

(1993) 09 GUJ CK 0013
In the Gujarat High Court

Tayab Abubakar Latif

APPELLANT

Vs

Jadhavji Mithabhai

RESPONDENT

Date of Decision : 30-09-1993

Acts Referred:

Bombay Rent Act, 1947 — Section 17B

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 17A, 17B, 17C

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1994) 1 GLR 767

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Judgement

B.S. Kapadia, J.—The present revision application is filed by the original plaintiff-landlord against the judgment and decree dated 17-4-1975 passed by the learned Jt. Civil Judge (S.D.). Veraval dismissing Reg. Civil Suit No. 142 of 1970 and confirmed by the learned Assistant Judge, Junagadh, by dismissing the Regular Civil Appeal No. 130 of 1975 by order dated 31-3-1978.

2. The petitioner-plaintiff has filed the said suit against the respondent-defendant firm carrying business mainly of timber at Veraval inter alia making the averments that the property consisting of open compound admeasuring 10,500 sq.fts. with built up area of about 350 sq.fts. of two small office rooms and corridor was let out to the defendant for the purpose of storing mainly timber at monthly rent of Rs. 75/-; that the plaintiff was landlord within the meaning of the Bombay Rent Act; that he proposes to demolish the existing structure of two office rooms and corridor on the open land let out to the defendant and on the entire open land he wanted to build residential premises; that for the purpose of said proposed construction he got prepared plans and estimates by the qualified architect which have been sanctioned by the Veraval Municipality; that he had available with him necessary funds for the purpose of erection of the proposed construction and that he has also obtained necessary certificate from the Tribunal as required u/s 13(3A) of the Bombay Rent Act. There was also an averment in

the plaint with regard to termination of the tenancy by giving notice to the defendant and calling upon it to hand over vacant possession of the premises. As the defendant did not comply with the requirements of the notice the aforesaid suit came to be filed for recovery of the possession of the suit premises.

3. The defendant contested the said suit by filing written statement (Ex. 24). The defendant denied all the claims made by the plaintiff. It was specifically pointed out by the defendant that the plaintiffs need was neither bona fide nor reasonable and that it was not motivated by the humanitarian considerations of easing housing problems in town. According to the defendant, as the defendant rejected the exorbitant price of the suit property offered by the plaintiff he was irritated and manouvered the ground for filing the present suit to pressurise the defendant in submitting to his unjust demand which was neither genuine nor bona fide. The defendant also denied the correctness and legality of the plans and estimates of the proposed new buildings and sanction given by the Municipality for the same and availability of necessary funds with the plaintiff for erection of the said construction. The defendant has also challenged the admissibility and evidentiary value of the Certificate of the Tribunal on the ground that defendant was not a party to the proceedings and that no opportunity was given to it to put their case before them. The defendant specifically contended that the suit premises alleged was not only used for storing timber but the same was taken on lease for business both for storing as well as for selling timber, assorted planks and wood, etc.. and the defendant was tenant in the suit premises for several years with established business and goodwill and that they would suffer greatest hardship and would be thrown out in the street.

4. On the basis of the aforesaid facts the issues were framed by the learned trial Judge at Ex. 31. The issue No. 1 was "It is proved that the plaintiff reasonably and bona fide requires the suit premises for the immediate purpose of demolishing the same for the purpose of erecting new building thereon?" The said issue was answered in the negative, i.e., against the petitioner-plaintiff. The second issue was "Has the plaintiff-landlord produced at the time of institution of the suit a certificate granted by the Tribunal as required by Section 13(3A) of the Bombay Rent Act 7 The said issue is answered in the affirmative. The 3rd issue was with regard to the Court's jurisdiction to enter into the legality of the certificate of the Tribunal. The said issue was answered in the affirmative. The 4th issue was material issue as to whether the certificate u/s 13(3A) was illegal. It was also answered in the affirmative holding that the said certificate issued by the Tribunal was illegal. The 5th issue was "Are the suit premises-land being part of building? If yes, are the same required by the plaintiff-landlord for the erection of new residential building approved by the local authority or permitted to build thereon?" The said issue was also answered in the affirmative. The issue No. 6 "Whether above ground is legal and valid ground for eviction of the defendant ?" was also answered in the affirmative. The issue No. 7 "Whether the plaintiff is entitled to a decree of eviction of the suit premises ?" was answered in the

negative. These are the material issues and the findings thereon.

5. The learned trial Judge after taking into consideration the evidence in the case, various provisions of the Rent Act as also various authorities cited before him, ultimately dismissed the suit.

6. The matter was carried in appeal by the petitioner-plaintiff and the learned Assistant Judge raised the following material points for determination:

(1) Whether the lease of the premises was a lease of building within the meaning of Section 5(8) of the Rent Act ? It was held to be lease of the building.

(2) Whether the Court can decide the legality and validity of the certificate issued by the Tribunal ? If yes, whether the certificate issued by the Tribunal is legal and valid ? The first part of this point was answered in the affirmative and the second part of the same was answered in the negative.

(3) Whether the plaintiff proves that he reasonably and bona fide requires the suit premises for immediate purpose of demolition of the same and for the purpose of erecting a new residential building thereon? This point was answered in the negative, i.e., against the org. plaintiff-petitioner.

7. After elaborately discussing the facts, evidence, various provisions of the Rent Act as also the authorities cited before him the learned Appellate Judge has dismissed the appeal filed by the plaintiff-petitioner. Hence the present revision application is filed.

8. The present revision application has been hotly contested and the eminent Counsels on both the sides have debated the points raised therein at sufficient length.

9. For the purpose of properly understanding the points involved in the matter it would be necessary to note some further undisputed facts. The plans and estimates got prepared by the plaintiff are dated 26-2-1969 and they are at Exh. 49. The plans were approved by the Veraval Municipality on 9-8-1969. The said permission/approval is at Ex. 46. The Tribunal granted the certificate u/s 13(3B) of the Act to the plaintiff on 13-2-1970. The prayer made in para-12 of the plaint is that a decree be passed ordering the defendant to vacate and hand over to the plaintiff the possession of the premises more particularly described in the Schedule to the plaint. The Schedule to the plaint describes the property as "an open compound admeasuring about 10,500 sq. ft. in which two small office rooms-cum-corridor structure admeasuring about 350 sq.ft. on its southeastern comer". The boundaries shown in the Schedule are not necessary to be mentioned.

10. Therefore, the subject-matter of the suit is a rented premises which is open land as well as two small office rooms-cum-corridor. The total area of the open land is 10,500 sq.ft. while the constructed portion is only 350 sq. ft. It is a composite letting of building and land at the rent of Rs. 75/- per month.

11. It is submitted by Mr. S.B. Vakil, learned Counsel for the petitioner that the suit for possession is not only u/s 13(1)(hh) of the Bombay Rent Act, but it is also u/s 13(1)(ii) of the Act and that it is not necessary to specifically mention the provisions of the Act when sufficient averments are made in the plaint. Mr. Vakil submitted that the premises are land appurtenant to the building which land is required by the landlord for erection of new residential building which the Veraval Municipality has permitted him to build thereon. The main thrust of the argument of Mr. Vakil is that though there is a composite lease of the land and building, i.e., the suit premises at the monthly rent of Rs. 75/- still however, open land is appurtenant to the building and therefore, according to him the case squarely falls within Section 13(1)(ii) of the Rent Act.

12. Mr. K.S. Nanavati, learned Counsel for the respondent has strongly opposed this submission of Mr. Vakil and submitted that the land is the integral part of the lease and it is not accessory to the building let out and therefore, it cannot be said to be land appurtenant to the building. Mr. Nanavati further submitted that looking to the extent, nature and situation of the land vis-a-vis the building thereon, the suit open land cannot be said to be land appurtenant to the building.

13. Mr. S.B. Vakil in his reply to the submission made by Mr. K.S. Nanavati, further submitted that Section 13(1)(ii) of the Act does not exclude the land which is part of the demised premises.

14. For the purpose of bringing home the respective submissions the learned Counsels took the to various provisions of the Rent Act and cited various authorities before me.

15. For the purpose of understanding the Scheme of the Rent Act, it is necessary to keep in mind the following definitions:

Section 5(3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sub-let any premises;

Section 5(8) "premises" means -

- (a) any land not being used for agricultural purposes,
- (b) any building or part of a building let separately (other than a farm building) including -
 - (i) the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
 - (ii) any furniture supplied by the landlord for the use in such building or part of a

building,

(iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof,

but does not include a room or other accommodation in a hotel or lodging house;" The whole controversy centres on the interpretation of building or part of a building let separately including the garden, grounds, garages and out-houses, if any, appurtenant to such building or part of a building.

16. Section 5(11) of the Act provides that "tenant" means any person by whom or on whose account rent is payable for any premises. Section 5(12) provides that "tenement" means a room or group of rooms rented or offered for rent as a unit.

17. In Part II of the Act Section 6 specifically provides that in areas specified in Schedule I, this part shall apply to premises let for residence, education, business, trade or storage and also to open land let for building purposes. Aid of this Section is taken by Mr. Vakil to point out that this Chapter would apply to the premises let and if it is read along with Section 13(1)(ii) of the Act it would not exclude the demised premises which are open land appurtenant to the building.

18. It is necessary to keep in mind that so far as Part II of the Rent Act is concerned, it gives protection to the tenants in respect of the rent as well as for possession. Section 7 of the Act provides that rent in excess of standard rent is illegal. Section 8 deals with the cases where on account of less favourable terms, there will be deemed increase in rent. Sections 9, 10, 10A and 10AA to 10E of the Act deal with increase in rent and permitted increases in certain circumstances. Section 11 of the Act provides for fixation of standard rent by the Court.

19. Section 12 of the Rent Act specifically takes away the right of the landlord to recover possession of any premises so long as the tenant pays or is ready and willing to pay, the amount of 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 provisions of this Act. Therefore, so long as the tenants pays the standard rent and permitted increases and also observes and performs the other conditions of tenancy which are consistent with the provisions of this Act, he is protected from eviction from the premises by the landlord.

20. However, that ban is lifted in favour of the landlord by providing a non-obstante clause in the opening of Section 13(1) and by providing several grounds for recovering possession of the premises if the Court is satisfied. Section 13(1)(g) of the Act provides for the ground for recovering possession of where the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person in 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 purpose of the trust. Similarly, Section 13(1)(h) provides for a

ground for recovery of possession where the premises are reasonably and bona fide required by the landlord for carrying out without repairs which cannot be carried out without the premises being vacated. Similarly, Section 13(1)(hh) of the Act provides for a ground where 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. This provision is also relied on by the petitioner in this case. Section 13(1)(hhh) of the Act provides for a ground for recovery of possession where the premises are required for the immediate purpose of demolition ordered by any local authority or other competent authority. Section 13(1)(i) of the Act provides for a ground where the premises are land, such land is reasonably and bona fide required by the landlord for the erection of new building. Similarly, Section 13(1)(ii) of the Act provides for a ground where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building such land is required by the landlord for the erection of a new residential building which a local authority has approved or permitted him to build thereon. The aforesaid provisions clearly disclose that when the demised premises are required by the landlord, the requirement should be bona fide and reasonable.

21. Further, these grounds are not absolute grounds without restrictions. When ground for recovery of possession is provided on the ground of personal and bona fide requirement as per Section 13(1)(g) Sub-section (2) of Section 13 puts a ban on passing a decree for eviction on that ground if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it. The said sub-section further takes note of the fact that though the suit is for recovery of possession of the entire premises still however, where the Court is satisfied that no hardship would be caused to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only. It is required to be mentioned only to show that though the Bombay Rent Act which is a beneficial piece of legislation for the tenants still however, it has maintained the balance between the tenants and the landlords. Therefore, provisions are also made for the landlords to get possession of the premises when they satisfy the Court for the same.

22. Similarly, when the premises are required to be vacated by the tenant for repairs as provided u/s 13(1)(h) or (i) further protection is given to the tenant by making a provision u/s 13(3) that the Court may pass the decree on the ground specified in Clause (h) or (i) of Sub-section (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work of repairs or erection.

23. Similarly, as per Section 13(3A) no decree for eviction shall be passed on the ground specified in Clause (hh) of Sub-section (1) unless the landlord produces

at the time of institution of the suit a certificate granted by the Tribunal under sub-sec and gives an undertaking as mentioned in Clauses (a), (before) and (c) of the said sub-section.

24. It is pertinent to note that the grounds for recovery of possession of the premises where the landlord requires the premises for personal use and/or repairs and/or the land is required reasonably and bona fide for erection of new premises, are there in the Act since it came into force. But Section 13(1) (hh) has been inserted by the Amending Act No. 53 of 1950. Therefore, Sections 13 (3A) and 13(3B) are inserted along with the said Clause (hh) of Sub-section (1) of Section 13 by the same Amending Act. Sections 17A, 17B and 17C have been inserted by the same Amending Act No. 53 of 1950. Section 17A of the Act gives a right to the tenant against whom decree for eviction has been passed on the ground specified in Clause (hh) of Sub-section (1) of Section 13, to give a notice to the landlord of his intention to occupy the premises from which he has been evicted and if the landlord does not forthwith deliver to him the vacant possession of the premises on the same terms and conditions on which he occupied them immediately before the eviction, the tenant can make an application to the Court within six weeks of the date on which he delivered vacant possession of the premises to the landlord.

25. Similarly, Section 17A(2) of the Act provides that even after obtaining the decree for eviction if the Court is satisfied that the landlord has not substantially commenced the work of demolishing the premises within the period of one month in accordance with his undertaking, the Court shall order the landlord to deliver to the tenant vacant possession of the premises on the terms and conditions on which he occupied them immediately before the eviction and on such order being made the landlord shall forthwith deliver vacant possession of the premises to the tenant.

26. Similarly, Sub-section (3) of Section 17A of the Act provides that any landlord who recovers possession on the ground specified in Clause (hh) of Sub-section (1) of Section 13 and fails to carry out any undertaking referred to in Clause (a), (before) or (c) of Sub-section (3A) of the said Section without any reasonable excuse or fails to comply with the order of the Court under Sub-section (1) shall, without prejudice to his liability in execution of the order under Sub-section (2), on conviction be punishable with imprisonment for a term which may extend to three months or with fine or with both.

27. Section 17B gives a right to the tenant to give notice to the landlord of his intention to occupy a tenement in the new building on its completion. Similarly, Section 17C of the Act casts a duty on the landlord to intimate to the tenant the date on which the said erection shall be completed and on the said date the tenant shall be entitled to occupy the tenement. Section 17C(2)(b) further provides that if the landlord fails, without reasonable excuse to comply with the provisions of Sub-section (1) or to place the tenant in occupation of the tenement, he shall without prejudice to his liability to place the tenant in vacant

possession of the tenement, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both. The said clause provides for criminal liability in addition to the civil liability in case the landlord fails to comply with the provisions of Section 17C. Thus, sufficient safeguards are provided for tenants who are to be evicted from the demised premises u/s 13(1)(hh) of the Act.

28. As against Section 13(1)(ii) which has been inserted by the Amending Act No. 61 of 1953 provides a ground for eviction for the landlord in respect of the premises which are land in the nature of garden, or grounds appurtenant to a building or part of a building when such building is required by the landlord for the erection of a new residential building which local authority has approved or permitted him to build thereon. So far as this ground is concerned, there does not appear to be any corresponding or similar restriction on the landlord and/or safeguards giving protection to the persons who are to be evicted from the premises which are appurtenant to the building or part of a building. Normally speaking the Legislature would treat the tenants alike and would give equal protection of law. However, if the tenants are enjoying the benefit of land which is surplusage or appendage to the demised premises, there may not be any provision for protection of the same like the provisions for the tenants who are to be evicted from the demised premises even on the ground of bona fide and personal requirements for personal use or for repairs or for erection of new building. Therefore, prima facie the argument of Mr. Vakil that Section 13(1) (ii) of the Act would not exclude the tenants of the demised premises of the land when it is appurtenant to the building, appears to be attractive, it cannot be accepted for the reasons shown in the Scheme of the Act. If at all the demised premises is land, whether demised by separate lease or composite lease, still however, if it is used as a demised premises for the purpose other than agriculture, it would be premises as per Clause (a) of Section 5(8) of the Act. Therefore, even in absence of Section 13(1)(ii) of the Act, landlord would have a right to evict the tenant from the land which is demised land when it is bona fide and reasonably required by the landlord for erecting new building either u/s 13(1) (i) or Section 13(1)(hh) of the Act when it is included in the definition of the word "building". It is, therefore, clear that the ground which is specifically made out by the Legislature for eviction u/s 13(1)(ii) of the Act refers only to the land in the nature of garden or grounds appurtenant to a building which is not part of the demised premises. It may be appendage to or for more convenient use of, the demised premises and may be accessory to the premises let out, but it would not be an integral part of the premises.

29. It is pertinent to note that as stated earlier in this judgment, Sections 13(1) (g), (h), (hh) and (i) of the Act provide for grounds for recovery of possession of the premises by the landlord if he bona fide and reasonably requires the demised premises for the purposes mentioned in the said clauses. Clauses (hh) and (i) of Sub-section (1) of Section 13 of the Act further provide ground for the landlord to recover possession of the demised premises provided it is required for the

purpose of erecting new building. Therefore, it is to be noted at this juncture that new building is not confined only to residential premises. So far as Clause (iii) of Sub-section (1) of Section 13 is concerned, it does not require bona fide and reasonable requirement, but only requirement is that it is required for residential building. That is the material difference between Clauses (hh) and (i) on one hand and Clause (ii) on the other hand though both of them are for the purpose of erecting new building. The intention of the Legislature is clear when the demised premises are to be taken, it might be for the purpose of erecting residential building or for non-residential purposes as enumerated in Section 6 of the Act, but it should be consistent with other provisions of the Act, namely, Sections 13(3) and 17(1) and (2) for Section 13 (1)(i) while Section 13(1)(hh) should be consistent with provisions of Sections 17A to 17C of the Act. This distinction is necessary particularly in suit for eviction u/s 13(1)(hh) when demised premises is used for nonresidential purposes. u/s 17B of the Act the tenant has a right to give notice to the landlord of his intention to occupy a tenement in the new building on its completion. If residential building is constructed on the demised premises used for non-residential purpose after demolition thereof Section 13B would be totally nugatory. The tenant who is occupying the demised premises for non-residential purpose might have his own property for his residence and he may not be in need of residential premises and would be totally out of business when he does not get premises for doing business.

30. It is true that in Section 17B the word "tenement" is used. The word "tenement" means a room or group of rooms rented or offered for rent as a unit. In view of the distinction between Section 13(1)(hh) and (i) on one hand and Section 13(1)(ii) on the other hand, it is clear that the Legislature intended that Section 13(1)(ii) should confine only to the land in the nature of garden or grounds appurtenant to the building or part of the building, but the said appurtenant land should not be demised premises.

31. At this juncture it is also important to mention that once when the Legislature is using a word in the Act it uses the same with the same meaning at any other places in the Act where it is used.

32. Mr. S.B. Vakil, learned Advocate for the petitioner has submitted that when any building is defined under Clause (before) of Section 5(8) of the Act it means any building or part of the building let out separately, including garden, grounds, garages or out-houses, if any, appurtenant to such building or part of the building. He, therefore, submitted that it would also include the lease of the appurtenant land which is used as a garden, ground, garage and out-house. It is important to note that what is let out is the building or part of the building, but it includes the portion which is not included in the lease and therefore, that inclusive definition is used. If at all it comes within the built up portion of a building which is let out, it would not have been necessary to mention. Still however, if along with the let out portion if the tenant is also using garden,

ground garage and out-house which are appurtenant to such building or part of the building, that would also be included in the building. If it is open land and if it is let out separately for a garden, certainly it cannot be said to be premises because it would not be premises as it only includes the land which is used for agricultural purposes only. Therefore, from the said definition also it is clear that it speaks about inclusion of garden, grounds, garages or outhouses, if any, appurtenant to such building which is not part of the lease because it is already included in the building or part of the building which is let out to the tenant. The same would be the position in respect of other clauses regarding furnitures and fittings of such building which is let out. When that is the meaning attached to the word "premises" in Section 5(8) of the Act with regard to open land of the gardens, grounds, garages and outhouses appurtenant to such building, certainly interpretation of Section 13(1)(ii) given earlier would be consistent with the meaning or interpretation given to Section 5(8) of the Act.

33. I am, therefore, of the view that Section 5(8) of the Act where the word "premises" is defined, has not included gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of the building, when such garden, grounds, garages and out-houses are let out premises. It only includes the open land of the garden, grounds, garages and out-houses, if any, appurtenant to the building or part of the building let out to the tenant. Therefore, the provisions of Section 13(1)(ii) of the Rent Act cannot be made applicable to the building and land when both of them are let out by a composite lease at the monthly rent of Rs. 75/-.

34. In spite of my aforesaid finding on the point, assuming that Clause (ii) of Sub-section (1) of Section 13 of the Act would include demised land which is let out along with the building it requires that it should be appurtenant to the building or part of the building.

35. The word "appurtenant" has been the subject-matter of various decisions. It is important to note that when both the Courts below have decided this matter the authorities which are cited before them were not before them. The appellate Court decided the appeal on 31-3-1978. Further, it is interesting to note that the Counsels on both the sides have relied on the judgment of the Supreme Court in the case of *Larsen and Toubro Ltd., Club House Road, Madras Vs. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnann, Chetty's Charities by its Trustees*, . It may be stated that in the said case the Supreme Court was concerned with the provisions of the Tamil Nadu City Tenants Protection Act, 1922. Under the said Act certain benefits of Section 9 were available only to the tenants of "land" which does not include building as defined u/s 2(2) of the said Act. The facts of the said case were that all that plot of vacant land and the buildings erected thereon and more particularly described in the schedule to the lease and delineated in the plan annexed thereto and measuring 17 grounds and 321 sq. fits, or thereabouts, known as Club Chambers, was given on lease for a period of 21 years from the date of the lease. The consideration was monthly

rent of Rs. 900/- for the aforesaid land and monthly rent of Rs. 350/- for the aforesaid buildings aggregating in all Rs. 1250/- per month. The said lease was executed in the year 1951. In the said case there was evidence to the effect that there was a palatial building over the property which originally belonged to a notable dignitary in yester years, who lived in that building with a spacious compound all around the property. The plinth area of the building was about 5285 sq. ft. The vacant site covered by the lease deed was about 35,830 which is equal to 14 grounds and 323 sq. ft. Hence the building had occupied an area of nearly two grounds, which would be roughly about one-eighth of the total area. It was not a tiny insignificant structure, but a substantial building which was used as a residential building by a very affluent person, and which had been later on given to the charity. In the said case the High Court has held as under:

In the instant case a substantial building which had occupied one-eighth of the area leased out cannot be overlooked particularly when the area was enjoyed as an appurtenant area for that building. Once a superstructure of such dimension had existed, it will be impossible to apply the provisions of Act 3 of 1922 and hold that only the land had been taken on lease by defendant.

36. The aforesaid finding of the High Court was challenged before the Supreme Court and it was also contended that definition of the word "building" given in the said Act includes appurtenance thereto and therefore, it refers to only such an extent of the land which is absolutely necessary for confining enjoyment of the building in question. In the said case the definition of the word "appurtenant" given in Black's Law Dictionary was considered and thereafter in para 11 of the said judgment the Supreme Court has held as under:

11. In our opinion, the contentions of the learned Counsel cannot be accepted. So far as the first contention is concerned, we do not think that the language employed is conclusive on the issue. It only shows that both land and building were leased. Whether the land is to be treated as an appurtenant or not would depend upon the extent and nature of the land and its situation vis-a-vis the building thereon and not on whether the lease deed describes the subject-matter as "all that land and building" or vice versa....

37. In the said case the Supreme Court has also considered its judgment in the case of *Maharaj Singh Vs. State of Uttar Pradesh and Others*, . In the said case of *Maharaja Singh* (supra) it was inter alia observed that "What is integral is not necessarily appurtenant. A position of subordination, something incidental or ancillary or dependent is implied in appurtenance."

38. In the case of *Maharaja Singh* (supra) the question was with regard to interpretation of the words "the site of wells or building which are appurtenant thereto" accruing in Section 9 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. In the said case the estate which was the site of the rural cattle market, has a large number of trees on it, a temple on one plot, a clinic in another and quite a number of cattle stands and other auxiliary structures which

are facilities for bovine display and transaction of business. It was the case of the defendant before the High Court that the trees and the two plots with the shrine and the Aushadhalya should be deemed to have been settled with her. In the said case of Maharaja Singh (supra) the meaning of the word "appurtenance" given in "Words and Phrases Legally Defined - Buttersworth, 2nd Edition" was also considered and it was observed as under:

In short, the touch-stone of "appurtenance" is dependence of the building on what "appertains to it for the use as a building. Obviously, the Hat, bazar or mela is "not an appurtenance to the building. The law thus leads to the clear conclusion that even if the buildings were used and enjoyed in the past with the whole stretch of vacant space for Hat or mela, the land is not appurtenant to the principal subject granted by Section 9, buildings.

39. It may be stated that in the case of Larsen and Toubro (supra) the Supreme Court has not dissented from the above earlier judgment, but has observed in para 13 of the judgment that "the question, therefore, whether certain land is appurtenant or not is one of fact". Ultimately, in para 16 of the judgment the Supreme Court observed that "In our opinion, this was a composite lease, as we have already said, of a building with appurtenant land and having regard to the definition contained in the Act, the lessee is not entitled to the rights conferred by Section 3 or Section 9 of the Act". Accordingly, by upholding the judgment of the High Court in the said case appeal was dismissed by the Supreme Court.

40. However, in the case of Maharaja Singh (supra) on the facts of that case it was held that Hat, bazar or mela is not appurtenant to the building.

41. When the facts of the present case are examined in the light of the observations made by the Supreme Court in the aforesaid cases, it is clear that the structure of two small office rooms-cum-corridors, admeasuring 350 sq. fts. is quite tiny and insignificant in comparison with the land which is let out totally admeasuring 10,500 sq.ft. It is let out by composite lease for the purpose of storing timber. It may be mentioned that Veraval is a city having a port and the defendant-tenant would get big and long wooden pieces through sea-conveyance and they would store it in the open space. Under the circumstances open land in the facts of the case cannot be said to be appurtenant to the building let out.

42. In fairness to the learned Counsels it may be stated that recent judgment of this Court in the case of Kamlaben Naginbhai Patel and Ors. v. Bulchand Narumal and Ors. reported in 1993 (2) GLR 1083 was cited before me. In the said case the principles laid down by the Supreme Court in both the aforesaid cases were considered. In the case of Kamlaben Naginbhai Patel (supra) there was an old building known as "Rajwadi Bungalow" with number of rooms therein occupied by different tenants. There is an open land around the said bungalow. On the southern side of said bungalow there is open land of the measurement of 64 ft. x 157 ft. and towards further South there is public road known as "M.S. Patel Road". Towards South the length of open land is 157 ft. and width of open plot

towards West is 64 ft. The question was whether the open land on the South of the said building can be said to be land appurtenant thereto.

43. It may be stated that in the said case of Kamlaben (supra) this Court has also considered the definitions of the words "premises" given u/s 5(8) of the Act as also the meaning of the word given in various Dictionaries. In the case of Kamlaben (supra) also the learned Judge has quoted the same paragraph from judgment in the case of Maharaja Singh (supra) which was quoted by the Supreme Court in the case of Larsen and Toubro (supra).

44. It is emphatically argued by Mr. K.S. Nanavati, learned Counsel for the respondent after quoting the said judgment that what is integral is not necessarily appurtenant and position of subordination, something incidental or ancillary or dependent is implied in appurtenance. Applying the said test in the case of Kamlaben (supra) the learned Judge held that the piece of land is not appurtenant to the buildings which are let out to various tenants and accordingly allowed the revision application. The judgment in case of Kamlaben (supra) supports the interpretation made by the of Section 5(8)(b) of the Rent Act after considering the Scheme of the Act.

45. Mr. K.S. Nanavati, further submitted that if the test laid down in the case of Maharaja Singh (supra) which has not been dissented by the Supreme Court in the case of Larsen and Toubro (supra) is applied to the facts of the present case, open land cannot be said to be appurtenant as it cannot be said under any circumstances that the open land is incidental or ancillary or appendage to the small insignificant construction of two rooms and corridors which is the tiny superstructure. Even as per the judgment of the Supreme Court in the case of Larsen & Toubro (supra) the question whether the land is to be treated as appurtenant or not would depend on the extent and nature of the land and its situation vis-a-vis the building thereon.

46. Now the extent of the land in the present case is about 29 times more than the built up area because the built up area is about 350 sq.ft. while the total area of the land is 10,500 sq.ft. Looking to the extent and situation of the land vis-a-vis the building also it cannot be said that it is in any way appurtenant to the demised premises particularly when the open land of such a large area is also let out by the composite rent of Rs. 75/- per month.

47. Mr. S.B. Vakil, learned Counsel for the petitioner also submitted that the object and purpose of enactment or the instrument to be used should also be taken into consideration while interpreting the provisions of the Act. It is true that provisions of Section 13(1)(hh), 13(1)(i) and 13(1)(ii) are made for erecting new building as also residential buildings, are made with the object of solving the housing problem to some extent. When that is so, can we stretch the meaning of the word "appurtenant" as used in Section 5(8) and Section 13(1)(ii) of the Act to such an extent that it would also include demised premises ? In view of the view taken by the Supreme Court the answer will definitely be in the negative.

Hence, this submission made by Mr. Vakil, cannot be accepted for the purpose of enlarging the meaning of the word "appurtenant".

48. Thus, on the facts of the present case, it cannot be said that the open land is appurtenant to the building let out to the defendant-tenant.

49. Mr. S.B. Vakil, learned Counsel has also cited the judgment in the case of Moraji Goculdas Deoji Trust and Others Vs. Madhav Vithal Kudwa, . In the said case a room on the first floor was let out to the tenant. There was open space on the ground floor in the compound of the building. The tenant wanted to park his car in the compound and his case was that open land in the compound is land appurtenant to the leased room to constitute the premises within the meaning of Section 5(8)(b) of the Rent Act. After considering various provisions of the Act and the meanings given in various dictionaries as also various judgments cited before it, the Court came to the conclusion that it would be a misnomer to describe the ground floor area as appurtenant to the first floor room. The ground floor area neither pertains nor relates to nor adjoins the first floor room. Nor can it legitimately be said that the ground floor area is usually enjoyed or occupied with the first floor room. It is neither an adjunct nor an appendage qua the first floor room."

It was held in the said case that open space in the ground of the said building is not appurtenant to the suit room on the first floor and therefore, does not constitute "premises" within the meaning of Section 5(8)(b) of the Act. Ultimately, the Court allowed the appeal holding that the defendant has failed to prove that he had statutory right to park his car in the suit compound. I do not dwell much on this judgment because of the subsequent judgments of the Supreme Court referred to by the earlier. However, it may be stated that this judgment would not be of any help to the petitioner. A feeble attempt was made by Mr. S.B. Vakil to say that the judgment of the Division Bench of the Bombay High Court is per incuriam. I do not think it necessary to discuss further on this criticism as my judgment rests on the observations made by the Supreme Court in the aforesaid judgments. It is appropriate to mention here that this judgment of the Bombay High Court supports the view I have taken on the interpretation of Section 5(8)(b) of the Act after considering scheme of the Act.

50. In view of the above discussion it is clear that the petitioner cannot get a decree for possession u/s 13(1)(ii) of the Rent Act as his case does not fall under the said section.

51. Hence the next question would be whether the case would be governed by Section 13(1)(i) of the Rent Act where the premises are land and it is required by the landlord reasonably and bona fide for erection of new building. In this connection Mr. K.S. Nanavati, learned Counsel for the respondent has drawn my attention to the discussion made in paragraph 10 of the judgment of the lower appellate Court wherein there is a reference to the judgment of the Bombay High Court in the case of Sohan Singh Bharat Singh v. Narhar Narayan Godhole and

Anr. reported in 1972 AIRCJ 173. In the said case after considering the judgment of the Supreme Court in the case of Krishnapasuda v. Dattatraya reported in AIR 1966 SC 1024, the Bombay High Court has held as under:

Thus looked at from any point of view, the conclusion is irresistible that the word "land" in Clause (i) of 13(1) of Rent Act means open land and this clause covers a case where the premises are open land and the structure constructed thereon, if any, belongs to the tenant. It is not capable of covering a case where the existing structure belongs to the landlord himself. The words in Section 13, (1) (1)) "where the premises are land" ought to be constructed to mean when the premises are land without any construction of the landlord thereon....

In view of the said observations of the Bombay High Court, in the present case what is let out is open land with construction thereon belonging to the landlord. In that view of the matter provisions of Section 13(1)(i) of the Rent Act would not be applicable to the facts of the present case.

52. It may be stated at this juncture that Mr. S.B. Vakil, learned Counsel who argued the matter for the petitioner has also not made any specific argument on this point that the case is governed by Section 13(1)(i) of the Rent Act. Accordingly, I hold, looking to the facts of the present case, that Section 13(1)(i) of the Rent Act would not be applicable to this case.

53. Therefore the case is to be considered only on the basis of the provisions of Section 13(1)(hh) of the Rent Act. As stated earlier in this judgment, Section 13(2)(hh) provides for a ground to the landlord for eviction of the tenant where the premises consists of not more than two floors and are reasonably and bona fide required for the immediate purpose of demolishing and such demolition is to be made for the purpose of erecting a new building on the premises sought to be demolished. This right of the landlord is further circumscribed by the provisions of Section 13(3A) of the Rent Act wherein it is provided that no decree for eviction shall be passed on the ground specified in Clause (hh) of Sub-section (1) unless the landlord produces at the time of the institution of the suit a certificate granted by the Tribunal under Sub-section (3B) and gives an undertaking as mentioned in Clauses (a), (before) and (c) of the said sub-section.

54. In the earlier part of this judgment the provisions of Sections 17A, 17B and 17C of the Rent Act have been considered. These Sections give protection to the tenant and creates civil as well as criminal liability on the landlord even after the decree is passed u/s 13(1)(hh) of the Rent Act.

55. It is no doubt true that at the time of institution of the suit certificate as required u/s 13(3A) of the Act issued by the Tribunal has been produced by the plaintiff-landlord. However, as stated earlier while stating the facts of the case, both the Courts below have held against the present petitioner-original plaintiff-landlord on the point of reasonable and bona fide requirement. In view of the said finding of fact Mr. K.S. Nanavati, learned Counsel for the respondent submitted that scope of Section 29(2) of the Act is limited and that this Court

cannot reappreciate the evidence and to come to a different finding of fact.

56. On the contrary, Mr. S.B. Vakil learned Counsel for the petitioner has submitted that there is a judgment of this Court decided by Justice J.B. Mehta in the case of Kasturbhai Ramchand Panchal and Brothers and Others Vs. Firm of Mohanlal Nathubhai and Others, . In the said case in para 5 learned Judge has observed as follows:

The revisional jurisdiction of this Court is invested under this Section 29(2) is not, therefore, merely in the nature of jurisdiction control. It extends to corrections of all errors in the overall decision which would make the decision contrary to law. The Legislature further empowers this Court in its revisional jurisdiction to pass such order with respect thereto as it thinks fit. The Legislature having invested this Court with powers of the widest amplitude to pass such orders as the Court thinks fit in order to complete justice, it is obvious that this wide power should not be narrowly construed. In so far as Section 13(2) is concerned, it deals with the human problem of considering the relative hardships of the landlord and the tenant and to arrive at a just solution. In such cases the highest Court of the State is given revisional powers, which are wider in scope than Section 115 of the Civil Procedure Code, so that it could do substantial justice by correcting even the errors where the decision as a whole is contrary to law.... The jurisdiction of this Court is to correct all errors of law going to the root of the decision, which would in such cases, include even perverse findings of facts, perverse in the sense that no reasonable person acting judicially and properly instructed in the relevant law arrive at such a finding on the evidence on the record of the case....

On the basis of this judgment it is submitted by Mr. S.B. Vakil, learned Counsel for the petitioner that when there is enough evidence on the point of requirement, i.e., honest requirement for the purpose of demolishing the premises for erecting new premises this Court should give the finding on the point. He further submitted that under these circumstances it is not necessary to remand the case on this point.

57. Mr. K.S. Nanavati, learned Counsel for the respondent has pointed out that in subsequent case of Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others, , the Supreme Court has considered the very case reported in (1968) 1XGLR 729 and in para 16 it is observed as follows:

...In this view in our opinion the ambit of the power was expressed in rather wide amplitude. As we read the power, the High Court must ensure that the principles of law have been correctly borne in mind. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. It must be such a decision which no reasonable man could have arrived at. Lastly such a decision does not lead to a miscarriage of justice. We must, however, guard ourselves against permitting in the guise of revision substitution of one view where two views are possible and the Court of Small Causes has

taken a particular view. If a possible view has been taken, the High Court would be exceeding its jurisdiction to substitute its own view with that of the Courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant. Judged by that standard, we are of the opinion that the High Court in this case had exceeded its jurisdiction.

58. It may be stated that on this point there is also subsequent judgment of the Supreme Court in the case of K.A. Anthappai Vs. C. Ahammed, wherein the Supreme Court was concerned with the scope of Section 20 of the Kerala Rent Control Act. The language of Section 20 of the said Act is similar to the language of Section 29(2) of the Bombay Rent Act. In the said case in para 5 the Supreme Court has observed as follows:

At this stage, it may also be mentioned that in exercise of its revisional jurisdiction u/s 20 of the Act, the High Court can "call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings and may pass such order in reference thereto as it thinks fit". It is no doubt true that scope of the revisional jurisdiction conferred u/s 20 is wider than that conferred u/s 115 Civil Procedure Code. But at the same time, a revision u/s 20 cannot be equated with an appeal. Moreover, the revisional power conferred u/s 20 also embraces an order passed by the appellate authority. While considering the provisions conferring revisional power couched in a language similar to that contained in Section 20 of the Act, this Court has laid down that the power conferred on the High Court is essentially a power of superintendence and despite the wide language employed, the High Court should not interfere with the findings of fact of the sub-ordinate authority merely because it does not agree with the said finding....

59. In view of the above position of law and powers of the High Court in revision u/s 29(2) of the Rent Act, this Court cannot interfere with the finding of fact arrived at by the trial Court and confirmed by the appellate Court when the subordinate Courts have kept in mind the principles of law and have appreciated the evidence on record correctly.

60. In that view of the matter Mr. S.B. Vakil, learned Counsel for the petitioner has submitted that the finding that certificate u/s 13(3A) of the Act was illegal, is a wrong finding. He submitted that certificate as granted by the Tribunal which is an Administrative Tribunal and the said certificate is held to be illegal on the ground that the defendant-tenant was not given opportunity to put his case before the Tribunal. According to Mr. S.B. Vakil, the said finding is wrong in view of the judgment of the Division Bench of this Court in the case of Indradaman Amritlal v. Anandlal Nandlal Kavi and Ors. reported in 1978 (1) A I R C J 239. In the said case after considering the judgments of the Supreme Court cited before it the Division Bench held that "the provisions of Section 13(1)(hh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, have to be read with

the provisions of Sub-sections (3A) and (3B) of Section 13 of the Act. When so read it is clear that the landlord can obtain a decree of eviction of a tenant if the requirements of production of certificate granted under Sub-section (3B) of Section 13 is satisfied at the time of the institution of the suit filed on the ground mentioned in Section 13(1)(hh) of the Act. This requirement of production of the certificate at the time of the institution of the suit has to be substantially complied with. The object of the Legislature in enacting Sub-sections (3A) and (3B) of Section 13 of the Act is also to prevent the landlord from harassing the tenants by instituting frivolous and vexatious suits for eviction against them. To put in short the conditions prescribed in sub-sees. (3A) and (3B) of Section 13 of the Act prevent a landlord from abusing the right conferred on him by Section 13(1)(hh) of the Act....

61. In view of the aforesaid judgment it is not necessary to hear the tenant by the Tribunal when they are not deciding any Us between the parties and when they have to act merely as an Administrative Tribunal.

62. In that view of the matter Mr. K.S. Nanavati, learned Counsel for the respondent submitted that even assuming that it is an Administrative Tribunal, even so on the principle of fairplay the defendant-respondent should have been given a chance to put his case. Mr. Nanavati has in this connection relied on the judgment of the Supreme Court in the case of Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, . It was a case in respect of appointment and selection of the candidate whose privilege was prejudicially affected. In the said case in para 23 the Supreme Court has observed as under:

...For this concept of fairness, adjudicative setting are not necessary, nor it is necessary to have lites inter parties. There need not be any struggle between two opposing parties giving rise to "lis". There need not be resolution of Us inter parties. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But when even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would juridically be called at least a privilege does not involve the duty to act fairly consistent with the rules of natural justice....

63. It is, therefore, necessary to find out whether in the present case the certificate granted by the Tribunal affects the defendant's personal right or property rights or the loss of or prejudicially affects something which would juridically be called at least a privilege or not. If it does not affect any such right or privilege, it does not involve the duty to act fairly consistent with the rules of natural justice. It is to be noted that such certificate when produced would make the suit of the plaintiff-landlord entertainable for adjudication in absence of which the plaintiff-landlord cannot get decree for possession on the ground of Section 13(1)(hh) of the Rent Act. Therefore, at the most this certificate serves the

purpose of complying with the condition at the time of institution of the suit. It will no doubt be relevant for the purpose of considering the bona fide and reasonable requirement of the landlord for the purpose of erecting new building along with there evidence on record.

64. It may also be stated that if similar certificate is granted by a Bank regarding the availability of funds with the plaintiff-landlord, can it be said that it would also require previous hearing to be given to the defendant-tenant by the Bank before issuing such certificate. The issuance of such certificate would at the most work as a relevant circumstance for considering the bona fide requirement of the landlord. It is the duty of the Court and not of the Tribunal u/s 13(3A) of the Rent Act to be satisfied about the bona fide and reasonable requirements of the landlord for erecting new premises u/s 13(1)(hh) of the Rent Act.

65. Under the circumstances it cannot be said that the Tribunal which issues the certificate u/s 13(3A) of the Rent Act decides any of the rights of the parties or even affects the privileges of the parties. In that view of the matter I do not find any reason for not agreeing with the judgment of the Division Bench referred to above. When that is so, the certificate issued by the Tribunal cannot be- said to be illegal.

66. It may further be stated that the trial Court also held that proper procedure is not followed by the Tribunal. The rules which are to be followed by the Tribunal are directory rules and if they are substantially complied with then ultimate result of issuing the certificate cannot be said to be bad and illegal. In this case the plaintiff had already placed before the Tribunal the plans and estimates prepared by the Architect and duly approved by the Veraval Municipality. Therefore, there was no question of granting any provisional certificate. When all the formalities were completed the Tribunal was right in directly issuing the final certificate as required u/s 13(3B) of the Rent Act. Hence the certificate of the Tribunal u/s 13(3B) of the Rent Act is legal and valid.

67. Now it would be convenient to consider the point of bona fide and reasonable requirements of 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. It would not be out of place to mention that similar bona fide and reasonable requirement is required to be established by the landlord even for the open land u/s 13(1)(i) of the Rent Act when he wants possession thereof from the tenant for erection of new building.

68. I have already discussed above in this judgment the powers of this Court u/s 29(2) of the Bombay Rent Act. Merely because this Court takes some view which appears to be better than the view taken by the Courts below, it cannot be said that this Court can interfere with the finding of fact arrived at by the Courts below. However, the finding of fact arrived at by both the Courts below should have been based on the correct appreciation of evidence on record keeping in mind the principles of law.

69. It may be mentioned that Mr. S.B. Vakil, learned Counsel for the petitioner while opening the argument in the matter, has submitted that while considering the case under Sections 13(i)(hh) and 17B of the Rent Act, the matters contemplated by Section 13(1)(g) of the Act need not be mixed up. He further submitted that if ingredients mentioned in Clause (hh) of Sub-section (1) of Section 13 of the Act are satisfied and if the interest of the tenant is protected, decree for possession must be passed by the Court. In this connection he placed reliance on the judgment of Justice S. H. Sheth in the case of Tribhovandas Khushaldas and Others Vs. Mulchandbhai Damodardas, . There cannot be any dispute on this proposition. Therefore, while considering the bona fide and reasonable requirement under Clause (hh) of Section 13(1) of the Act the Court will only look to the Scheme of the said Section along with the protection given under Sections 17A, 17B and 17C of the Act which provisions have been considered by Justice Sheth in the aforesaid judgment.

70. Mr. S.B. Vakil, learned Counsel for the petitioner has further submitted that bona fide requirement of the landlord should be genuine and honest requirement. In this connection Mr. Vakil placed reliance on the judgment of the Supreme Court in the case of Neta Ram Vs. Jiwan Lal, wherein the Supreme Court was concerned with the Patiala and East Punjab States Union Urban Rent Restriction Ordinance and u/s 13(3)(a)(iii) and (before) of the said Act the application for ejectment of tenant was made on the ground of bona fide requirement for reconstruction. In the said case the Supreme Court has held as under:

Before a landlord can obtain an order for ejectment of his tenant on ground of his requirement for construction of a house, he must satisfy the Rent Controller about genuineness of his claim and this can only be established by looking at all the surrounding circumstances. such as the conditions of the building, its situation, the possibility of its being put to a more profitable use after construction, the means of the landlord and so on. It is not enough that the landlord comes forward, and says that he entertains a particular intention, however strongly, said to be entertained by him. Section 13(3)(a) of the Pepsu Urban Rent Restriction Ordinance speaks not of the bona fide of the landlord, but says, on the other hand, that the claim of the landlord that he requires the building for reconstruction and re-erection must be bona fide, that is to say, honest in the circumstances. It is impossible, therefore, to hold that the investigation by the Controller should be confined only to the existence of an intention in the mind of the landlord to reconstruct. This intention must be honestly held in relation to the surrounding circumstances.

71. Another decision which is cited by Mr. Vakil in this regard is the judgment of the Madras High Court in (he case of V.P. Selvaraj v. V. Narasimha Rao and Anr. reported in AIR 1969 CJ 640. That was a case u/s 14(1)(b) of the Madras Buildings (Lease and Rent Control) Act (18 of 1969). In the said case it was held as under:

When Section 14(1)(b) of Madras Building (Lease and Rent Control) Act is read in conjunction with and in juxtaposition of Section 16 of the Act, it is very clear that the real content of the word bona fide appearing in this sub-section has to be understood in a limited sense and has to be given effect to in the context in which it appears. Section 16 of the Act affords a statutory right to the tenant to reclaim possession of a building secured by the landlord u/s 14(1)(b), if he does not substantially demolish the building and attempt at reconstruction as proposed. This controlling provision provides as it were a key to the interpretation of the expression "bona fide" appearing in Section 14(1)(b) of the Act. It appears that in case where the claim of the landlord is not per se dishonest and has not been found to be oblique or for any designed purpose to evict the tenant, then it follows that he is entitled to an order of eviction in the ordinary course, subject, however, to the Tribunals constituted under the Act being satisfied that the other relevant conditions required and prescribed under the Act are complied with....

72. This judgment also throws light on the point that while considering Section 13(1)(hh) of the Rent Act, it is to be read in juxtaposition with Sections 17A, 17B and 17C of the Act because this controlling provision provides as it were a key to the interpretation of the word "bona fide".

73. Mr. S.B. Vakil, learned Counsel for the petitioner has also relied on the judgment of the Division Bench of this Court in the case of Maganlal Shivilal Vs. Memon Daudbhai Mithabhai, . That was a case u/s 13(1)(h) of the Saurashtra Rent Control Act. Section 13(1)(h) of the Saurashtra Rent Control Act quoted in the said judgment reads as under:

That the premises are reasonably and bona fide required by the landlord for carrying out repairs or renovation which cannot be carried out without the premises being vacated.

74. While interpreting the word "bona fide" it was held in the said case that in order to prove that landlord bona fide requires the building for renovation as defined u/s 13(1)(h) of the Saurashtra Rent Control Act, he must prove that his claim is real and honest and this can be judged by the Court after taking into consideration the surrounding circumstances. In order to show that the requirement is bona fide it is not enough that the landlord has a there desire or intention to demolish the building and reconstruct it. It may be mentioned that the relevant discussion on the point is made in para 18 of the judgment wherein it is observed that same view is expressed on this point by the Supreme Court in the case of Neta Ram Vs. Jiwan Lal, . The said Supreme Court judgment has been considered by me in this judgment earlier.

75. The last judgment cited by Mr. S.B. Vakil on this point is the judgment of the Kerala High Court in the case of Saramma Varghese and Others Vs. George, . The ratio of the said judgment is similar to that of the case reported in Neta Ram Vs. Jiwan Lal, . Hence it need not be discussed further.

76. In view of the above settled position of law on the point of proving bona fide and reasonable requirement of the landlord it is necessary to see as to how the Courts below have considered this point. The lower appellate Court has considered this aspect of the case in point No. (3) from paras 21 to 33 of the judgment. After discussing the evidence of various witnesses examined on behalf of the plaintiff and defendant and in the light of various judgments cited before him on the point, the learned lower appellate Judge has also considered the contention raised on behalf of the defendant that if the Court feels that the landlord is to construct the building in such a manner that the tenements cannot be suitable to the tenants intended to be evicted, the Court would be entitled to hold the requirement of the landlord are not reasonable and bona fide. This very contention is raised by Mr. K.S. Nanavati, learned Counsel for the respondent-defendant before me. Mr. Nanavati further submitted that the right which is conferred on the tenant u/s 17B of the Act in respect of the premises for which decree is passed, is not an illusory right and if the plans and estimates on record go to suggest that the premises which are to be constructed on the premises to be demolished would make the tenant's right u/s 17B of the Act would be illusory one, then bona fide requirement of the landlord cannot be said to have been established.

77. In the judgment of the lower appellate Court the learned Assistant Judge has also discussed by taking aid of the plan (Ex. 43) about the carpet area of the bungalow and the carpet area of the single-room tenement proposed to be constructed as also the built up area which is already in the possession of the defendant. The learned appellate Judge, therefore, held that there is no bona fide requirement on the part of the petitioner-plaintiff particularly when the defendant-respondent is occupying the premises for storing timber and when all the premises to be constructed are residential premises. In this connection the learned Appellate Judge has also relied on the judgment of the Division Bench of the Bombay High Court in the case of Appellants: Merwanji Fardoonji Sethna Vs. Respondent: Antelo Custodio Correa, . In the said case the Division Bench in para 9 of the judgment has observed as under:

Section 13(1)(hh) enable the landlord to sue for possession but the Court has to be satisfied that the demand is bona fide and reasonable. Before filing his suit landlord is required to obtain a certificate from the Tribunal. It is true that before the Tribunal grants the certificate it is not required to issue a notice to the tenants and is not required to see that the areas of the tenements are similar to the areas of tenements to be demolished. Even so if the Court finds that the landlord is so constructing his building that the tenements cannot be suitable to the tenants intended .to be evicted the Court would be entitled to hold that the requirements of the landlord are not reasonable and bona fide. This inference is justified if one considers the whole scheme of the Act which does show that the rights that are given by the Act to the tenants are not intended to be illusory.... This construction is supported by the provisions of Sections 17, 17B and 17C in which care is taken to safeguard the tenant in all possible respects.... Having

regard to the previous history of the legislation and all the other provisions of the Rent Act, we will be justified in holding that in deciding the reasonableness and bona fides of the owner the Court must take the nature of new tenements into account....

78. After considering the area of the proposed construction and the area which is at present in the possession of the defendant-tenant and after applying the test laid down by the Bombay High Court in the case of Merwanji Fwdoonji Sethna (supra) it was held by the learned appellate Judge that the requirements of the plaintiff-landlord cannot be termed as reasonable and bona fide. The said finding cannot be said to be a finding which is not supported by evidence on record and/or that the correct principles of law are not kept in mind by the learned appellate Judge.

79. The most important aspect to be considered in this case is that when the petitioner-plaintiff landlord got prepared the plans and estimates for the proposed construction the respondent-defendant-tenant was doing business in the premises let out to him. It is not pointed out by the petitioner as to how the residential premises which are sought to be constructed would in any way be suitable to the tenant for his timber business. If it is not suitable to the tenant, the entire right conferred on the tenant u/s 17B of the Rent Act becomes totally illusory. As can be seen from the Scheme of the Act, Sections 13(1)(hh) and Section 13(1)(i) provides for grounds for evicting the tenant when the landlord requires the premises for bona fide and reasonable requirements unlike the Clause (ii) of Sub-section (1) of Section 13 of the Act where the only requirement is construction of new residential building. It is pertinent to note that the word "residential" which was occurring in Clause (i) of Sub-section (1) of Section 13 of the Act has been subsequently deleted by the Amending Act No. 61 of 1953. It clearly shows that when the premises to be demolished are used by the tenant for business purpose new premises to be so constructed on the demolished premises should be business premises or for commercial purpose along with the required area of residential premises as per the undertaking required to be given u/s 13(3A)(a) of the Rent Act, so that the requirement of Section 17B of the Act can be fully complied with and the new building to be erected by the landlord shall contain not less than two times the number of residential tenements and not less than two times the floor area contained in the premises sought to be demolished.

80. In the present case on perusal of the plan it is clear that the entire construction sought to be made is meant for residential purpose. The carpet area of the proposed bungalow is 254.75 sq. ft. and the single room tenement construction would be 216 sq. ft. which would not be suitable for the tenant who is doing business in the built up area of 350 sq. ft. along with the other open demised land on the composite rent of Rs. 75 per month.

80.1 Under the circumstances the contentions raised on behalf of the defendant-respondent-tenant deserves to be accepted and have been rightly accepted by

the Courts below, that the requirement of the plaintiff-petitioner-landlord cannot be said to be reasonable and bona fide. I, therefore, agree with the concurrent finding of fact arrived at by the Courts below on the point of reasonable and bona fide requirement of the plaintiff-petitioner (landlord).

81. In that view of the matter the suit has been rightly dismissed by the trial Court and the lower appellate Court has rightly confirmed the judgment and decree passed by the trial Court. In view of the above discussion, I do not find any merit in the present revision application. Hence it deserves to be dismissed and is hereby dismissed. Rule is discharged with costs.