

(1989) 07 MAD CK 0029
In the Madras High Court

Nandan Brothers and Others

APPELLANT

Vs

Kamaladevi Chandak and Others

RESPONDENT

Date of Decision : 26-07-1989

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3)(c)

Citation : (1989) 2 LW 25 : (1989) 2 MLJ 469

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—By my order dated December 7,1988, I called a finding from the Rent Controller on the question whether the respondent herein require the portions in the. occupations of the revision petitioner bona fide for the purpose of their business. I permitted the parties to let in evidence before the Rent Controller and directed the latter to consider the evidence on record and submit a finding. In the said order, I had considered some of the contentions urged by the revision petitioners and gave my decision thereon. First I rejected the argument that the Appellate Authority was in error in receiving additional evidence produced before him and held that the procedure adopted by the Appellate Authority was proper and authorised by law. Secondly, the contention that the application ought to have been filed u/s 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act and it was not maintainable as it was filed u/s 10(3)(a)(iii) of the Act was negatived by me. Thirdly, I held that the respondents were carrying on business in premises which are not owned by them.

2. I felt it necessary to give an opportunity to the parties to let in evidence as regards to bona fide requirement as defined by the Supreme Court in Hamedia Hardware Stores v. B. Mohan Lal Sow-car 102 AIR 1988 S.C. 1060. I permitted the parties to let in evidence on the question whether the portions of the building whether the portions of the building which fell vacant after the filing of the eviction petitions and were in the control of the respondents were sufficient for the purpose of the businesses of the respondents.

3. Both parties adduced oral as well as documentary evidence before the Rent Controller after my said order. The Rent Controller has given a finding that the requirement of respondents is bona fide and that the portions which fell vacant already after the filing of the eviction petitions were not sufficient to meet the needs of the respondents.

4. The revision petitioners have filed their objections to the findings returned by the Rent controller. They took me through the evidence on record and argued at length that the respondents have not made out their case of bona fide requirement for the purpose of their own business. Learned Counsel for the petitioners raised several contentions and I am dealing with them here under seriatim:

1.(i) Before the filing of the petitions for eviction, the respondents had issued a notice dated 7-3-1984, marked as Ex. R3 to the effect that the building was very old and in a dilapidated condition and they require the same for demolition and erection of a new superstructure, but when they filed the petitions for eviction, they claimed that they require the building for their own occupation for the purpose of their business. According to learned Counsel, the respondents have taken two inconsistent positions thereby and their requirement for own occupation cannot be said in bona fide as they had expressed an intention earlier to demolish the same. While elaborating the submission on this aspect of the matter, learned Counsel for the petitioners invited my attention to the recital in the sale deed under which the respondents purchased the building on 6-12-1983. The sale deed has been marked as Ex.P.7. The recital on which reliance is placed as follows:

Whereas the schedule mentioned property is very old and is in a dilapidated condition and whereas the rental income from the said property whereas the rental income from the said property is not much and whereas the said rental income is wiped off for the payment of property taxes, maintenance charges and other expenses and whereas it is not advisable to own such a old and dilapidated building; and whereas the Vendors do not have the means and inclination to demolish the old building and re-construct a new one; whereas the Vendors deem it fit to have the property sold.

In Annexure I-A to the sale deed, the age of the building is mentioned as over 100 years. Learned Counsel submitted that in the face of the recital in the sale deed, followed by the notice dated 7-3-1984, issued by the respondents to the petitioners reiterating the condition of the building as dilapi dated and expressing their intention of demolishing the building and putting up a new construction, the petitions for eviction, which are wholly silent as to the alleged dilapidated condition of the building lack in bona fide when the claim made therein is that the respondents have purchased the building for the purpose of shifting their business to the said building for their own occupation. According to learned Counsel, requirement for demolition and reconstruction cannot go alone with the requirement for own occupation and the two purposes are mutually exclusive.

Learned Counsel placed reliance on the absence of averment in the notice Ex. Rule 3 that the building was required by the respondents for their own occupation.

(ii) In my opinion, the contention has no substance. There is no inconsistency in the stand taken by the respondents in the notice issued by them soon after the purchase eviction. The fact that the respondents have applied for eviction on the ground of requirement for own occupation for the purpose of carrying on business does not mean that they have given up the earlier version that the building is very old and dilapidated. Whenever a landlord requires a building for the purpose of his own occupation. It does not mean that he should occupy the building as it is. He is certainly entitled to carry out certain structural alterations after getting possession of the building according to law under the same or soon after occupying the same. The provision under which a landlord is enabled to seek possession from the tenant on the ground of requirement for own occupation is u/s 10(3)(a)(iii) of the Act in the case of non-residential building. Under the said section, a landlord may apply to the Controller for an order directing the tenant to put him in possession of the building if he or any member of his family is not occupying for the purpose of the business which he is carrying on a non-residential building in the city, town or village concerned which is his own. Under the first proviso to the Sub-section a person who becomes a landlord after the commencement of the tenancy by an instrument inter vivos shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered. Under the second proviso, if a landlord has obtained possession of the building under this Clause, he shall not be entitled to apply again for possession of another building of the same nature. The Sub-section is subject to Clause(d) that where the tenancy is for a specified period agreed upon between the land lord and the tenant, the landlord shall not be entitled to apply before the expiry of such period. If the Controller is satisfied that the claim of the landlord is bona fide, he shall make an order directing the tenant to put the landlord in possession of the building. It is not necessary to refer to the other parts of the Section. Thus, u/s 10(3)(a)(iii) of the Act, there is no reference whatever to the condition of the building. The section does not prescribe that a landlord who has obtained possession of the building under the Sub-section shall not in any manner alter the super structure, or effect such modifications as may be required to suit his convenience. Once the land lord gets possession of the building under the said Sub-section, he is entitled as the owner thereof to make such alterations or modifications as necessary for his purposes. The provision for requirement for purposes of demolition and reconstruction is found in Section 14(1)(b) of the Act. Under that Sub-section, the Controller shall, if he is satisfied on an application made by the landlord that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, pass an order directing the tenant to deliver possession to the landlord. Under this Sub-section, it is not necessary

for the landlord to say that the new building which is to be erected after the demolition of the existing building would be occupied by himself. In fact it is now settled law that under the said Sub-section, an application can be made by the landlord either on the ground that the building is so old and dilapidated that it requires to be demolished immediately or on the ground that he wants to augment his income and therefore, requires the building for immediate demolition and erection of a new structure which would fetch him a higher or larger income. That itself shows that a landlord who seeks possession of the building for demolition and reconstruction, is entitled to get an order whether he proposes to occupy the new building himself or let out the same to tenants.

(iii) The Supreme Court has held in *Ramiklal Pitambardas Mehta v. Indradaman Amratlal Sheth* (1965) 2 S.C.J.608 while construing a similar provision in Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947) that the provision of Clause(hh) of the said Act which provided for eviction on the ground of the requirement for demolition and reconstruction would apply to cases where the landlord does not require the premises for his own occupation but recovers them for erecting a new building which is to be let out to tenants. The relevant provisions in the Bombay Act corresponding to Section 10(3)(a) and Section 14(1)(b) of the Tamil Nadu Buildings(Lease and Rent Control) Act are found in Sections 13(1)(g) and 13(1)(hh), which has been extracted in the judgment of the Supreme Court read as following:

13. (1) Notwithstanding anything contained in this Act but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied.

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust;

(hh) that the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished.

The statement of the law relevant for the purpose of this case found in the following passage:

We agree with the courts below that the respondents case falls under Clause(g) when he bona fide requires the premises for his own occupation. The mere fact that he intends to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of the condition of the house, does not affect the question of his requiring the house bona fide and reasonably for his occupation, when he has proved his need for occupying the house. There is no such prohibition either in the language of Clause(g) or in any other provision of the Act to the effect that the landlord must occupy the house for

residence without making any alteration in it. There could not be any logical reason for such a prohibition. Under ordinary law the landlord is entitled to eject his tenant when ever he likes after following certain event. The Act restricts that general right of the landlord in the special circumstances prevailing in regard to the availability of accommodation and the incidental abuse of those circumstances by landlords in demanding unjustifiably high rents. The Act has provided sufficient protection to the tenants against being harassed by threat of ejectment in case they are unable to satisfy landlord's demands. Various restriction have been placed on the right of the landlord to eject the tenant. Section 12(1) provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy in so far as they are consistent with the provision of the Act. Section 13 provides for exceptional cases in which the landlord can eject the tenant even though he had been paying rent regularly or be ready and willing to pay rent. The provision of Section 13 are for advantage of the landlord and the various grounds for ejectment mentioned in that section are such which reasonably justify the ejectment of the tenant in the exercise of the landlord's general right to eject his tenant. There is therefore no reason why restrictions not mentioned in the grounds be read into them. We do not therefore agree with the contention that Clause(g) will apply only when the landlord bona fide needs to occupy the premises without making any alteration in them i.e. to occupy the identical building which the tenant occupies. There is no justification to give such a narrow construction either to the word "premises" or the word "occupies" which have been construed by this Court *Krishnalal Ishwarlal Desai v. Bal Vijakor* (1963)2 S.C.J. 699.

There are provisions in the Act which ensures that the provisions of Clause(g) are not abused. Section 17 provides that if the premises are not occupied within a period of one month from the date the landlord recovers possession or the premises are re-let within a period of one year of the said date to any person other than the original tenant, the Court may order the landlord, on the application of the original tenant, within the time prescribed, to place him in occupation of the premises on the original terms and conditions.; This tends to ensure that a landlord does not eject a tenant unless he really requires the premises for occupation by himself.

We are therefore of opinion that once the landlord establishes that he bona fide requires the premises for his occupations, he is entitled to recover possession of it from the tenant in view of the provisions of Sub-Clause(g) of, Section 13(1) irrespective of the fact whether he would occupy the premises without making any alteration to them or after making the necessary alteration.

The provisions of Clause(hh) cannot possibly apply to the case where a landlord reasonably and bona fide requires the premises for his own occupation even if he had to demolish premises and to erect a new building on them. The provisions of

Clause (hh) apply to cases where the landlord does not require the premises for his own occupation but requires them for erecting a new building which is to be let out to tenants. This is clear from the provisions or to give certain undertaking before a decree for eviction can be passed on the grounds specified in Clause (hh).

(iv) Referring to the aforesaid judgment of the Supreme Court, Sivasubramaniaro, J., has in Ponnuswami Naickerv. K.Anandan (1988)1 L.W.31, rejected a similar contention urged before him. In that case, the petition for eviction was filed u/s 10(3)(a)(iii) and u/s 14(1)(b) of the Act. It was argued before the learned Judge that the petition was unsustainable as the prayers were mutually exclusive. It was contended that if really the landlord requires the premises for his personal occupation, then the question of demolition and reconstruction would not arise and the fact that he wants to demolish and reconstruct the building shows that there is no immediate necessity for the landlord to require the building for his personal occupation. The said contention was repelled by the learned Judge, rightly if I may say so, who placed reliance on the judgment of the Supreme Court in R.P.Mehta's case (1965)2 S.c.J.608 referred to above. The learned Judge held that once the bona fide requirement for personal occupation is provided from the mere fact that a reference to Section 14(1)(b) of the Act is made in the petition and an allegation to the effect that the landlord is going to demolish the building to suit his purpose is made, it cannot be stated that the remedy available u/s 10(3)(a)(iii) of the Act is taken away. The learned Judge has taken the view that it is unnecessary to go into the question whether the prayers are mutually exclusive. I am of the opinion that the prayers are not mutually exclusive and they are complementary to each other.

(v) A similar question arose before a Division Bench of this Court in Nathella Sampathu Chetty v. Sha Vajinjeo Bapulal 80 L.W. 73: (1967)1 M.L.J. 289. In that case, an application was made by the landlord to the Government for exemption of the building u/s 29 of the Act. In that application it was alleged that on getting possession of the building which was the subject matter of proceedings, the landlord proposed to make that building and the adjacent one, in which he was already carrying on business, in partnership with his son, into one by making structural and other alterations to suit the needs of the business. In the application filed before the Rent Controller for eviction, the landlord required the building u/s 10(3)(a)(iii) of the Act for the purpose of his own occupation for carrying on business. One of the arguments advanced on behalf of the tenant before the Division Bench, which had been accepted by the appellate Authority, was inconsistent with the allegations made earlier in the application for exemption filed before the Government. The said contention was repelled by the Division Bench and the view taken by the Appellate Authority was reversed. The Division Bench held that there was no inconsistency in those allegations. The Division Bench went on to hold that the said allegations were not relevant for considering the question of bona fides and they could not affect the bona fides of the claim made in the petition for eviction. The Division Bench also held that so

long as the evidence does not justify the finding that the claim is a device and intended to serve an oblique purpose, it will go a long way towards the claim being honest. Very little evidence might be required to find that the claim is an honest one. The said decision was referred to with approval by the Supreme court in Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, Hence I hold that the fact that the respondents herein claimed in the notice that the building was dilapi dated and they proposed to demolish, the same with a view to erect a new one, does not militate against the bona fides of the claim made by the respondents in the petition for eviction.

(2) The second contention urged by learned Counsel for the petitioner is that there is no plea in the petition for eviction that the premises are required for centralisation of the businesses carried on by the respondents whereas they have let in evidence that they require the building in order that all the businesses carried on by them are situated in one place. There is no substance in this contention as the specific plea in the petition for eviction is that the respondent requires the premises for shifting their businesses to the same place from the respective rented premises. The language used in the petition is clear enough to indicate that the respondents want all their businesses to be shifted to the petition premises under one roof. Incidentally, it was argued by learned Counsel for the petitioners in C.R.P.No.4234 and 4235 of 1987 that the respondents herein have not stated in the petitions for eviction as to which portions of the building are required and occupy such portions as may be required for which business of theirs. In my view, it is wholly unnecessary. The respondents are co-owners and they are carrying on different businesses. It is for them to adjust and for each business according to the respective needs. There is no necessity for them to disclose the same in the petition for eviction. So long as their claim is that they propose to shift all the business carried on by them to the petition premises, it is not necessary to specify the portions which are going to be occupied by each of the business.

(3) The third contention put forward by the petitioners is that the evidence on record is only to prove that the businesses carried on by the respondents are on the increase and they are expanding and such evidence is not sufficient to prove the bona fide requirement of the respondents. This contention is also without any substance. P.W. 1 has spoken to the fact that the business has been considerably expanding over the years and he is the only person managing all the businesses on behalf of the respondents and there is a dire necessity for him to have all the businesses in the same place. The records produced by the respondents herein prove that the business has been on the increase. Reliance is placed by learned Counsel for the petitioners on the deposition of P.W.I that though the business was in the decline for two years it has increased two-fold later. Learned Counsel for the petitioners in C.R.P.Nos. 4234 and 4235 of 1987 contended that when the, business is on the increase even in the rented premises in which it is being carried on, there is no necessity for shifting the

business to the petition premises and that the claim that the respondents are, not able to do more business in view of the fact that their two businesses are situated in two different rented buildings at present is inconsistent with the admission that the businesses increased two-fold. I do not find any inconsistency in the evidence given by P.W.I. When the witness deposes that the respondents are not able to do more business on account of the businesses being carried on in two different places, it only means that they would be able to do much more business than what is being done at present. Learned Counsel for the respondents drew my attention to Exs, P-16 to P-18, P-32, P-33, P-34(series), P-44 and P-56 to P-83 to prove that the businesses have expanded considerably and there is a genuine need for the respondents to shift the same to their own building so that they may conveniently handle all their businesses without the difficulties which they are experiencing at present on account of the fact that they are situated in different buildings which are not their own. "

(4) The next contention urged by learned Counsel is that the respondents did not occupy the portions which admittedly fell vacant and it shows that the requirement of the respondents is not bona fide. The argument goes that if the requirement was genuine, the respondents would have occupied immediately the portions which fell vacant and shifted at least some part of their businesses to the petition premises. It is also argued that the portions which have fallen vacant are quite sufficient to meet the requirements of the respondents and they have no necessity whatever to evict the. revision petitioners from the portions occupied by them. P.W.I has given clear evidence as to the area required by him for the purpose of the businesses of the respondents and deposed that the area of the portion which fell vacant after the filing of the eviction petitions is hardly sufficient for meeting the needs of the respondents. He has stated that the business Raj Fabrics is occupying an extent of 800 sq. ft. in the ground floor of No. 71, Godown Street, and that the portion is facing the street. He has also deposed, that apart from the said area they are having 450 sq. ft. in the sixth floor in the same building.; As regards Vimal Fabrics, the evidence of P.W.I is that it is occupying 600 sq. ft. in No. 24 Godown, Street in the ground floor facing the street, He has deposed that the portions which fell vacant in the petition premises are very small portions of a total extent of 500 sq it. and that they are situated in the first floor and second. floor. This evidence of P.W.I is supported by, the evidence of a Civil Engineer examined as,P.W.2. He has inspected the premises in which the respondents are carrying on business and prepared the plan showing the measurements of the portions now in the occupation of the respondents in the rented premises. He has also filed a report which is marked as Ex.P-84. The plans are marked as Exs. P-85 and P-86, Nothing has been elicited in, the cross-examination of P.W.2 to discredit his evidence. A comment is made in the course of arguments that he did not enter the portions occupied by the petitioners in the petition premises and measure the carpet area. He has deposed, that he has taken the outer measurements. No, evidence has been produced by the petitioners to prove the extents of the portions occupied by them.

If the petitioners wanted to dislodge the evidence of P.Ws.1 and 2, they should have let in positive evidence on their side to prove the actual measurements. I have no hesitation to accept the evidence of P.W.I that the portions which fell vacant during the pendency of these proceedings for eviction were not sufficient to meet the needs of the respondents and the failure of the respondents to occupy them immediately does not militate against the bona fide of their requirement of the portions in the occupation of the petitioners herein.

(5) Another contention urged by learned Counsel for the petitioners is that the respondents are constructing a huge building in Srinivasa Iyengar Road, Alwarpet and that building is a non-residential building which would be sufficient to meet the requirements of the respondents. There is no evidence to prove that the building in Alwarpet is a non-residential one. The assertion of P.W.I is that it is only a residential building. He deposed in the course of cross-examination that it would be possible for him to produce the plan relating to that building. He denied emphatically that he is constructing a commercial complex in that place. According to learned Counsel for the respondents, the plan was produced before the Court and a prayer was made on behalf of the respondents herein to mark that plan. It is stated that the Court refused to mark that plan as it was opposed by the petitioners herein. This statement of learned Counsel for the respondents is refuted by learned Counsel for the revision petitioners. According to them, no attempt was made by the respondents to produce the plan. There is nothing on record to show that an attempt was made by the respondents to produce the plan and the Court refused to mark the same. It is not necessary for me to decide whether the plan was produced before Court or not. The evidence available on record does not make out that the building which is constructed by the "respondents in Alwarpet is a non-residential one. As against the positive assertion of P.W.I that he is constructing only a residential building the petitioners herein have not let in any evidence to the effect that the building is a non-residential one. R.W.I, who is the second petitioner in C.R.P. No. 4235 of 1987 states in the chief-examination that P.W.I is constructing a building on six ground plot at No. 5, Sriman Srinivasa Iyengar Street. He does not say that it is a non-residential building. But, he states that the building is situated in a commercial area. In the cross-examination he denies that the building is a residential building. No where in his evidence R.W.I has stated as to how he knows that the building in Alwarpet is a non-residential one. R.W.2, who is the husband of one of the partners of Nandhan Brothers the first petitioners in C.R.P. No. 4230 of 1987 deposed in chief-examination that a big shopping complex is being built by the respondents in No. 5, Sriman Srinivasa Iyengar Street. He also deposed that the area is a commercial area. In the cross-examination he stated that he had seen the said building and that it was still under construction. He admitted that there is no textile shop in that street. He refers to the existence of a bank an engineering company and a wine shop nearby. That will not prove that the area is a commercial area. It is not known as to how R.W.2 is able to assert that the building of the respondent is a non-residential one when admittedly it is

only under construction. He does not claim to have seen the plan submitted to the authorities by the respondents. Learned Counsel for the respondents point out that R.W.2 is motivated in giving evidence against the respondents. According to learned Counsel, R.W.2 wanted to purchase the petition premises from the previous owners and he is aggrieved as the respondents have purchased the same. Learned Counsel points out that R.W.2 has gone to the extent of speaking a falsehood in denying his attempt to purchase building in the cross-examination while in the counter statement filed by him in the eviction petition there is a clear admission that he offered to purchase the premises of Rs. 7.5 lakhs from the previous landlord. Learned Counsel for the respondents also points out that R.W.2 is guilty of suppression of relevant facts when he produced the previous Income Tax returns relating to his business and deliberately omitted to file the revised returns which were submitted by him under the voluntary disclosure scheme. I hold that there is nothing on record to prove that the building in No. 5, Srinivasa Iyengar Road, Alwarpet which is admittedly under construction, is a non-residential one. I accept the evidence of P.W.I that it is only a residential building. Hence, this contention has also got to fail.

(6)(i) Learned Counsel for the petitioners in C.R.P. No. 4234 and 4235 of 1987 argued that the petitions for eviction are not maintainable as they have been filed u/s 10(3)(a)(iii) of the Act. He contended that the only remedy of the respondents was to file applications u/s 10(3)(c) of the Act for additional accommodation as admittedly some portions of the building fell vacant during the pendency of the proceedings for eviction. Even before calling for finding from the Rent Controller I had rejected the very same contention which was put forward at that stage. In spite of that, learned Counsel argued the question again and referred to a judgment of mine in Lipton India Limited Vs. Smt. M.M.K. Sara Uma, In that case, the first floor of the building from which the revision petitioner was sought to be evicted fell vacant after the filing of the eviction petition. On the evidence, I found that the first floor was residential in character and the ground floor which was in the occupation of the revision petitioner in that case was non-residential which was required for the purpose of the business of the landlord. I rejected the contention that the subsequent event of the landlord having obtained possession of the entire first floor should be taken note of and the landlord should be non suited, on that ground. I observed, "As I have taken the view that the first floor is residential in character, this subsequent event relied on by the petitioner will not help their contention that the petition for eviction should be dismissed as not maintainable". Learned Counsel for the petitioners herein submitted that if in that case the first floor had been non-residential in character, I would have held that the subsequent event should be taken note of. Learned Counsel submitted that my judgment in that case would support him in the present case as the portions which fell vacant during the pendency of the proceedings are admittedly non-residential in character. I am of the opinion that the contention of learned Counsel is wholly misconceived. It was

not necessary for me in that case to give any reason other than the one which I had given therein. I have not held in that case that if a landlord obtains possession of a portion of a building subsequent to the filing of the eviction petition u/s 10(3)(a)(iii) of the Act, the petition will become not maintainable under the said Sub-section and that the landlord's remedy would be only to file a petition u/s 10(3)(a)(iii) of the Act, The subsequent event cannot go to the extent of changing the facts which existed on the date of filing the petition. When the petition for eviction was filed, the landlord could approach the Court only u/s 10(3)(a)(iii) of the Act as he was not in possession of any building of his own for the purpose of his business. If subsequent to the filing of the petition the landlord obtains possession of a portion of the building that will not create a legal fiction as if the landlord had possession of the same on the date of filing the petition. Such subsequent event cannot lead the Court to hold that the petition for eviction should have been filed u/s 10(3)(c) of the Act and not u/s 10(3)(a)(iii) of the Act. I did not intend to lay down any such proposition in that case.

(ii) Learned Counsel went on to refer to the decision of the Supreme Court in *Amarjit Singh Vs. Smt. Khatoon Quamarain*, . In that case, the landlady filed a petition for eviction of the tenant from the first floor of her building on the ground of bona fide personal necessity. The ground floor was at that time in the occupation of New Zealand Embassy,. Some time later, the Embassy vacated the ground floor and it was re-let by the landlady to another person on a higher rent. That tenant also vacated two years later and it was again let out by the landlady on a still higher rent to M/s. Indian Express Newspapers Private Limited. Again there was a change of tenant when the Indian Express vacated the premises. On the fact, it was found that the landlady had let out the ground floor on a further higher rent. When the tenant put forward the subsequent events, to non suit the landlady on the ground that the bona fide of her claim was disproved by her conduct, the trial Court negated the contention of the tenant holding that the landlady was in need of income to maintain herself and, therefore, her letting out the ground floor for higher rent did not militate against her bona fides. On revision, the High Court confirmed the order of the trial Court. The Supreme Court reversed the findings of the Courts below and held that the conduct of the landlady was sufficient to prevent her from seeking eviction of the tenant of the first floor, who was the appellant before the Supreme Court. In the course of the judgment a reference was made to an earlier judgment of the Supreme Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , and the following passage from that judgment was extracted:

If the fact of the landlord having come into possession during the pendency of the proceedings of Shop No. 2 is to be taken into account, as indeed it must be, then clearly the petition is no longer maintainable u/s 10(3)(a)(iii) of the Act, as the requisite condition for the invoking of that provision has ceased to exist viz, that the landlord was not occupying a non residential building in the town. "Building", of course means a portion of building. As the prerequisite for the entitlement of the petitioner to institute and continue a petition has ceased to

exist, it must follow that ABA No. 5 of 1967 is no longer maintainable and must be dismissed.

After quoting the said passage, the Supreme Court administered a note of caution in the matter of taking note of subsequent events. The Supreme Court observed as follows:

This Court affirmed the proposition that for making the right or remedy claimed by the party just and meaningful as also legal and factual in accord with the current realities, the Court could and in many cases must take cautious cognizance of event and developments subsequent to the institution of the proceedings, provided rules of fairness to both the side were scrupulously obeyed.

Later in the same paragraph the following observation is found:

There is no dispute that subsequent events can be taken into consideration of justice demands that any changes either in fact or in law must be taken cognizance of by the court but that must be done in a cautious manner of relevant facts.

The Supreme Court also referred to another judgment of its own in *Hasmat Rai and Another Vs. Raghunath Prasad*, , and observed that subsequent events can be taken note of if they are relevant and material. They also referred to the observation made in *Variety Emporium Vs. V.R.M. Mohd. Ibrahim Naina*, , that subsequent events could be taken account of and the distinction between "desire" and need must be kept in view. Towards the end of the judgment, the Supreme Court observed as follows:

The Rent Restricting Acts are beneficial legislation for the protection of the weaker partly in the bargains of letting very often. These must be so read that these balance harmoniously the rights of the landlords and the obligations of the tenants. The Rent Restriction Acts deal with the problem, of rack-renting and shortage of accommodation. It is in consonance with the recognition of the right of both the landlord and the tenant that a harmony is sought to be struck whereby the bona fide requirements of the landlords and the tenants in the expanding explosion of need and population and shortage of accommodation are sought to be harmonised and the conditions imposed to evict a tenant are that the landlord must have bona fide need. That is satisfied in this case. That position is not disputed. The second condition is that landlord should not have in his or her possession any other reasonably suitable accommodation. This does not violate either Article 14 or Article 21 of the Constitution.

19. Shri Kacker submitted that this section should be read literally and we should ask our selves the question today whether can. it be said that the landlady had reasonably suitable other accommodation. We are unable to read it in that sense. If the landlady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disentitled herself to that property by letting it put for higher income, she would be disentitled to evict her tenant on

ground of her need. The philosophy and principle of rent restriction law have nothing to do with the private exploitation of property by the owners Of the property in derogation of the tenant's need of protection from eviction in a society of shortage of accommodation.

(iii) If on the facts of the case it is found that the portions which came under the control of the landlord during the pendency of the proceedings are not sufficient to satisfy the needs of the land lord and fulfil his requirements, the Court cannot refuse to uphold the bona fide of the requirement which is established by the evidence on record. In the present case, on the facts I have found that the portions which fell vacant subsequent to the filing of the petitions for eviction were not sufficient for the respondents to shift their business or a part thereof immediately. The respondents had to wait for the entire building becoming vacant so that they could conveniently shift all their businesses to the petition building. I hold that the respondents have made out a case of bona fide requirement as defined by the Supreme Court in Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, .

(7)(i)The only other contention urged by learned Counsel for the petitioners is that the tenancy in favour of the petitioners is for a fixed period and the petitions for eviction were filed before the expiry of the said period and therefore, they are not maintainable in view of the clear provisions of Section 10(3)(d) of the Act. The said Sub-section read as follows:

Where the tenancy is for a specified period agreed upon between the landlord and the tenant the landlord shall not be entitled to apply under this Sub-section before the expiry of such period.

No doubt the language is mandatory, but the question is whether in this case the tenancy is proved to be for a specified period. No document of lease has been produced by the petitioners. Admittedly, there was no tenancy agreement between the petitioners and the respondents. The petitioners are only relying upon the agreement of tenancy between them and the previous landlord. According to the petitioners in C.R.P. No. 4230 of 1987, they became tenants under an-agreement dated 9-7-1980 for a period of five years. Though the document of lease is not produced, reliance is placed on Ex.R-7 a letter written by the first petitioner in the said C.R.P. to the respondents on 30-1-1984. The following passage is found therein:

We are the Lessees of the premises under the agreement of lease for 5 years and that we are entitled to renew the same at our option. Since the ownership has now changed we require you to make arrangement for the execution and registration of the lease deed for a period of 5 years in compliance with the covenants in the agreement with the previous owners.

By their letter dated 7-3-1984 (Ex.R-8), the respondents called upon the petitioners to vacate the building. The petitioners sent a reply dated 16-3-1984 (Ex. R-9) asserting that they were entitled to continue for a further period of five

years after the expiry of the present terms, and called upon the respondents to execute a fresh lease agreement to that effect. My attention is also drawn to the recital in the sale deed Ex.P-7 under which the respondents purchased the building to the effect that the vendors have handed over to the purchasers the documents of title of the property listed therein. One of the documents mentioned in the sale deed is rental agreement dated, 9-7-1980 between the vendors and the tenant Nandhan Brothers. Another document is rental agreement dated 4-5-1982 between the vendors and the tenant Karpagam Silk House (first respondent in C.R.P. 4234 of 1987). It is argued that the above records prove that the tenancy is for a specified period of five years initially with a provision for renewal at the option of the petitioners for another five years. The petition for eviction in these cases have been filed in 1984. It is contended that the petitions are hit directly by Section 10(3)(d) of the Act.

(ii) The contention of the petitioners cannot be accepted. When admittedly there is a document of lease, the terms thereof should be proved only by producing the document. The petitioners are admittedly having a duplicate copy of the document of lease. They have neither produced it nor called upon the respondents to produce the lease deed. The reason therefore is very simple. Admittedly the document is not registered, nor has it been engrossed on sufficient stamps. It appears that the agreement is stamped only with such stamp required for an ordinary agreement. Under the provisions of stamp Act an agreement of lease should be stamped as a lease deed and it cannot be stamped as an ordinary agreement. Any instrument which is not duly stamped is not admissible in evidence for any purpose. Vide *Yasodammal and Another Vs. Janaki Ammal*, . That is the reason why the agreement of lease has not been produced by either party in this case.

(iii) Consequently, the document is not a valid one. u/s 107 of the Transfer of Property Act, a lease of immovable property from year to year or for any terms exceeding one year can be made only by a registered instrument. In the absence of a registered instrument, there can be no valid lease for any period exceeding one year. For applying the provision of Section 10(3)(d) of the Act, there must be a valid agreement of tenancy for a specified period. If there is no valid agreement the provisions of the Section cannot be invoked by the tenant. In *Sengayyan Chettiar v. Rasu Chettiar* 65 L.W. 162: (1951)2 M.L.J. 37(S.N.); Subba Rao, J., held that an agreement which affords protection against eviction of a tenant u/s 7(3)(a)(ii) of the Madras Buildings (Lease and Rent Control) Act of 1946 must be a valid agreement. He held in that case that an oral contract of tenancy for five years was invalid under the provisions of the Transfer of Property Act and the tenant cannot rely on the same in regard to the period of the tenancy in an application for eviction u/s 7 of the old Act.

(iv) In *Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another*, , it was held that the document of lease not being an operative document u/s 107 of the Transfer of Property Act; the tenancy created by implication of law in favour

of the defendant in that case should be held to be from month to month since its inception.

(v) In *S.Ramaswami Gounder v. M.Pattabhiraman Chettiar* 89 L.W. 505 Mohan J. held that unless there was a registered agreement whereby specific leasehold right was conferred, it would be futile on the part of the tenant to contend that the rights of the tenant would remain unaffected. In that case, the agreement was to confer a further right to tenancy. The learned Judge placed reliance on the dictum of Ismail, J in *Rasiklal M.Mehta and Anr. v. The Hindustan Photo Films Manufacturing Co. Ltd.* 89 L.W. 19, that when an option for renewal of a lease is exercised by the lessor or lessee, a valid lease as such does not come into existence unless a registered document is executed and the renewed lease in question satisfies the requirement of Section 107 of the Transfer of Property Act. Referring to Section 10(3)(d) of the Act, Mohan, J. observed that the section contemplates a valid enforceable agreement,

(vi) A converse case arose before the Supreme Court in *Biswabani Pvt. Ltd. Vs. Santosh Kumar Dutta and Others*, . In that case a tenant was inducted as such for a period of five years under a valid lease deed. During the continuance of the lease, the West Bengal Premises Rent Control (Temporary Provisions) Act came into force. After the expiry of the period, the lease was renewed for a further period of five years, but the second lease was found to be void for want of registration. On application by tenant, standard rent in respect of the demised premises was determined and the same was accepted as the rent to be paid under the second lease. When the landlord interfered with the possession of the tenant and tried to forcibly evict him the tenant approached the Court with a suit for a declaration that he was the tenant of the premises and for a permanent injunction restraining the landlord's to remove the locks put up by them in some portions of the demised premises. The Supreme Court held that the tenant was not a trespasser but a month to month tenancy came into existence when the original period of five years under the registered lease deed expired. The Supreme Court relied upon its earlier judgment in *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, .

(vii) In view of the above settled position in law, the petitioners cannot rely upon the provisions of Section 10(3)(d) of the Act and defeat the petition for eviction.

5. In the result, all the contentions put forward by the petitioners fail and the Civil Revision Petitions are dismissed with costs.