is that the proceedings are pending against the portion owned by her husband. The proceedings for recovery by the Ernakulam District Co-operative Bank have been proved in evidence by producing Ext. A6 and by examining P.W. 4. We are of the view that no prejudice has been caused to the tenant because of the said aspect. What is of importance is, whether there is any merit in the special reason offered by the landlady.

60. Thus the special reason shown is the proceedings pending for recovery of loan arrears in respect of the building, including the portion owned by her. Even though vehement arguments have been raised on the petitioners side that it cannot be a special reason at all, both the authorities below have rejected the same. The legal proceedings pending against the property and the building, according to us is a special reason which is sustainable going by the scheme of the Act and in the light of the principles we have discussed above. A special reason should be one germane to the issue and it should be one acceptable to the court dealing with the eviction petition. When a finality has not been attained as on the date of filing of the eviction petition with regard to the recovery proceedings involving the property concerned, and even now, it cannot be said that the idea of the landlady to occupy the tenanted premises against which purportedly no other proceedings are there, is not bona fide. Therefore, we are not impressed by the argument of the learned Senior Counsel Shri R.D. Shenoji supported by the learned counsel Shri N.M. Mohamed Ayub that the building in Kalathilparambil road and the floor in the name of the landlady is available for occupation straightaway.

61. Much argument was raised with regard to the residential building of the landlady at Panampilly Nagar. With regard to the same, it was contended that the plea of the landlady that she has shifted her residence to the tenanted premises

is not correct. This aspect was considered by the Appellate Authority in paragraph 13 of the Judgment and the argument of the petitioners was rejected. Reliance was placed on the evidence of P.W. 2 in that regard. He had stated that the property in Sy. No. 919/2 is in Panampilly Nagar and the building in it is a residential one. Revenue Recovery proceedings were taken in respect of the said property. The Appellate Authority therefore observed that there is no reason to disbelieve the evidence of P.W. 2 regarding the taking over of possession of the residential house at Panampilly Nagar. There was no contra evidence on the part of the tenants also and accordingly it was held that P.W. 1's evidence that she resides in the address given in the Rent Control Petition is to be accepted. Therefore, we find no reason to disagree with the above view. It was also argued by Shri Mohamed Ayoob, learned counsel appearing for one of the petitioners that in Exts. B5 to B7 notices, which were issued prior to Ext. A1 lawyer notice, the need urged is only to shift the Press and therefore it can be presumed that the landlady's present need, viz. to occupy the building may not be correct. Regarding this aspect, the Appellate Authority has found in paragraph 19 that the explanation of P.W. 1 that only after she lost her house, she intended to shift her house to the petition schedule building, can be accepted. It was also observed that there is nothing to show that at the time of sending Exts. B5 to B7 notices, her house was taken over for the dues to the sale tax department and, therefore, the change in the need mentioned in Exts. B5 to B7 notices does not warrant a conclusion that her need is not bonafide. We find no reason to disbelieve the same and hence the said argument is also rejected.

62. Shri N.M. Mohamed Ayub, learned counsel appearing for the petitioner in R.C.R. No. 66/2013 had further submitted that the petition schedule building was sought to be evicted earlier by filing an eviction petition against the then tenant M/s. Jain Automobiles and the plea therein was also u/s 11(3) of the Act and after getting the building evicted, the present petitioners-tenants have been inducted which will show that there are no bona fides. It is answered by learned counsel for the landlady Shri C. Varghese Kuriakose by pointing out that the bona fide need as pleaded in the eviction petition will have to be gone into by the said court.

63. We find from the order passed by the Rent Control Court that the said aspect has been examined. In fact, a preliminary objection was raised by one of the tenants with regard to the maintainability of the eviction petition itself raising the bar u/s 15 of the Act. The same was rejected and an appeal filed from the order has also been dismissed. The orders show that even though eviction was sought under Sections 11(3) and 11(4)(iii) of the Act against M/s. Jain Automobiles, it was allowed only u/s 11(4)(iii) of the Act. At the stage of filing of the appeal, there was a compromise and the appeal was dismissed as not pressed. It cannot be said that merely because on an earlier occasion an eviction petition was filed, the plea for occupation u/s 11(3) of the Act as of now" is affected. The landlady has stated various change of circumstances in the petition and in evidence, while explaining the requirement to occupy the petition schedule building. Therefore,

the said argument is without any merit and we reject the same.

64. The authorities below have found in favour of the landlady with regard to the second proviso to Section 11(3) of the Act also. It has been found that the burden of proof has not been discharged by the tenants with regard to these aspects, namely, as to whether they are depending upon the income from the business for their livelihood and whether any alternate buildings are available in the locality. We find no reasons to interfere with the same also.

65. For all these reasons, we dismiss the revision petitions. We grant six months time from today to the petitioners-tenants to vacate the petition schedule building on the following conditions:

a. The petitioners will file an affidavit within one month undertaking to vacate the petition schedule premises within the time granted by this Court, before the Execution Court or the Rent Control Court as the case may be.

b. They will continue to pay the same monthly rent for use and occupation till the vacant possession is handed over. If any of the conditions are violated, the petitioners will not be entitled for the benefit of this order.

66. We record our deep appreciation of the learned arguments raised by learned Senior Counsel Shri R.D. Shenoj, learned counsel Shri N.M. Mohamed Ayub and Shri C. Varghese Kuriakose. No costs.