
(2013) 03 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5778 of 2006

M/s. Sri Srinivas Enterprises and Another

APPELLANT

Vs

Sri Narayandas and Others

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10(3)
(a), 10(3)(a)(i), 10(3)(a)(iii), 10(3)(c), 11
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2013) 03 AP CK 0003

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : B. Nalin Kumar, for the Appellant; Manjari Ganu for Sri M. Papa Reddy, for the Respondent

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, J.—This Civil Revision Petition is filed u/s 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, (for short "the Act") by the landlords challenging the order dt. 5.6.2006 in RA No. 504 of 1994 of the Appellate Authority under the Act-cum-Additional Chief Judge, City Small Causes Court, Hyderabad confirming the order dated 25.4.1994 in RC No. 1175 of 1988 of the Principal Rent Controller, Hyderabad. The subject matter of this Civil Revision Petition is a mulgi bearing premises No. 5-8-658/5 situated at Station Road, Nampally, Hyderabad (hereinafter referred to as "RC schedule premises". The first petitioner is a firm in which petitioner no. 2 and respondents 2 to 9 are partners.(for short "petitioners")

2. The RC schedule premises was purchased by the 1st petitioner firm under regd. sale deeds dt. 9.5.1985 and 10.5.1985. The first petitioner firm was carrying on hotel business under the name and style of Coromandel Lodge in the premises bearing Municipal Nos. 5-8-658, 658/1-4 and sheds bearing Nos. 658/5,658/6 and 658/7 and three floors with back side restaurant Shalimar Bar

and Restaurant. The first, second and third floors are resting on the ground floor shops bearing Nos. 5-8-657, 658, 658/1 to 8 situated at Nampally Station Road, Hyderabad. On the western side of the main road, there is a passage with shutter gate. In the first, second and third floors there are total 33 rooms with balcony, W.C. bath and other amenities fully equipped with furniture.

3. The 1st respondent is a tenant of the petitioners in the RC schedule premises and he had attorned his tenancy with effect from 12.5.1985. The 1st respondent was paying monthly rent of Rs. 350/- excluding electricity consumption charges and carried on business in the name and style of "M/s. Sona Foot Wear".

4. After purchase of the RC schedule premises, the 1st petitioner firm informed the 1st respondent that it requires it and adjacent mulgies for their own use as it is facing inconvenience in its business for want of accommodation for business; that it is temporarily using the stair case room for Reception and facing problems to accommodate the Manager, Telephone cabin, Receptionist, Accounts Section etc., and waiting lounge for customers; that customers are suffering inconvenience for lack of sitting accommodation; it could not accommodate a manager with a cabin to attend to customers; and this is affecting the business of the petitioners; they could not install a lift providing easier access to the 3 floors above. As the 1st respondent did not vacate, RC. No. 1175 of 1988 was filed in the Court of the Principal Rent Controller, Hyderabad u/s 10(3)(c) of the Act to evict the 1st respondent contending that petitioners require additional accommodation which requirement is bonafide; that hardship to the petitioners outweighs the requirements of the 1st respondent; apart from the RC schedule premises the 1st petitioner also requires other two shops which are abutting it i.e. premises bearing municipal no. 5-8-658/6 and 7; that it had initiated eviction proceedings against the tenants of the said premises also; that petitioners has to take up construction of fourth floor to create more lodging accommodation; and they require the RC schedule premises for additional accommodation for reception, Manager Room etc., which need is bonafide and therefore the 1st respondent is liable to be evicted.

5. The 1st respondent filed a counter admitting the jural relationship of landlord and tenant between the 1st petitioner and himself and also quantum of rent. But he pleaded that the petitioners have no right to seek eviction u/s 10(3)(c) of the Act; that the first petitioner in its capacity as firm is not competent to file petition for eviction on account of non-compliance of mandatory provisions embodied u/s 69 of the Partnership Act; there are also other buildings on the site including the building occupied by M/s. Shalimar Bar and Restaurant; the building occupied by the 1st respondent has been allotted an independent separate municipal number and is not part of any other building and as such, the provisions of section 10(3)(c) of the Act are not attracted; that 1st petitioner deliberately suppressed various sale transactions in respect of other independent buildings from the same vendor; the allegation of the 1st petitioner that it is undergoing inconvenience for want of accommodation for its business is not true; the 1st petitioner is

occupying a vast building in the first, second and third floors of the building; the 1st petitioner is having accommodation of its choice and using the same as reception room; the 1st petitioner has recently constructed a separate hall for Manager's office on the terrace of the building occupied by M/s. Shalimar Bar and Restaurant; this hall is being used as Office and Manager's room; there is separate accommodation for telephone, cabin for receptionist and accounts section; that the tenant M/s. Shalimar Bar and Restaurant has vacated big reception room and other adjoining premises and had inducted the 1st petitioner in to them; the RC schedule premises is an independent building having independent access and it had always been used as such by previous tenants and also let out as such; 1st petitioner had sold mulgies bearing Nos. 5-8-658/3, 5-8-657/1 to the previous tenants under different sale deeds; there would be no hardship to the 1st petitioner if the petition for eviction is dismissed; that 1st petitioner acquired the buildings in the rear side of the premises No. 5-8-658, 658/1 to 7 in the ground floor and occupied the same; that requirement of the petitioners is not bona fide; that business of the 1st respondent in the schedule premises is the only source of income for him and for his family members; and the hardship that would be caused to him would out-weigh the advantage to the petitioners.

6. Before the Principal Rent Controller, the Manager of the 1st petitioner firm was examined as P.W. 1, and Exs. P.1 to P.11 were marked. The son of the first respondent who was also his GPA holder was examined as R.W. 1 and he marked Exs. R.1 to R.20.

7. By his order dated 25.4.1994, the Principal Rent Controller dismissed the petition for eviction. He held that the premises in occupation of the petitioners and the RC schedule premises are not two separate buildings but are part of the same building; the petition for eviction is maintainable to seek eviction of 1st respondent from the RC schedule premises u/s 10(3)(c) of the Act; petitioners are not having accommodation in the ground floor of the same building for their business requirements; the requirement of the petitioners is bona fide; 1st respondent had no right to direct or instruct the landlord to adjust his requirements in the accommodation available in another building; it is not possible to hold that the rooms in the first, second and third floors of the building in occupation of the petitioners are reasonable accommodation to adjust the requirements of the 1st petitioner's lodge; R.W. 1 had not deposed in his evidence that the petitioner's firm at any time demanded him to enhance the rent; the petitioners had no oblique motive in seeking additional accommodation in the occupation of the 1st respondent; it is admitted by the 1st respondent that building where M/s. Shalimar Bar and Restaurant and M/s. Sri Sai Restaurant are located is a separate building; letting of the building to M/s. Sri Sai Restaurant subsequent to the filing of the petition is not helpful to the first respondent; however, it is not possible for 1st respondent to get similar accommodation for his business in the same locality; and therefore hardship which may be caused to the 1st respondent would outweigh the advantage to the petitioners if the

petition for eviction is allowed.

8. Aggrieved thereby, the petitioners filed RA No. 504 of 1994 before the Additional Chief Judge, City Small Causes Court, Hyderabad. The said appeal was dismissed by order dt. 29.12.1999.

9. Challenging the said order in RA No. 504 of 1994, the petitioner and the respondents 2 to 9 filed CRP No. 509 of 2001 before this Court.

10. By its order dt. 17.6.2005, this Court allowed the Revision on the ground that before Appellate Authority Exs. R.21 to R.29 (photos, paper publications and copy of sale deed) were filed by 1st respondent probably to show that there was no pressing need for the petitioners-landlords requiring additional accommodation and that their requirement is not bona fide; the petitioners also filed an affidavit of K. Lakshminarayana, who was in possession of premises no. 5-8-658/6; counter affidavit filed by petitioners opposing the application to receive additional evidence brought out subsequent events and additional facts; subsequent events can be brought before the appellate authority for deciding the matter; the appellate authority while dismissing the appeal had not considered issue of comparative hardship; in the light of the peculiar facts and circumstances of the case, and in view of subsequent events which were brought to the notice of the Court, it is a fit case where opportunity should be given to the parties to lead further evidence in the matter; therefore the CRP was allowed, order of the appellate authority was set aside and the matter was remitted back to the lower appellate authority to afford opportunity to both parties "on all aspects" and to dispose of the matter. This Court also gave opportunity to adduce further oral and documentary evidence to substantiate the respective contentions of the parties.

11. After remand, the 1st petitioner firm filed I.A.No. 895/2005 to amend its petition for eviction and sought to add paragraph "6 a" to "6 d" therein. The said application was allowed on 6.12.2005 by the lower appellate authority.

12. These paragraphs contains some additional pleadings of the petitioners. The petitioners contended that premises bearing No. 5-8-658/5, 5-8-658/6 and 7 are adjacent to each other and next to stair case room; that RC schedule premises 5-8-658/5 is very next to the staircase room and premises bearing No. 5-8-658/6 is in between 5-8-658/5 and 5-8-658/7; that premises bearing No. 5-8-658/6, 5-8-658/7 have been vacated for some years and petitioners were losing a lot of money; that there was a discussion among partners of the 1st petitioner firm on this issue several times; it was suggested by the partners that unless premises 5-8-658/5 is vacated, it is not possible to convert/modify the said premises for accommodation of Manager, Telephone cabin, cabin, receptionist, accounts section, waiting room for the customers and lift; since the present proceedings commenced in the year 1988 and it was not certain how much more time it would take before the proceedings terminate, it was suggested that the petitioners should not lose income, if a right party, who is

credible, came forward to take it on rent subject to terms and conditions of the petitioners; that Sri Y. Satyanarayana and Sri K. Laxminarayana approached the petitioners to take the premises 5-8-658/6 on rent at Rs. 25,000/- per month; the said offer was attractive; the 2nd petitioner explained to the said persons about the requirement of the premises No. 5-8-658/6 along with the other 2 premises bearing Nos. 5-8-658/5 and 5-8-658/7, that litigation in respect of 5-8-658/5 was pending, and in the event of litigation finally terminating in favour of the petitioners, they have to vacate the premises to enable the petitioners to make necessary conversion, modification to the premises; that 1st petitioner firm expected that in any event minimum period for termination of the proceedings would be one year in 2004; and as such offered premises No. 5-8-658/6 to Sri Y. Satyanarayana and Sri K. Laxminarayana on the specific understanding that they should handover the premises to petitioners on their securing vacant possession of the adjacent premises no. 5-8-658/5 and they agreed to it; accordingly Ex. P12/ regd. lease deed dt. 9.2.2004 bearing No. 334/2004 was entered into for a period of 11 months on a monthly rent of Rs. 25,000/-; as the proceedings for eviction of 1st respondent from the RC schedule premises did not terminate, they executed another regd. lease deed Ex. P13/dt. 16.2.2005 for 3 more years subject to the understanding that they would handover on termination of proceedings in favour of petitioners or on expiry of 3 years whichever is earlier; this was done only to earn income for the petitioners, but not for any oblique purpose; the said Y. Satyanarayana and K. Laxminarayana are willing to vacate the premises as agreed on the petitioners securing vacant possession of the RC schedule premises; the petitioners had no intention to sell the property; and they also gave an undertaking to the Court that the RC schedule premises will be put to the use of the purpose for which eviction is sought, on obtaining vacant possession.

13. The 1st respondent filed additional counter denying all the averments made in the amendment application contending that RC schedule premises is not located next to the stair case room; that petitioners had admitted that premises No. 5-8-658/6 and 7 were kept vacant for many years without occupying the same; that they have suppressed the fact that these premises have fallen vacant with a mala fide intention; only when 1st respondent filed an application in the revision to receive certain documents as additional evidence, this plea was raised; if there is any requirement which is bona fide and genuine, the 1st petitioner would have used the premises fallen vacant for their alleged requirement and would not have created a story which is unbelievable, in order to justify keeping those premises vacant; that petitioners should have adjusted themselves for their alleged business requirement in the area which is vacant, instead, they have let out the same to a new tenant on handsome rent and received deposits; 1st petitioner has not specifically stated anything about the alleged conversion and modification of the RC schedule premises for Manager, telephone cabin, reception, accounts section, waiting lounge for the customers; the so called understanding between the petitioner and the tenants Y.

Satyanarayana and K. Laxminarayana is not true; 1st petitioner had given a paper advertisement in Deccan Chronicle news paper dated 15.4.1998 for disposal of the entire property and this also indicates that its requirement is not bona fide. The 1st respondent also raised certain additional pleas that during the pendency of the appeal, M/s. Shalimar Bar and Restaurant which was in occupation of the premises adjacent to the main building of the petitioners on the rear side vacated and handed over vacant possession of the portion under its occupation to the 1st petitioner; that the said tenant was occupying area approximately 12 x 40 feet; after obtaining vacant possession, the 1st petitioner had constructed additional rooms and let out half portion of the same to one Vaishnavi Restaurant on higher rent and the other half is being used for manager room, waiting lounge etc., therefore, the alleged requirement of additional accommodation, if any, ceases and the cause of action, if any, stands extinguished; to the east of the petition schedule premises is the entrance of the petitioners' lodge and beyond that there is another premises No. 5-8-658/3; apart from the said premises adjacent to the main gate, another premises no. 5-8-658/4 was in occupation of the another tenant of the petitioners by name Shri Duhilanomal; petitioners obtained a part of premises bearing No. 5-8-658/3 adjacent to mugli no. 5-8-658/4 from Duhilanomal under a compromise dt. 24.11.2004 in O.S. no. 227/2003 before the III Additional Chief Judge, City Civil Courts, Hyderabad, whereby the said tenant has withdrawn the said suit in favour of the petitioners by receiving a sum of Rs. 4,50,000/- giving up a portion out of premises no. 5-8-658/3; that 1st petitioner filed eviction case against tenant M/s. Carona Shoe and Co. Ltd. occupying premises no. 5-8-658/6, adjacent to the RC schedule premises and another tenant Smt. P. Lalitha occupying premises no. 5-8-658/7 vide RC No. 1140 of 1988 and RC No. 1174 of 1988 before the Rent Controller, Hyderabad and obtained vacant possession of the same during the pendency of the appeal; that the said eviction cases were filed on the same grounds of personal requirement as alleged in the present eviction proceedings; having obtained vacant possession of the premises nos. 5-8-658/6 and 5-8-658/7, the first petitioner has kept the premises bearing No. 5-8-658/7 vacant since many years and let out premises no. 5-8-658/6 to Y. Satyanarayana and K. Laxminarayana; in view of the subsequent developments also, the 1st petitioner firm and its partners are not entitled to maintain the R.C. and seek any relief. The 1st respondent also filed cross objections to the same effect.

14. By common order dt. 5.6.2006 in RA No. 506 of 1994 and cross objections, the Additional Chief Judge, City Small Causes Court, Hyderabad dismissed the appeal filed by petitioners while setting aside the findings of the Principal Rent Controller. He held that RC schedule premises is a separate building within the definition of S. 2 (iii) of the Act for all practical purposes and the petitioners are not entitled to invoke S. 10(3)(c) of the Act; that letting out premises 5-8-658/6 to P.W. 3 and others and the portion adjacent to Shalimar Bar and Restaurant to Sri Sai Restaurant disentitles the petitioners from seeking eviction of the 1st

respondent; that requirement of the RC schedule premises as additional accommodation is not genuine and bona fide and 1st respondent is not liable to be evicted from the RC schedule premises.

15. Aggrieved thereby, the present Civil Revision Petition is filed by the 1st petitioner and 2nd petitioner.

16. Heard Sri B. Nalini Kumar, learned counsel for the petitioners and Smt. Manjari Ganu, learned counsel appearing on behalf of Sri M. Papa Reddy, learned counsel for the 1st respondent.

17. Learned counsel for petitioners contended that the finding of the Appellate Authority that the RC schedule premises is an independent building is incorrect; that he erred in holding that petitioners are not entitled to seek eviction of 1st respondent u/s 10(3)(c); that he failed to appreciate that the premises No. 5-8-658/5 obtained by the petitioners from other tenant was let out for a limited period subject to specific understanding to avoid loss of income from the property pending present litigation to evict 1st respondent from the RC schedule premises; that he failed to consider that the premises obtained from M/s. Shalimar Bar and Restaurant was let out to M/s. Sri Sai Restaurant is no way connected to the bonafide requirement of petitioners as the same is not located in the building facing the main road but on it's rear side and not suitable for proposed additional accommodation; that he ought to have held that hardship faced by 1st respondent is not outweighed by advantage to the petitioners; the Appellate Authority ought to have set aside the order of the Principal Rent Controller and directed eviction of 1st respondent; that he erred in holding that the intention of petitioners is only to evict the 1st respondent from the premises for getting more rent; that he erred in holding that the entire family of the 1st respondent would be deprived of it's livelihood as R.W. 1 clearly admitted in the cross examination that his family members are having other business; and that due to lack of additional accommodation the petitioners are put to lot of inconvenience. In support of his contentions, he relied on the following decisions reported in T. Venkatakrishna Reddy v. T.K. Sreedhar and Others 1979(2) APLJ 141, R.K. Veerappa Naidu and Another v. N. Gopalan 1961(1) MLJ 223, A. Mohammed Jaffar Saheb Vs. A. Palaniappa Chettiar, Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, Bollabha Artho Thyadi and Others Vs. Grandhi Kamaraju, , Kosuri Satti Babu Vs. Vadaboyina Simhachalam and Another, , K.C. Kanniyappan v. Y. Venkataramana Rao 1988 (1) ALT 414, Smt. Chunnu Bai Vs. K. Ramulu and Others, Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others, Joginder Pal Vs. Naval Kishore Behal, B. Rukmaiah and Others Vs. M.A. Samad and Others, K. Parasuramaiah Vs. Pokurl Lakshamma, , Bentool Steel Products Pvt Ltd. V O.M.A. Mohammed Omar and Another (2008) 17 SCC 679, S.N. Kapoor (Dead) by his LRs. Vs. Basant Lal Khatri and ors, Bhimanagouda Basanagouda Patil Vs. Mohammad Gudusaheb, Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi, Bai Hira Devi and Others Vs. The Official Assignee of Bombay,

18. On the other hand, Smt. Manjari S. Ganu, learned counsel representing Sri M. Papa Reddy, counsel for 1st respondent contended that findings of the Appellate Authority under the Act are based on appreciation of evidence on record and therefore the order under challenge do not warrant any interference in exercise of the revisional jurisdiction of this Court u/s 22 of the Act. She reiterated that the reasoning of the Principal Rent Controller insofar as applicability of S. 10(3)(c) was rightly set aside in appeal giving cogent reasons; requirement of the petitioners of the RC schedule premises is not bona fide; RC schedule premises is an independent building and therefore the petition for eviction u/s 10(3)(c) of the Act was held rightly to be not maintainable; subsequent events clearly show that the need of petitioners is not subsisting as adjacent premises which have fallen vacant were not utilized for the needs of the petitioners but were kept vacant; premises bearing No. 5-8-658/6 was let out to P.W. 3 and others and thus sought for dismissal of the CRP. In support of her contentions, the following decisions were relied on by the learned counsel for the respondents Kun Ji Bai G. Chugani V. Fashion, Secunderabad 2012(3) ALD 132, Central Auto Agencies Vs. Gopal Das J. Bhupata, Gangaram Vs. N. Shankar Reddy, Manik Halder Vs. Polamraju Lavanya, and Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta,

19. Before we consider the contentions of the parties, it is necessary to deal with the scope of S. 22 of the Act.

20. In Harshavardhan Chokkani Vs. Bhupendra N. Patel and Others, , the Supreme Court, while considering the scope of S. 22 of the Act, held:

There can be no controversy about the position that the power of the High Court u/s 22 of the Act is wider than the power u/s 115 CPC. Nonetheless, the High Court is exercising the revisional power which in its very nature is a truncated power. The width of the powers of the revisional court cannot be equated with the powers of the appellate court. In examining the legality and the propriety of the order under challenge, what is required to be seen by the High Court is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It is only in such situations that interference by the High Court in revision in a finding of fact will be justified. Mere possibility of a different view is no ground to interfere in exercise of revisional power.

21. In Central Auto Agencies Vs. Gopal Das J. Bhupata, , Vited by the learned counsel for 1st respondent, this Court held that concurrent findings of fact arrived at by the Rent Controller and the Appellate Authority that a premises in occupation of a tenant is not separate and distinct from that in the occupation of the landlord cannot be interfered with in exercise of revisional jurisdiction. In the present case, the finding of the Rent Controller that the premises in occupation of the 1st respondent-tenant are not separate from the premises in occupation of

the 1st petitioner landlord has been reversed by the appellate authority. Therefore this decision has no application.

22. In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, , the Supreme Court while interpreting the scope of Revisional jurisdiction u/s 25-B of the Delhi Rent Control Act, 1958 held that the High Court cannot enter into appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts and that its jurisdiction while not limited as is u/s 115 CPC is also not wide as that of an appellate Court. The 1st respondent cannot place any reliance on this decision as the language in Section 25-B of the Delhi Rent Control Act, 1958 is substantially different from that of Section 22 of the Andhra Pradesh Act (which is wider and permits the legality, regularity and propriety of the order under revision to be judged by the High Court). Therefore the jurisdiction of this Court u/s 22 of the Act is wider and it can even interfere on issues of fact if the parameters set out in Harshavardhan Chokkani Vs. Bhupendra N. Patel and Others, are satisfied.

23. In Manik Halder Vs. Polamraju Lavanya, , this Court held that in exercise of revisional jurisdiction, the High Court can judge, the legality, regularity and propriety of the order under revision.

24. Keeping in view the above principles, we have to consider the following points in this revision.

(i) Whether the RC schedule premises is part and parcel of the building which is in occupation of the landlords ?

(ii) Whether action of the petitioners in letting out premises No. 5-8-658/6 to P.W. 3 and others (which was obtained by filing eviction petition on the ground of additional accommodation) disentitles the petitioners to seek eviction of 1st respondent?

(iii) Whether action of the petitioners in letting out to Sri Sai Restaurant, the premises adjacent to Shalimar Bar and Restaurant disentitles them from seeking eviction of 1st respondent from RC schedule premises on the ground of additional accommodation ?

(iv) Whether the petitioners require RC schedule premises as an additional accommodation and their need is genuine and bonafide?

(v) If so, whether the hardship which may be caused to the 1st respondent by granting eviction will outweigh the advantage to petitioners?

25. Point No. (i):

The petitioners filed the RC for eviction of the 1st respondent u/s 10(3)(c) of the Act. The said provision entitles a landlord, who is occupying only of a part of a building, whether residential or non-residential, to seek eviction of a tenant occupying the whole or any portion of the remaining part of the building and to put the landlord in possession thereof, if he requires additional accommodation

for residential purposes or for the purposes of a business which he is carrying on, as the case may be. However, the Rent Controller may reject the said application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord as per proviso to Section 10(3)(c).

26. The contention of the petitioners is that the respondent is in occupation of a portion in the ground floor portion and the petitioners are in occupation of first, second and third floor portions of the same building. Therefore they are entitled to invoke S. 10(3)(c). On the other hand, 1st respondent contends that premises in his occupation is a separate and independent building and as such, the present petition u/s 10(3)(c) of the Act is not maintainable.

27. It is not disputed that RC schedule premises is situated in the ground floor; there are some other mulgies in occupation of other tenants in the ground floor; and all these mulgies are in a row. It is admitted that originally the entire premises belonged to one Gopalakrishna Reddy and Suryanarayana Reddy who were carrying on hotel and lodging business in the entire premises under the name and style M/s. Brundavan Hotels and that the previous owners let out RC schedule premises to 1st respondent and others. It is not disputed that these two persons sold their property including the premises let out to 1st respondent to 1st petitioner firm under different sale deeds. Admittedly there is direct access to premises in occupation of the respondent from the main road.

28. In *Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others*, a landlord living in a upstairs portion of a building sought eviction of a tenant living in the down stairs portion of the said building on the ground that he requires additional accommodation under S. 10(3)(c) of the Tamilnadu Buildings (Lease, Rent and Eviction) Control Act, 1960 (which is in pari materia with S. 10(3)(c) of the Act). The Supreme Court held that Section 2(2) of the said Act defines a "building" to mean "any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes..... " unless the context otherwise requires; a part of a building which has been let out can also be construed as a separate and independent building without reference to the other portion or portions of the building where it is not necessary to treat the entire building as one whole and inseparable unit; but, if the context otherwise requires and warrants, the entire building can be construed as one integral unit; it would be inappropriate to view the building in question as consisting of several disintegrated units and not as one integrated structure; there is a vast difference between the words "residential building" and "non-residential building" used in Section 10(3)(a)(i) and (iii) on the one hand and Section 10(3)(c) on the other; that the former refers to the building only as a residential or non-residential but the latter refers to the landlord occupying a part of a building, whether residential or non-residential; that Section 10(3)(c) states that a landlord may apply to the Controller for an order of eviction being passed against a tenant "occupying the whole or any portion of the remaining part of the building"; if as contended by the tenant, each portion of the building let out separately should

always be construed as an independent unit by itself, then there is no scope for a landlord occupying "a part of a building" seeking eviction of a tenant occupying "the whole or any portion of the remaining part of the building"; and that such a construction would render the provisions of Section 10(3)(c) otiose because a landlord can never then ask for additional accommodation since section 10(3)(a) does not provide for eviction of tenants on the ground of additional accommodation for the landlord either for residential or non-residential purposes. It observed:

It is, therefore, obvious that insofar as Section 10(3)(c) is concerned the legislature has intended that the entire building, irrespective of one portion being occupied by the landlord and the other portion or portions being occupied by a tenant or tenants should be viewed as one whole and integrated unit and not as different entities. To import the expansive definition of the word "building: in Section 2(2) into Section 10(3)(c) would result in rendering meaningless the words "part of a building" occupied by the landlord and a tenant "occupying the whole or any portion of the remaining part of the building.

29. A Division Bench of this Court in *Bollabha Artho Thyadi and Others Vs. Grandhi Kamaraju*, held that a reading of sections 10(3)(a)(i), (ii) and (iii) and Section 2(iii) do not lead to an inference that a building which is structurally one and the same ceases to be a building when it is leased out in portions to more than one tenant. It held that if the building is such that it can be conveniently divided into different portions, it can be leased out in portions. But the unit as a whole does not cease to be a building on that count. Every premises let, or to be let, is a building within the meaning of the Act. Therefore, even if each portion of a house is let out and is a building for the purposes of the Act, the entire building as an integrated unit is also a building and if the requirement is for the integrated unit, there is no prohibition in law, subject of course to the restrictions or conditions mentioned in the 10(3)(a) (i) or Section 10(3)(a)(iii). The Bench held that there is nothing in Section 10(3)(a)(i) or Section 10(3)(a)(iii) which precludes a landlord seeking possession of the entire building let out to different tenants if his requirement is bonafide; If the context in a particular provision requires that the word "building" should not be understood as defined in Section 2(iii) of the Act, certainly it is open to the Court to give the normal, natural and ordinary meaning which it is capable of; a landlord can seek possession of the entire building or any one or more portions of the building depending on his requirements and if the competent authority is satisfied that the requirement is bonafide, he can be put in possession of the integrated unit. The Bench also referred to *Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others*, and held that the definition of the term "building" depends on the context and that if the context warrants the entire building to be taken as a single unit, it should be so taken and the issue of additional accommodation requirement of the landlord should be adjudicated.

30. The learned counsel for the respondent however relied upon the decision in

Gangaram Vs. N. Shankar Reddy, and in particular to the following passage:

7. On a consideration of the matter, we find that the contention of Mr. Nambiyar, which has found acceptance with the Appellate Court and the High Court is not at all a tenable one. What Section 10(3)(c) envisages is the oneness of the building and not the oneness of ownership of two different buildings, one occupied by the landlord and the other by the tenant. The significant words used in Section 10(3) (c) are "the landlord who is occupying only a part of a building" and "any tenant occupying the whole or any portion of the remaining part of the building". Surely no one can say that two adjoining buildings bearing different door numbers, one occupied by the landlord and the other by the tenant would make them one and the same building if they are owned by one person and separate buildings if they are owned by two different persons. A practical test which can be applied to find out if two adjoining buildings form part of the same building or two different buildings would be to see whether one of the two buildings can be sold by the landlord and the purchaser inducted into possession of the premises sold without the landlord's possession and enjoyment of the premises in his occupation being affected. Viewed in that manner, it can at once be seen that the leased premises in the appellant's occupation can be independently sold and the purchaser delivered possession without the respondent's possession of door no. 1-1-249 being affected in any manner. As a matter of fact, the previous history of the building shows that before it was purchased by the respondent, it was owned by Sri Sitaram Rao and the respondent was owning only door no. 1-1-249. Such being the case, merely because the appellant has acquired title to door no. 1-1-250 also, it can never be said that the building under the tenancy of the appellant became part and parcel of the respondent's building No. 1-1-249. Similarly, the fact that the two buildings are separated only by a single wall with no intervening space between them would not alter the situation in any manner because the identity of two separate buildings is not to be judged on the basis of the buildings being separated by a single wall or by two separate walls with intervening space in between them.

31. This Court in Kosuri Satti Babu Vs. Vadaboyina Simhachalam and Another, considered both the decisions in Gangaram Vs. N. Shankar Reddy, and in Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, and held that in Gangaram, there were two separate buildings to start with owned by two different persons, with two different house numbers, and the respondent before the Supreme Court who owned the building bearing Door No. 1-1-249 purchased the adjoining tenanted building Door No. 1-1-250 (in the occupation of the tenant/appellant before the Supreme Court), which was separated "by a single wall with no intervening space" from the other building; the respondent-landlord contended that these two buildings should be treated as parts or portions of one building and claimed that he is entitled to invoke Section 10(3)(c); rejecting the said contention, the Supreme Court in Gangaram held that the practical test which could be applied to find out if two adjoining buildings form part of the same building would be to see whether one of the two buildings could be sold by

the landlord and the purchaser inducted into possession of the building sold without the landlord's possession and enjoyment of the building in his occupation being affected; this Court explained that the said test cannot be divorced from the context of the facts of Gangaram and the contentions urged therein i.e. existence of two separate and distinct buildings owned by two different persons when the appellant before the Supreme Court was inducted as a tenant of one of the buildings. This Court held that when what is leased to the tenant is only a portion of a house and not an independent building, Section 10(3)(c) could be invoked notwithstanding the fact that a part of a building is also a "building" as defined u/s 2(iii), because in the context, such portion is a part of one integrated structure of a building.

32. In T. Venkata Krishna Reddy's case 1979(2) APLJ 141 (supra), this Court held that where a portion let out to a tenant is structurally part of the main building though it was given a separate municipal number, the landlord is entitled to seek eviction of the tenant on the ground of requiring additional accommodation by invoking Section 10(3)(c) of the Act. Similar view was taken by the Madras High Court in R.K. Veerappa Naidu and Another 1961(1) MLJ 223 (supra) which was approved by a Division Bench of the said Court in A. Mohammed Jaffar Saheb Vs. A. Palaniappa Chettiar,

33. In K.C. Kanniyappan's case 1988 (1) ALT 414 (supra), this Court held that Section 10(3)(c) of the Act is an enabling provision to a landlord to seek eviction of a tenant from a portion of the building, which has been rented out for a non-residential purpose, so as to expand the business which he is already carrying on in a portion of that building.

34. In Smt. Chunnu Bai Vs. K. Ramulu and Others, , this Court held that where the structure of the premises in occupation of the landlord and a tenant is one and the same, even if they are in separate possession and occupation by different owners from the very beginning and have been given separate assessment numbers, it would not alter the nature of the structure and its oneness; that the demised premises has to be treated as part of the main structure upon which the residential house of the landlord is situated; and the landlord can invoke Section 10(3)(c) of the Act.

35. In the present case, the premises which is in occupation of the 1st respondent is situated in the ground floor; there are some other mulgies also in occupation of other tenants in the ground floor; all these mulgies are in a row; above the ground floor, there are three other floors having 33 rooms with balcony, W.C. and bath and other amenities fully equipped by furniture in which the petitioners are doing lodging business. The fact situation in the present case is similar to that in Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, Ex. R52 sketch filed by the 1st respondent shows these facts in detail. In my opinion, these facts when holistically considered would lead to the only conclusion that the ground floor mulgies and the three floors above would form an integrated unit. It would appear to be a single building with several portions,

if viewed by any reasonable man, from the Nampally Road (on the south of the premises) where it is located. The facts in the present case set out above do not warrant the application of the definition of the term "building" as defined in Section 2(iii) of the Act to be adopted. It is clearly a situation where the petitioner is in possession of a part of a non-residential building and it is seeking eviction of 1st respondent from another part of the same building on the ground that it requires additional accommodation for its business. Though 1st respondent can be said to be a tenant of a portion of the premises which by itself is a building within the meaning of Section 2 (iii), yet, the portion in occupation of 1st respondent is not to be considered as a separate building when the petitioners admittedly are in possession of the remaining portion of the composite building. Merely because separate municipal members have been given to the premises in occupation of the 1st respondent, or that it was sold under a different sale deed on a different date to the petitioners, it does not become a separate building. The Rent Controller rightly held that the RC schedule premises and the premises in occupation of the petitioners are not two separate buildings and they are part of the same building. The Appellate authority under the Act, while accepting that RC schedule premises is a portion in the main building (at para 28), erroneously applied the decision in Gangaram Vs. N. Shankar Reddy, without understanding the context in which the observations were made in the said case and came to a wrong conclusion relying on Section 2 (iii) of the Act that the premises in occupation of the 1st respondent is a separate building and held that the provisions of Section 10(3)(c) of the Act cannot be invoked by the petitioners. The said view of the Appellate Authority is not correct for the aforesaid reasons and therefore, I hold that petitioners are entitled to invoke Section 10(3)(c) of the Act.

36. Point Nos.(ii) and (iii):

It is not disputed that premises bearing No. 5-8-658/6 was let out by the petitioners to Y. Satyanarayana and K. Laxminarayana on a monthly rent of Rs. 25,000/- initially under a regd. lease deed Ex. P.12/dt. 09.02.2004 for 11 months and later under another regd. lease deed Ex. P.2/dt. 16.02.2005 for 3 years. The petitioners contend that they had explained to the said tenants about their requirement of premises bearing No. 5-8-658/6 along with 5-8-658/5 (the RC schedule premises occupied by the 1st respondent) and 5-8-658/7; that as litigation against 1st respondent is pending in respect of RC schedule premises, they should handover premises No. 5-8-658/6 to petitioners on termination of proceedings in their favour in the said litigation or on expiry of 3 years, whichever is earlier.

37. The 1st respondent also contended that M/s. Shalimar Bar and Restaurant is in occupation of premises belonging to petitioners adjacent to the main building of the petitioners on the rear side and part of it was let out to M/s. Sri Sai Restaurant pending the RC. In the cross examination, PW. 1 also stated that Shalimar Restaurant was on the rear side of the main building in which the 1st

respondent is in occupation of one mulgi; it is a part of premises No. 5-8-658/4 and is in the ground floor; that it is a separate wing; there is a first floor building on Shalimar Restaurant; there are six single rooms on the first floor of Shalimar Restaurant belonging to the 1st petitioner; by the side of Shalimar Restaurant, there is a building wherein Sri Sai Restaurant is carrying on business and it belongs to petitioners; there is also first floor on Sri Sai Restaurant; in 1992, the petitioners had let out the premises to Sri Sai Restaurant for Rs. 3,000/- per month; and that it was kept vacant from 1989 to 1992.

38. The counsel for the petitioners contended that landlord tenant disputes in our country take a long time and one cannot wait indefinitely for resolution of such litigation; the landlord cannot be expected to sit idle, keep a property vacant and lose income; in the present case, had the petitioners done so, they would have lost rents from 2004 to 2012 i.e., 8 years.

39. In Pratap Rai Tanwani and Another Vs. Uttam Chand and Another, he Supreme Court held:

7. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale after passing through all the previous levels of the litigation merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

8. We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of the petition. In Ramesh Kumar v. Kesho Ram 1979(2) APLJ 141 a two-Judge Bench of this Court (M.N. Venkatachalia, J., as he then was and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this: (SCC pp. 626-27, para 6)

6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a "cautious cognizance" of the subsequent changes of fact and law to

mould the relief.

9. The next three-Judge Bench of this Court which approved and followed the above decision in *Hasmat Rai v. Raghunath Prasad* 1961(1) MLJ 223 has taken care to emphasise that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below: (SCC pp. 113-14, para 14)

Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an order for eviction is made. If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events.

10. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system, it shatters the confidence of the litigant, despite the impairment already caused.

11. The above position in law was highlighted in *Gaya Prasad v. Pradeep Srivastava*

40. The eviction proceedings initiated against 1st respondent in 1988 are admittedly pending till 2013 i.e., for almost 25 years. It would be grossly unjust to expect the petitioners to keep the premises No. 5-8-658/6 or the premises adjacent to M/s. Shalimar Bar and Restaurant on the rear side (which was let out to Sri Sai Restaurant) vacant in the hope that the litigation against the 1st respondent would end quickly. Therefore, the mere fact that premises No. 5-8-658/6 is let out to Y. Satyanarayana and K. Laxminarayana or that the premises beside M/s. Shalimar Bar and Restaurant on the rear side was given on lease to Sri Sai Restaurant cannot per se disentitle the petitioners from seeking eviction of 1st respondent on the ground that they require the RC schedule premises for additional accommodation.

41. The counsel for 1st respondent sought to contend that the alleged understanding between petitioners and K. Laxminarayana/Y. Satyanarayana for taking on lease premises bearing No. 5-8-658/6 (that they would vacate the same as soon as the litigation for eviction against the 1st respondent in respect of premises bearing No. 5-8-658/5 ends) is not reflected in the lease deeds Exs. P12 and P13; there was in fact no such understanding and the said plea is a concocted one; therefore the said circumstance should be taken into account and the plea of the petitioners should be rejected.

42. PW. 2, the managing partner of the 1st petitioner firm stated in his evidence that premises No. 5-8-658/6 and 5-8-658/7 had been vacant since a long time and petitioners were losing a lot of money; there was discussion among partners of 1st petitioner firm on the issue several times in this regard; it was suggested by partners that unless the premises No. 5-8-658/5 is vacated, it is not possible to convert/modify the three premises for providing accommodation for Manager, telephone cabin, receptionist, accounts section, waiting lounge for customers and lift apart from constructing an additional floor; as proceedings for eviction which had commenced in 1988 were not concluded and it was uncertain when they would attain finality, it was decided that petitioners should not lose income if a right party who is credible came forward to take it on rent; that K. Laxminarayana and Y. Satyanarayana agreed to take the premises bearing No. 5-8-658/6 on rent and had also agreed to vacate the said premises as and when RC schedule premises became vacant to enable the 1st petitioner to make necessary conversion/modification to the premises; and therefore Ex. P.12 and P.13 lease deeds were executed.

43. PW. 3, K. Laxminarayana, the lessee who had taken the premises No. 5-8-658/6, also corroborated the evidence of PW. 2 and stated that there was a clear understanding between the petitioners and himself that he and Y. Satyanarayana should vacate if proceedings initiated by petitioners against 1st respondent ended in favour of petitioners.

44. In view of evidence of PWs. 2 and 3 it cannot be doubted that there was an understanding between the petitioners and K. Laxminarayana/Y. Satyanarayana that the latter would vacate premises No. 5-8-658/6 in the event the petitioners succeed to get 1st respondent evicted from the RC schedule premises. The mere absence of such a clause in the lease deeds does not preclude them from having such understanding. Both petitioners and the said persons/tenants are clearly *ad idem* on the said issue and have asserted the same on solemn oath. I do not see why such evidence should be discarded. Therefore, the grant of lease of premises bearing No. 5-8-658/6 by petitioners to Sri K. Laxminarayana and Sri Y. Satyanarayana does not disentitle the petitioners from seeking eviction of 1st respondent from the R.C. schedule premises.

45. In respect of premises in occupation of M/s. Sri Sai Restaurant, PW. 1 clearly stated that it is adjacent to the premises in occupation of M/s. Shalimar Bar and Restaurant on the rear side of the main building in which the R.C. schedule premises in occupation of 1st respondent is located and both the buildings are separated by a distance of 5 feet. RW. 1 in his evidence stated that a portion of the premises vacated by Shalimar Bar and Restaurant was let out to Sri Sai Restaurant in 1991-92 and that Shalimar Bar and Restaurant was in occupation of premises behind the R.C. schedule premises. It is an admitted fact that the R.C. schedule premises is facing the main road-Nampally Station Road. Therefore, the fact that the premises adjacent to Shalimar Bar and Restaurant and which is on the rear side of the R.C. schedule premises was let out to Sri Sai

Restaurant would not disentitle the 1st petitioner to seek eviction of 1st respondent from the R.C. schedule premises for additional accommodation to meet its needs for additional accommodation for Manager, telephone cabin, receptionist, accounts section, waiting lounge for customers and lift apart from constructing an additional floor.

46. It is common knowledge that reception, waiting lounge for customers, Manager's room, accountant's room apart from lift are normally provided in the area facing the main road as it would facilitate the business. As would be evident from the later part of this order, it is not for the 1st respondent to dictate to the petitioners how they should conduct their lodge business and where they should locate such amenities. It is not unreasonable for the petitioners to provide the above amenities in the area covered by the RC schedule premises, 5-8-658/6 and 7, part of 5-8-658/3 facing the above main road instead of providing them in the rear side area or in the upstairs portion considering the nature of their business i.e. for running a lodge.

47. In my view, the Appellate Authority misread the evidence on record and came to a conclusion which no reasonable man would come to i.e., that the leasing of premises No. 5-8-658/6 and the rear side area to Sri Sai Restaurant disentitles petitioners from seeking eviction of the 1st respondent. The Appellate Authority failed to see that it is normal and reasonable for any landlord, who, when faced with long drawn out litigation against a tenant, to lease out the portion in his occupation (adjoining the portion which is subject to the lis). By doing so, pending the finalization of the lis with the tenant, he would avoid suffering financial loss. The Appellate Authority ought to have accepted the evidence of PWs. 2 and 3 in regard to the understanding between them that PW. 3 would vacate premises bearing No. 5-8-658/6 as and when petitioners succeed in obtaining eviction of 1st respondent from R.C. schedule premises which is adjacent to premises No. 5-8-658/6.

48. The view of the Appellate Authority even with regard to grant of lease to Sri Sai Restaurant i.e., that petitioners should have located the Manager room, accounts section, reception etc., in the premises leased to Sri Sai Restaurant (which was admittedly not on the main road on which the RC schedule premises was located but on the rear side of the RC schedule premises) is clearly perverse as it would be unreasonable to expect a person running a lodge to have such facilities-not on the portion facing the main road, but on the rear side of the building in which the RC schedule premises is located. In doing so, the Appellate Authority is allowing the tenant to dictate to the landlord how the landlord should conduct its business or locate the amenities for the landlord's business, which is clearly not permitted by law as explained below.

49. Point Nos.(iv) and (v):-

It is the contention of the 1st respondent that premises No. 5-8-658/6 and 7, which were adjacent to the premises in his occupation, were kept vacant by

petitioners for many years; they failed to occupy and use them for the purpose pleaded in the eviction petition; having let out these two premises to Y. Satyanarayana and K. Lakshmi Narayana under registered lease deed dt. 09-02-2004 for 11 months and subsequently extending the said lease for three more years under regd. lease deed dt. 16-02-2005, on handsome rent, petitioners have failed to prove that their need is bonafide, honest and genuine; that M/s. Shalimar Bar and Restaurant was in occupation of a premises 12"X40" belonging to the 1st petitioner adjacent to the main building on the backside; after obtaining vacant possession of the same, the 1st petitioner constructed additional rooms and let out half portion to M/s. Vaishnavi Restaurant on higher rent and the other half is being used for Manager room, waiting lounge etc. and therefore requirement of additional accommodation, if any ceases; portion of the premises let out to Shalimar Bar and Restaurant was let out to Sri Sai Restaurant; that petitioners got vacated part of another premises bearing No. 5-8-658/3 to the East of the RC schedule premises in a compromise dt. 24-11-2004 in O.S.No. 227 of 2003 on the file of III Additional Chief Judge, City Civil Court, Hyderabad and 5-8-658/4; it also obtained vacant possession of premises bearing No. 5-8-658/6 and 5-8-658/7 by getting the tenants M/s. Carona Shoe & Co. Ltd. and Smt. P. Lalitha in possession thereof evicted in R.C.No. 1140 of 1988 and R.C.No. 1174 of 1998 in the Court of the Rent Controller, Hyderabad and therefore the petitioners could use any or some of these premises for their needs and cannot insist for eviction of 1st respondent from the R.C. schedule premises.

50. The counsel for the petitioners however contended that it is the prerogative of the landlord to decide for what purpose he requires premises in question; the tenant cannot dictate terms to landlord and advise him what he should do or not do; and it is the privilege of the landlord to choose the nature of the business and the place of business; and where he should provide the amenities for the purpose of it's business. It is common knowledge that reception, waiting lounge for customers, Manager's room, accountant's room apart from lift are normally provided in the area facing the main road as it would facilitate the business. Accepting the case of the respondent would force the petitioners to provide these facilities in a cramped area adjacent to the RC schedule premises or in the area on the rear side which would not be convenient for the business of the petitioners.

51. In Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others, the Supreme Court observed that it is always the prerogative of the landlord to choose the nature of the business and the place of business and it is not for the tenant to dictate terms to the landlord and advise him what he should do or not do. In the said case, the landlords had business spreading over Chennai and Hyderabad and they wanted to expand their business at Calicut but the tenant contended that the landlords' need for the premises at Calicut is not bonafide and genuine as they already have business at Chennai and Hyderabad. The Supreme Court held that there is nothing unnatural in the landlords seeking

eviction of the tenant at Calicut for expansion of their business at the said place.

52. In *S.R. Babu Vs. T.K. Vasudevan and Others*, , the Supreme Court while considering the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965, held:

10. Sub-section (8) of Section 11 reads thus:

11. (8) A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use.

11. A perusal of sub-section (8) makes it clear that to invoke this sub-section the landlord must show that: (i) he is occupying only a part of the building; (ii) the tenant is occupying the whole or a portion of the remaining part; and (iii) the landlord requires the additional accommodation for his personal use.

12. The following is the distinction between sub-section (3) and sub-section (8) of Section 11 of the Act. The former provision applies when the building is wholly occupied by the tenant and the landlord bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him provided he does not have any building of his own in his possession in the same city, town or village whereas the latter provision applies when a landlord is already in occupation of a portion of the building and needs additional accommodation which the tenant is occupying, for his personal occupation.

13. In the instant case, admittedly, the first respondent is in occupation of a part of a building and the appellant is occupying another part of the building which the first respondent requires as additional accommodation for his personal use. Therefore, this case falls under sub-section (8) of Section 11 and not under sub-section (3) of Section 11 of the Act.

14. In our view, once it is held that the landlord requires additional accommodation for his personal use, he is entitled to utilise it to best suit his requirement. The condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant. The first respondent may use it as it exists or he may use it after necessary repairs, additions or alterations to suit his requirements. The appellant has no say in such matters.

53. In *Sarla Ahuja Vs. United India Insurance Company Limited*, , the Supreme Court, while considering the provisions of the Delhi Rent Control Act, 1958, held:

The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller

to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

15. Facts such as the cordial relationship between a landlord and his daughter-in-law or that he is comfortably residing in the present building are not relevant in judging the bona fides of the claim of the landlord. Otherwise it would appear that the landlord can think of residing in his or her own residential building only when cracks develop in the relationship between him and his kith and kin.

54. In Kunji Bai G. Chugani 2012(3) ALD 132 (supra) cited by counsel for 1st respondent, a learned Single Judge of this Court held that the term "bonafide" means, honestly, in good faith, without fraud or deception, without an ulterior motive and that the word "require" is something more than a mere wish or desire; and that the landlord must show the circumstances proving his necessity. It was held that if a landlord is in possession of other non-residential premises then, in order to invoke Section 10(3)(a)(iii) of the Act, he must prove that the other premises is not sufficient considering the aspects of quality, size and suitability of the building and that if he cannot plead and prove the same, his requirement cannot be treated as bonafide. This principle will not apply in case where the provisions of Section 10(3)(c) is invoked by a landlord as in the present case.

55. Admittedly, the RC schedule premises is adjacent to the main road and has direct access from it. It is admitted that RC schedule premises is in the ground floor and the petitioners are running a lodge in the first, second and third floors above the RC schedule premises where there are 33 rooms with balcony, WC, bath and other amenities. It has already been held under point no. (i) supra that the premises bearing Municipal No. 5-8-658/1 to 8 including the RC schedule premises have to be treated as part of a single building and cannot be treated as separate and independent buildings.

56. The petitioners are seeking additional accommodation to accommodate their Manager, telephone cabin, receptionist, accounts section, waiting lounge for guests for the lodge run by them apart from a lift. The petitioners also intend to build a fourth floor to create further lodging accommodation to their customers.

57. The first respondent has admitted in his deposition that the premises in the occupation of Shalimar Bar and Restaurant is a separate building; M/s. Shalimar Bar and Restaurant and Sri Sai Restaurant are located on the rear side of the building where the RC schedule premises is located; there are rooms on the first floor of these two restaurants. But there is no direct access to the road from these buildings as they are located on the rear side of the subject building. The 1st respondent has not been able to show any decision to the effect that the

requirement of the petitioners would not be bonafide in an application filed under S. 10(3)(c), if the landlord is having accommodation in another building or adjoining building.

58. The 1st respondent contends that the landlord, should adjust in the premises No. 5-8-658/6 or 5-8-658/7 or in the back side where Shalimar Bar and Restaurant and Sri Sai Restaurant are located or 5-8-658/3, 5-8-658/4 (which were secured by virtue of the compromise dt. 24.11.2004 in O.S.No. 227 of 2003 before the III Additional Chief Judge, City Civil Courts, Hyderabad).

59. But the petitioners contend that if the respondent vacates the RC schedule premises, then K. Satyanarayana and Y. Laxminarayana in occupation of the adjacent premises No. 5-8-658/6 would also vacate; premises No. 5-8-658/7 is vacant (after the tenant Smt. P. Lalitha vacated it pursuant to orders in RC No. 1174 of 1988); and if the 1st respondent vacates the RC schedule premises, the petitioners can make a provision for all their above needs by suitably modifying the building.

60. O.S.No. 227 of 2003 was compromised on 24.11.2004 and under the said compromise Ex. R.51, Duhilanomal, tenant of premises No. 5-8-658/3 and the 1st respondent agreed not to claim any right, title or interest in the place under the staircase (to the west of the premises No. 5-8-658/3) at the entrance of the Coromandel lodge and accepted that the said area belonged to the 1st petitioner; they also agreed not to claim any right, title or interest on the open space abutting their wall on the northern side of their premises No. 5-8-658/3 and under the balcony of Coromandel lodge and accepted that the same belongs to 1st petitioner and that it forms part of premises No. 5-8-658/4 of the 1st petitioner; in consideration of the above concession by 1st respondent and Duhilanomal, they were paid Rs. 4,50,000/- by the petitioners. The area covered by this compromise is very small and would be hardly sufficient for the petitioners to provide all amenities mentioned above therein.

61. In my opinion, Shalimar Bar and Restaurant/Sri Sai Restaurant premises are separate buildings and area available therein cannot be taken into account and in any event they would not be suitable as they are not located on the main road but on the rear side of the RC schedule premises; the 1st respondent cannot dictate to the landlords where and how they should meet their additional requirements mentioned in para 57 above; and it is the privilege of the landlord to chose the nature and place of his business and where he should locate the amenities for the said business. The request of the petitioners to locate the reception, waiting lounge for customers, Manager's room, accountant's room apart from lift in the RC schedule premises and the adjacent area facing the main road is reasonable and bonafide as it would certainly facilitate their business. Thus the RC schedule premises is located in such a way in the building that the amenities sought by the landlord cannot be provided except by evicting the 1st respondent and remodeling the entire building; and therefore, it has to be held that the requirement of the landlord for personal use for its business needs is

bonafide.

62. Coming to the question of relative hardship which has to be looked into as per proviso S. 10(3)(c) of the Act, in *K. Parasuramaiah Vs. Pokurl Lakshmamma*, a Division Bench of this Court held that hardship of the tenant has to be first found out in case eviction u/s. 10(3)(c) of the Act is to be directed; that hardship then has to be placed against the relative advantages which the landlord would stand to gain if an order of eviction is passed; hardship and advantage then have to be weighed and if the balance turns in favour of the tenant, the petition of the landlord must be rejected. It held that such a consideration is not restricted merely to financial or physical advantages or disadvantages or any injury to the health of the person affected; it would take in existence or availability of an alternative accommodation or the real efforts made by the tenant to seek an alternative building for his purposes and other such things; the proviso should not be read as if it confers the practical immunity on the tenant from being evicted and if it were to be so construed, it would destroy the very purpose of S. 10(3)(c). The Bench held that once the bonafide requirement of the landlord brings him within that provision, then the onus is on the tenant to allege and prove the various factors which he wants the Rent Controller to take into account for weighing the relative hardship which may be caused to the tenant in case he is evicted, and establish that it outweighs the advantage which might accrue to the landlord. It observed:

Merely because the tenant has been occupying the premises since a long time, it does not necessarily mean that his eviction would cause irreparable loss to him. If he has really established his reputation as a good and reliable photographer, which building he occupies and in what locality would certainly be not much material. He does not seem to have made any real attempt to find out whether any alternative accommodation for his purpose is available in the same or any other locality. His statement in his deposition that "My main objection to vacate is that I will not be able to get better accommodation" does not in any manner disclose that real efforts were put in to find out any other accommodation. There is no evidence in that regard. The Rent Controller obviously went wrong in accepting the ready made conclusion given by the tenant that in case he is asked to vacate, it would be fatal to his business. Some hardship is bound to be caused when a person is disturbed from the premises where he has been carrying on business of photography for the last so many years apart from personal inconvenience, but this hardship which is inherent in the situation does not compare better with the disadvantage from which the landlady is suffering at the moment. She might have been compelled to be content with that limited accommodation under the circumstances prevailing previously. That does not however necessarily mean that she cannot subsequently have reasonable need for additional accommodation.... She should not therefore be allowed to live in that inconvenient position merely because she tolerated it for some time....

63. This decision was followed in *Joginder Pal Vs. Naval Kishore Behal*,

64. The 1st respondent in his counter merely pleaded that if he is evicted, he and his family members will be deprived of their source of income and therefore, the hardship which would be caused to him in the event of his eviction will outweigh the advantage to the petitioners. In his deposition, the 1st respondent did not say what attempts he made to secure other accommodation in the area but merely stated that his family consists of 8 members; their source of income for livelihood is only the income from the business in the RC schedule premises; in the event of eviction, he will be put to great hardship. As held in K. Parasuramaiah Vs. Pokurl Lakshamma, some hardship is bound to be caused if the 1st respondent is disturbed from the premises where he had been carrying on business but if he had made no attempt to find out whether alternative accommodation for his purpose is available in the same or any other locality, it has to be held that the hardship caused to him would not outweigh the advantage to the landlord. The landlord cannot be compelled to live in an inconvenient position merely because he had tolerated it for sometime. The advantage to the landlord, in my opinion, in the facts and circumstances of the case would clearly outweigh the hardship which the tenant is likely to suffer because of his eviction.

65. For all the above reasons, I hold that the petitioners have established their need for additional accommodation under S. 10(3)(c); that their need is bonafide; and that the hardship which would be caused to the 1st respondent is outweighed by the advantage to the petitioners. Therefore, the C.R.P. is allowed and the order dt. 05.06.2006 of the Appellate Authority under the Act-cum-Additional Chief Judge, City Small Causes Court, Hyderabad and the order passed by the Principal Rent Controller, Hyderabad dt. 25.04.1994 in R.C.No. 1175 of 1988 are set aside; the 1st respondent is directed to deliver vacant possession of the RC schedule premises to the 1st petitioner on or before 30.06.2013; and continue to pay the admitted rent up to the said period. No costs.