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**(1998) 12 KL CK 0040**  
**In the High Court Of Kerala**  
**Case No : C.R.P. No. 2304 of 1992**

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| M/s. Chakolas Silk House and Others | Vs | APPELLANT  |
| Abdul Sathar Ismail Sait and Others |    | RESPONDENT |

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**Date of Decision :** 09-12-1998

**Acts Referred:**

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11(3), 11(4)(i), 11(4)(iv)

**Citation :** (1999) 1 KLJ 116

**Hon'ble Judges :** K. Narayana Kurup, J; A.R. Lakshmanan, J

**Bench :** Division Bench

**Advocate :** T.R.G. Wariyar and A. Rama Prabhu, for the Appellant; E. Subramani, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.R. Lakshmanan, J.—Revision Petitioners are the tenants. The first responder is the landlord and the petitioner in the Rent Control Petition. The above revision has been filed against the judgment in R.C.A. 31 of 1991 on the file of the Second Addl. District Judge and Rent Control Appellate Authority arising from the order in R.C.P. 124 of 1987 on the file of the Second Additional Munsiff and Rent Controller, Ernakulam. First respondent filed the R.C.P. against the revision petitioners and respondents 2 to 9. Eviction was sought on the grounds of:

- (1) need for own occupation;
- (2) sub-lease or transfer; and
- (3) re-construction.

The Rent Controller dismissed the petition for eviction rejecting the claim of the landlord. The landlord filed RCA.31 of 1991 against the said order. The Appellate Authority ordered eviction on the ground that the original tenant transferred its right under the lease to a stranger without the consent and knowledge and also on the ground that the landlord bonafide needs the building for his own

occupation. However, the Appellate Authority disallowed eviction on the ground of reconstruction confirming the findings of the Rent Controller. Being aggrieved by the judgment of the Rent Control Appellate Authority, the tenants have preferred the above revision petition to set aside the impugned judgment.

A Division Bench of this Court, by order dated 25-8-1994, allowed the revision petition, reversed the judgment of the Appellate Authority and sustained the order of the Rent Controller. The Division Bench has also allowed a Civil Miscellaneous Petition No. 2848/94 filed by the revision petitioners/tenants for reception of certain documents in revision. The Division Bench felt that the documents now sought to be produced can be admitted in this revision. The documents sought to be produced are only extracts from the Registrar of Firms and partnership deeds (not originals). The Division Bench allowed the CMP and admitted the documents in evidence and permitted them to be marked as Exhibits on the side of the revision petitioners as Exts. B11 to B17. Aggrieved against the order in the revision petition and in CMP.2848 of 1994, the landlord preferred Civil Appeal No.11734 of 1996 (arising out of SLP (C) No. 21233/94) before the Supreme Court. The Supreme Court passed the following order:

Special Leave granted.

Heard Learned Counsel for the parties. One of the main objections raised by the appellant is that the High Court while hearing the revision application under Sec. 20 of the Rent Control Act permitted, certain documents to be produced notwithstanding the objections raised and allowed the revision on the basis of those documents as if they were proved as required by the Evidence Act. We do not propose to comment on the High Court's power to permit additional evidence to be produced but if the same is allowed to be produced the requirement of proof under the Evidence Act has to be satisfied and the opposite party against whom the documents are proposed to be used must be given an opportunity to explain the same. In the instant case the Learned Counsel for the appellant states that the documents were produced and straightaway admitted in evidence without formal proof having been tendered. In para.6 of the judgment the High Court observed thus:

We feel that the documents now sought to be produced can be admitted in this revision since those documents had been relied on by revision petitioners before the Rent Control Court and the Appellate Authority and the witness has also spoken about the reconstitution of the firm. The documents sought to be produced are only extracts from the Registrar of Firms and Partnership Deeds. We therefore allow C.M.P. "

It is obvious that partnership deeds have to be proved and so also the question regarding the reconstitution of the firm has to be established. We, therefore, think it appropriate to give the appellant an opportunity to put his version in regard to the documents before the court and thereafter the parties may tender proof in support of the documents,

In the result we allow this appeal, set aside the order of the High Court and remand the matter back to the High Court to deal with the additional documents as stated hereinbefore and, thereafter dispose the revision application on merits. In the meantime the status quo to be maintained.

The appeal will stand disposed of accordingly without any order as to costs.

2. On remittal, the revision petition was listed before a Division Bench consisting of one of us (AR. Lakshmanan, J.) for further enquiry. As already noticed, along with CMP 2848 of 1994, only attested photo-copies of those documents were filed and marked by this court. In substitution thereof, the tenants have now filed all the original documents except Ext. B12 in C.M.P. 4503 of 1997. For proof under the Evidence Act, the tenants were willing to tender proof in support of the documents and so the documents were received in original and marked as Exts. B11, B13 to B17. Ext. B12 is only a true copy. Thereafter, we directed the Rent Controller to examine the witnesses and record their evidence in proof of Exts. B11 to B17. Counselor the landlord was given liberty to cross-examine the witnesses. The Rent Controller was directed to record the evidence and submit the recorded-evidence along with the entire case records and documents" to this Court. Accordingly, both parties-appeared before the Rent Controller and the Rent. Controller recorded the evidence of R.W.2 on 5-3-1998 and forwarded the same to this Court. No other witness were examined on either side.

3. As already noticed, the landlord filed RCP 124 of 1987 for eviction of the tenants from the petition schedule building under Sec. 11(3) (bonafide need for own occupation), Sec. 11 (4)(i) (sub-lease without the consent of the landlord) and Sec. 11 (4)(iv) (demolition and reconstruction) of the Kerala Buildings (Lease & Rent Control) Act, 1965 (for short "the Act"). The building in question was leased out in the year 1950 to M/s. C.P. Lonappan and Sons on a monthly rent of Rs. 875/-. The tenant, without the consent and knowledge of the landlord, has transferred the right under the lease and has sublet the building to another firm, M/s. Chakola Silk House and that the tenanted building is in the exclusive possession and control of M/s. Chakola Silk House. According to the landlord, M/s. CP. Lonappan and Sons, the tenant walked out of the premises and buildings and the premises and buildings are presently in the occupation and possession of a different partnership namely, M/s. Chakola Silk House, which is not the tenant of the landlord. The transfer of possession and the sub-lease by M/ s. CP. Lonappan and Sons to M/s. Chakola Silk House is without the consent, concurrence and knowledge of the landlord and is against the terms and conditions of the tenancy arrangement. The landlord issued notice through his advocate on 19-12-1986 to the tenant and also to the sub-tenants intimating his contravention of the conditions of the lease. The tenant had failed to terminate the sub-lease within 30 days of the receipt of the notice thereof.

4. As already seen, the landlord sought eviction of the tenant on the ground of demolition and reconstruction also. According to the landlord, the building is old and old fashioned. It is in the most important commercial locality of the city,

namely, Broadway. It is a fast developing locality and that the landlord bonafide needs to reconstruct the building and that he intends to construct a shopping complex and also a theatre. He was doing movie thereafter business and the primary and immediate object is to construct and complete the shopping complex as per the plan fully utilizing the premises and that he has already submitted a plan to the Cochin Corporation for necessary approval and sanction. The income which the landlord is getting at present is very low and if the building is reconstructed as per the plan, he can do business and that he can provide for the tenant in the reconstructed building reasonable space for his business provided the tenant is willing and agreeable to pay the fair rent for the space that will be allotted to him in the new building. The landlord is not having any substantial business of his own and that he intends to augment his income by doing business and renting out to the tenant after reconstruction, if the tenant is so willing. The buildings are not in good condition. They are rather old having regard to the developing nature of the locality and the developing needs.

5. The Rent Control Petition was resisted by the tenants. An objection statement was filed by respondents 1 to 6 & 9 to 11 in the RCP. According to them, M/s. C.P. Lonappan and Sons, which was the firm originally constituted in 1949 by three brothers, late CL. Paloo, CL. Lona and CL. Joseph, sons of late CP, Lonappan. After the death of CL. Paloo, the firm was reconstituted by admitting the wife and children of three brothers as and when the persons admitted were qualified to be admitted. The business of M/s. C.P. Lonappan and Sons had its headquarters at Trichur and branch office at Ernakulam and the Ernakulam business was being conducted in the petition schedule building. The first reconstitution of the firm was in 1973 and the second was in 1975. The partnership, M/s. Chakola Silk House was formed for sake of efficient management of the business at Ernakulam by some of the partners of the original CP. Lonappan and Sons cannot be treated as a different entity so as to attract the question of sub-tenancy as contemplated in Sec. 11(4)(i) of the Act. The business in the tenanted premises is being conducted and managed by the very same partners along with other members of the family consisting of the wife and children of the three brothers. There was no transfer of possession of the tenanted premises to another firm as stated in the Rent Control Petition. The receipts of the rent of the tenanted premises have been issued by the landlord in the names of M/s. C.P. Lonappan and Sons and M/s. Chakola Silk House, Broadway, Ernakulam accepting the reconstitution of the firm. Hence, the landlord, having accepted M/s. Chakola Silk House as the original tenant, is estopped from contending that the original tenant has without his consent and knowledge sublet the premises to another firm.

6. According to the respondents in R.C.P., the buildings do not require any reconstruction either taking into consideration of the physical condition of the building or the social conditions available in the locality. The intention of the landlord to start a shopping complex is without any bonafides. The tenants are conducting a flourishing business in textiles and that the income from the

business conducted in the petition schedule building is the main source of livelihood of the respondents. There are no other suitable buildings available in the premises of the petition schedule building or in the locality. The landlord has no ability to reconstruct the building. The landlord has no cause of action against the tenants and that he is not entitled to any of the reliefs claimed in the petition.

7. Before the Rent Controller, Exts. A1 to A18 and Exts. B1 to B10 were marked. The Commissioner's report was marked as Ext. C1. On the side of the landlord, PW1 was examined and on the side of the tenants, R. W. 1 was examined. The Rent Controller, after formulating the points for consideration, held that the Rent Control Petition is maintainable and that the landlord is not entitled to an order for eviction under Sec. 11(4)(i) of the Act. The Rent Controller found that Chakola Silk House, which is now in occupation of the building, is a partnership firm and that this partnership firm is only a sister concern of CP. Lonappan and Sons and that no person stranger to Chakola family is a partner of the firm. He also relied on Exts. B2 and B4 receipts wherein the name of the tenant is shown a CP. Lonappan and Sons as well as Chakola Silk House and these documents clearly show that the landlord has accepted the rent from Chakola Silk House knowing fully well that it is the tenant of the building. On the question of bonafide need for own occupation and reconstruction, the Rent Controller discussed the matter together. According to the Rent Controller, Ext. C1 report will not support the case of the landlord that the building is not adaptable to the social conditions of the locality and that the bonafide need for own occupation set up by the landlord will sustain only when it is found that the reconstruction sought for itself is bonafide. The Rent Controller, on a consideration of the facts and circumstances of the case, held that there is no need to reconstruct the building. In the result, the Rent Controller dismissed the Rent Control Petition.

8. Being aggrieved by the Order, the landlord filed R.CA.31 of 1991 before the Appellate Authority. Before the Appellate Authority, it was argued that the second respondent-firm, Chakola Silk House, is in exclusive possession and there is absolutely no evidence to hold that any one of the partners of the original tenant or anybody claiming under them are still in possession of the petition schedule building. It was argued by the landlord that the original letting was to CP. Lonappan and Sons and it is admitted by the respondents that there were only three partners in the original firm. Even according to the contesting respondents, the headquarters of the business of the first respondent firm-CP. Lonappan and Sons is at Trichur and the business conducted in the disputed premises at Ernakulam is only a branch. The tenth respondent in the RCA was examined as R.W.1 and he, in his evidence, had deposed that from 1978 onwards the two firms are functioning separately. In view of the admission made in the pleadings and the admission of R.W.1 in the box, it is clear that the disputed premises is in the exclusive possession of the second respondent firm Chakola Silk House and that the second respondent is, in fact, doing business in the disputed premises. Therefore, the Appellate Authority had found that the landlord has proved the fact that the original tenant transferred its right under the lease to a stranger

without his consent or knowledge. The Appellate Authority has also, for the reasons recorded in his judgment, held that the landlord has not accepted the second respondent as a tenant. The Appellate Authority held that the first respondent-tenant had transferred its right under the lease to the second respondent-firm without the consent and knowledge of the landlord and, therefore, held that the landlord is entitled to an order of eviction on the ground of sub-letting. As regards the claim of the landlord under Sec. 11(3) of the Act, the Appellate Authority held that the claim of the landlord that he needs the building for his own occupation is bonafide. Regarding the claim under Sec. 11(4) (iv) of the Act, the Appellate Authority confirmed the findings of the Rent Controller and rejected the claim of the landlord under the said section.

9. As already noticed, the revision was heard and disposed of by a Division Bench of this Court and the revisional authority reversed the judgment of the Appellate Authority and sustained the order of the Rent Controller and that the said order was again interfered with by the Supreme Court. The Supreme Court, while allowing the appeal filed by the landlord, set aside the order of the High Court, remanded the matter back to the High Court to deal with the additional documents received in revision and dispose of the revision petition on merits. As already noticed, after remand, R.W.2 was examined and the documents were marked. Exts. B11 to B17 were marked on remand. We have to now consider whether the evidence now let in by the tenant in the form of documents under Exts. B11 to B17 and the further oral evidence by R.W.2 have, in any manner, improved the case of the tenants. In order to find out the genuineness of the documents, its acceptability and its relevance etc, we directed both the Learned Counsel appearing on either side to advance arguments on the basis of the evidence now let in and on the basis of the evidence already available on record.

10. We have heard Mr. T.R.G. Wariyar, learned Senior Counsel for the revision petitioners-tenants and Mr. E. Subramani for the first respondent-landlord. Both the Learned Counsel reiterated the contentions raised by them in the petition, counter and also argued the case with reference to the documents filed including the additional documents now filed after remand.

11. As already seen, the eviction was sought on the grounds of own occupation, sub-letting and demolition and reconstruction. We shall first dispose of the claim made by the landlord for eviction on the grounds of demolition and reconstruction and own occupation. In support of his case, the landlord has submitted that the building is an old and old fashioned one and is situated in an important and fast developing locality in the city and that he intends to construct a shopping complex at present and also a movie theatre later. His primary object is to construct and complete the shopping complex as per the plan fully utilising the premises. In this regard, he has already submitted a plan to the Cochin Corporation for necessary approval and sanction and the Corporation has also approved the plan and granted sanction for construction. It is also the case of the landlord that after reconstruction, he can do business and can also provide

for the tenants in the reconstructed building reasonable space for their business provided the tenants are willing and agreeable to pay the fair rent for the space that will be allotted to them in the new building. According to the landlord, he is not having any substantial business of his own and, therefore, he intends to augment his income by doing business and also renting out to the tenant after reconstruction. The building in question was leased out to the tenant in the year 1950; about 48 years ago. There is no contra evidence that the building is not old or old fashioned one. It is settled law that a landlord, in order to augment his income by doing business, can demolish the building and reconstruct a new one in the said place and can start new business. The Commissioner appointed by the trial court has also filed a report. According to his report, the rear half of the building with tiled roof is comparatively an old fashioned one. The senior most employee of the shop admitted that the building was constructed in the year 1950 and the shop was started in the same year. Therefore, it can safely be believed that the building was constructed in the year 1950. The front portion of the building is with concrete and the back portion with the tiled roof and in the joining portion, the Commissioner found leakage. Cracks are seen on the floor of the tiled building and the building is situated in a very important commercial locality in Ernakulam. Approximately 100 feet north of the petition Schedule building, there is a multi-storied building and in the nature of the building, it can be said to be a modern construction. On the southern side adjacent to the petition schedule building, there is a modern double-storied building. Both sides of the road are full of commercial establishments. The owner will get better income than what he is getting now if a multi-storied building or a shopping complex in the place of the present one is established. The Commissioner has also reported that majority of the admirals in the textile shop run by the tenant are kept vacant and during the time he spent there for inspection, he could not see a single customer coming for shopping. The oral evidence let in by P.W. 1, who is the manager of the landlord, also clearly establishes the case of the landlord. He deposed that in the building in question no business is in conducted and invariably it is locked. According to the witness, the idea of the landlord is to demolish the petition schedule building and construct a shopping complex and that the landlord has got experience in theatre business and that he has financial ability to reconstruct the building. The landlord, in support of his contention, filed and marked Exts. A1 to A12, which are deposit receipts in the name of the landlord and his wife. It is stated by P.W. 1 that at present the landlord is getting only Rs. 525/- which is not sufficient for his maintenance and, therefore, he has decided to demolish the present building. Nothing has been elicited to discredit his testimony in the cross examination insofar as the demolition of the building or bonafide requirement of the building for demolition is concerned.

12. The landlord, in our opinion, has satisfied the requirement of Sec. 11(4)(iv) of the Act. He has proved that the building is an old one and it needs reconstruction. He has also proved that he requires the building bonafide to reconstruct the same and to start a business and also to lease out a portion of

the same to the tenant at a reasonable rent. He has satisfied the court that he has the plan and licence and also the ability to reconstruct the building. The tenant, on the other hand, has not proved that the proposal of the landlord for reconstruction on the ground of Sec. 11(4)(iv) has been made as a pretext for eviction. Before the landlord could obtain an order for eviction on the ground of reconstruction, he must satisfy the Rent Controller about the genuineness of his claim. In the instant case, this has been established by the landlord. In our opinion, it is for the landlord of the building to decide whether it needs reconstruction or not. It is his property and he is the best judge on the matter and all that the court is entitled to do is to enquire whether the need is bonafide or whether it is only a pretext to evict the tenant. As already stated, the landlord has proved his bonafide and the possibility of its being put to more profitable use after reconstruction. We have already noticed that the landlord has sought eviction of the tenant under Sec. 11(3) also. The ground under Sec. 11(4)(iv) is distinct from and unrelated to the ground under Sec. 11(3) of the Act. But, that does not mean that the two are mutually exclusive. If the application is both under Sec. 11(3) and Sec. 11(4)(v), the circumstance that the building requires reconstruction for the purpose of own occupation does not affect or alter the bonafide nature of the landlord's need under Sec. 11(3). Courts have held that a realistic meaning must be given to the expression "condition of the building". As pointed out by this Court in *Kalliani v. Madhavi* (1970 KLT 257), the social purpose of this provision is to remove the road blocks in the way of progress in building programme. Replacement and renewal of obsolescent and unsightly buildings to make room for larger, modern construction is a social necessity, provided existing tenants are not thrown into the streets. The landlord, in our opinion, has not only proved his bonafide requirement of the building for reconstruction, but also has agreed to provide for the tenant in the reconstructed building reasonable space for his business on the tenant agreeing and willing to pay the fair rent for the space that will be allotted to him in the new building. The physical condition of the building alone is not the criterion. The factors like situation of the building, possibility of its being put to more profitable use after reconstruction are also relevant considerations. The building in question is situated in the heart of Cochin City. The building is situated in a posh commercial locality and is very near to the High Court, various government buildings, five star hotel and business premises etc. The landlord has established that the building was constructed in the year 1950 and his requirement is reasonable and bonafide. In our view, the landlord need not establish that the condition of the building is such that it requires immediate demolition. All that we have to see in a matter like this is whether the claim put forward is honest and the landlord himself is earnest in carrying out the reconstruction. In our opinion, the importance of the locality in which the building is situated should be a ground for reconstruction. It is in evidence that the tenant is not carrying on any business and most of the days the shop is closed. If the building is demolished and reconstructed and that the tenant is allotted a portion on payment of its reasonable fair rent, it will also be to its benefit and advantage. It is wrong to

think that the building needs reconstruction only after it has become irreparable or about to collapse. The landlord, in our opinion, need not be asked to wait until that stage before he attempts a reconstruction. It was argued that the plan submitted by the landlord has already expired. That cannot be a reason for denying the relief asked for by the landlord. The licence, building permit and plan etc. were issued and to be valid for a period of three years. Because of the pendency of the matter before one forum or the other, the landlord could not renew the licence, building permit etc. It is now open to the landlord to apply for a fresh licence etc for demolition and reconstruction and on such application being made, the authorities concerned shall consider the same on merits. We are satisfied that the landlord has a plan and licence to reconstruct the building and, therefore, his petition is not to be dismissed on the ground that the period of licence expired during the pendency of the proceedings. We are satisfied that the landlord has a licence as required by law. In such a situation, this Court has held in *Jos? v. Thomas* (1992 (1) KLT 158) that the court cannot reject a petition on the ground that the period of licence expired during the pendency of the proceedings. In such a case, the court may incorporate a direction in the order of eviction that actual delivery of possession will be given only when the landlord satisfies the execution court that the licence has been renewed or a new licence has been granted by the local authorities. Regarding the landlord's ability to reconstruct the building, we are of the opinion that he need not possess of the entire amount required for the construction at present. It is enough if he satisfies the court that he has got the power, capacity and talent to raise the funds and carry on the construction.

13. In so far as the claim of the landlord for own occupation under Sec. 11(3) is concerned, the landlord required the premises bonafide for the purpose of business after demolishing the present building and putting up a new building at that place and also, after reconstruction, to provide for the tenant a reasonable space for his business. Even though an order of eviction is passed under Sec. 11(3), we are of the opinion that the landlord is obliged to provide accommodation to the tenant in the new building. This will satisfy the requirements of both Sec. 11(3) and Sec. 11(4)(iv) of the Act.

14. The Madras High Court (AR. Lakshmanan, J.) in a judgment reported in *A.N. Srinivasa Thevar Vs. Sundarambal alias Prema*, , while considering the various points in regard to the requirement of a landlord for demolition and reconstruction under the provisions of the Pondicherry Buildings (Lease & Rent Control) Act, held as follows:

The Supreme Court in *Pore & Sons* case, at the beginning of para.28 of the Judgement has held that a various circumstances. such as the capacity of the landlord, size of the existing building, the demand for additional space, the condition of the place, the economic advantage and other factors, justifying investment of capital on reconstruction may be taken into account by the concerned authorities, while considering the requirement of the building on the

essential and overriding consideration in the general interest of the public and for the protection of the tenant from unreasonable eviction."

In the said Section, the basic stipulation for passing an order for eviction is the test and satisfaction of bonafide requirement. Therefore, the bona fide requirement could be established by several ways and one important circumstance which ought to be taken into consideration by the court is the conditions of the building. The condition of the building cannot be restricted to the stability of the building. The consideration of the condition of the building would include the nature of construction of the building. For an example, a fifty years old country tiled building, situate in a busy locality like Mount Road, or even a good residential locality, however, well maintained it may be, cannot be said that the building should not be demolished for giving place to multi-storeyed building. The "word "condition" in the present context is given the following meaning in Oxford Encyclopaedic English Dictionary: The state of being or fitness of a thing, circumstances especially those affecting the functioning or existence of something. It is apparent from the above said meaning, the word "condition" cannot be assigned very restrictive meaning."

In the present case, the landlady respondent has specifically stated in her petition that the building consists of brick built structure covered by asbestos sheet. Further, the premises does not yield good return, and in the present condition, it has not been properly utilised. Hence, she intends to demolish the existing structure and construct a new building with better utility and for good return. As stated already, the building is situate at Kamaraj Salai, which is admittedly a busy locality. It is borne out from the evidence of both the landlady/respondent and the tenant petitioner that there is a large vacant space behind the existing building. A cumulative reading of all the" above facts would make it clear that in a busy locality in Pondicherry Town, the demised premises which is more than 30 years old, with asbestos roof, occupying one third of the site leaving two third of the site vacant, behind the building."

The economic advantage: A modern construction of a larger building shall certainly yield better revenue and also appreciate in value; when compared to the asbestos sheet roofed, old building."

I may also consider the other factors, viz., public interest and the object of the Act, as pointed out by the Apex Court. In the public interest also, old, out-model asbestos sheet roof buildings should be replaced with better and modern buildings which would provide for better quality accommodation to the needs of the present day. The preservation of an old asbestos roofed building in the midst of modern construction, in a busy locality of a town, shall, not only be an eye sore but also against the soaring public demand for additional space. Stalling growth, development and increases of quality and quantity construction for the sake of one tenant, who is in occupation of the premises consisting of brick walls constructed with mud mortar with asbestos sheets roof occupying one third of the site, leaving two third behind vacant and unutilised shall be in my humble

opinion against the public interest."

In the present case, needless for me to say "that the old asbestos roof building occupying only one third of the site would be uneconomical to maintain the same, as such, for ever or to repair the same. Further, the Supreme Court also has mentioned the consideration in the general interest of the public, when a big site should yield to a larger modern building with an increased and enlarged accommodation having better facilities, to solve the ever increasing demand for more space in the light of the population explosion in our country."

15. For all the aforesaid reasons, we are of the opinion that the landlord has proved his claim under Secs. 11(3) and 11(4)(iv) of the Act. Having regard to the developing nature of the locality, the developing needs and the income which the landlord is getting at present, we are of the opinion that the building needs immediate reconstruction. We, therefore, order eviction of the tenant under Sec. 11(3) and 11(4)(iv) of the Act. Further, we fix a time limit of one year from today within which the building is to be demolished and reconstructed by the landlord and within three months thereafter, the tenant will have to be provided accommodation, as per rules.

16. According to the tenant, the headquarters of their business firm, CP. Lonappan and Sons, is at Trichur and the business conducted in the disputed premises at Ernakulam is only a branch. It is contended that the firm "was first reconstituted in the year 1973. R.W.1 (the tenth respondent in the RCP and RCA and third petitioner herein), in his evidence, had deposed that from 1978 onwards, the two firm - C.P. Lonappan and Sons and Chakola Silk House - are functioning separately. In view of the admission made in the pleadings and the admission of R.W. 1, it is amply clear that the disputed premises is in the exclusive possession of the second respondent firm - Chakola Silk House. Tenants have no case that the firm - CP. Lonappan and Sons is also doing business in the disputed premises. In the nature of contention raised by the tenants, the entire burden was on them to prove that there is at least one common partner in both these firms. But, strangely for reasons best known to them, none of the partnership deeds were produced either before the Rent Controller or before the Appellate Authority and for the first time, some Notary attested copies issued to CP. Lonappan and Sons between 26-3-1973 to 29-5-1987 (seven documents) by the Registrar of Firms, Trivandrum were filed in this Revision Petition, which was disposed by the earlier Division Bench on 25-8-1994 which was again set aside by the Supreme Court and remitted back to this Court. It is settled by catena of decisions that when it is shown that a person other than the original tenant is in exclusive possession, the burden is on the tenant to disprove the prima facie case of sub-letting established by the landlord. So, it is for the tenants to prove that the firm Chakola Silk House is only a firm formed by some of the partners of the firm CP. Lonappan and Sons. Before the Rent Controller, R.W.1, in his chief examination, had admitted that the partners of Chakola Silk House are himself, his brother Joseph J. Chakola and his mother. But, he does not remember when

exactly that firm came into existence. He had also admitted that from 1978 onwards both the firms are functioning separately. He had further admitted that both the firms are maintaining separate books of accounts and firms were separately assessed for income tax and sales tax. There was absolutely no other evidence available on record to show that R.W. 1, his brother and mother, who were admitted to be partners of the firm Chakola Silk House were partners of the second respondent-firm CP. Lonappan and Sons also. In fact, the Appellate Authority held that the tenants were withholding the best evidence in their possession. He found that the tenant had transferred its right under the lease to the firm Chakola Silk House and none of the partners of the firm CP. Lonappan and Sons are partners of the other firm. It was argued that there is evidence to show that the landlord has accepted Chakola Silk House as his tenant. It was also argued that the landlord received rent paid by Chakola Silk House and issued receipts to it. Chakola Silk House was formed in the year 1978 and the landlord was regularly receiving rent from it. Much reliance is placed on Ext. B2, the rent receipt dated 17-10-1983, issued by the landlord. R.W.1 admitted in his evidence that when the business started in the premises in 1950, the name of the shop is Chakola Silk House. According to the contesting tenant, even when the name of the firm was CP. Lonappan and Sons, the name of the shop was Chakola Silk House and that the first reconstitution of the firm took place only in the year 1973. The tenants have no case that they had informed the landlord about the reconstitution of the firm or transfer of possession. Since the business is conducted by a firm, the landlord, as rightly pointed out by Learned Counsel for the landlord, will not be in a position to know who is in actual possession. In Ext. B1, the name of the tenant is written as Chakola Silk House, Ernakulam. There is nothing in Ext. B 1 to indicate that it was issued to Chakola Silk House. This fact is made more clear by Exts. B2, B3 and B4 receipts. In those receipts, the name of the tenants are shown as M/s. C.P. Lonappan and Sons, Chakola Silk House, Broadway, Ernakulam. Those were issued during the months of October, November and December 1983. Evidence shows that Exts. B2 to B4 receipts were issued long after Ext. B 1 receipts. Therefore, it is clear that the name Chakola Silk House written in Ext. B 1 is the name of the shop and not that of the firm. Therefore, the contention of the learned Senior Counsel for the tenants that the landlord had accepted Chakola Silk House as tenant is not correct and we reject the same.

17. From the above, it is clear that the firm C.P. Lonappan and Sons had transferred its right under the lease to the firm Chakola Silk House without the consent and knowledge of the landlord and that the landlord never accepted the firm Chakola Silk House as his tenant. Hence, the finding of the Rent Controller that the landlord is not entitled to an order of eviction under Sec. 11(4)(i) is not sustainable and we set aside the same.

18. The Supreme Court, while setting aside the order in the Civil Revision Petition and remitting the matter back to this Court, directed this Court to deal with the additional documents and dispose of the revision on merits. Only after remand,

in CMP 4503 of 1997, all original documents were filed. There is ample material on record to show that M/s. Chakola Silk House is an entirely different entity and that the landlord has proved beyond doubt that the original tenant has transferred its right under the lease to a stranger without his consent, knowledge and, therefore, the tenant is liable to be evicted on this ground as well. Our considered view is that the landlord has succeeded in showing that the tenant has parted with possession of the premises in favour of M/s. Chakola Silk House and that M/s. Chakola Silk House is actually carrying on business by paying rent to the landlord. The landlord is entitled to get an order of eviction under Sec. 11(4)(i) of the Act also.

In the result, the Civil Revision Petition fails and it is accordingly dismissed. Eviction is ordered as prayed for on all the three grounds. No costs.