

(2014) 04 KL CK 0043
In the High Court Of Kerala
Case No : R.C.R. No. 409 of 2010

Welfare Stationery

APPELLANT

Vs

South Indian Bank Ltd.

RESPONDENT

Date of Decision : 08-04-2014

Acts Referred:

Constitution of India, 1950 — Article 12
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 11, 11(1), 11(10), 11(2)(b), 11(3)
Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 — Section 34

Citation : (2014) 2 ILR 685 : (2014) 2 KLJ 602 : (2014) 2 KLT 328 : (2014) 2 RCR(Rent) 435

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

Bench : Division Bench

Advocate : P.B. Krishnan, R. Suraj Kumar, Geetha P. Menon, N. Ajith, P.M. Neelakandan and P.B. Subramanyan, Advocate for the Appellant; T. Krishnan Unni, Sr. Advocate and K.K. John, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—Can South Indian Bank Ltd., which is a Scheduled Bank, be one among "other public institutions" described in S. 11(7) of the of the Kerala Buildings (Lease and Rent Control) Act, 1965? South Indian Bank Ltd., Thrissur, who is the landlord, had approached the Rent Control Court, Thrissur through R.C.P. No. 29 of 1994, seeking an order directing the tenants, who are the petitioners herein, to put the landlord in possession of the scheduled room on the ground under Sections 11(2)(b), 11(7) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as "the Act"). The Rent Control Court considered the matter along with two other connected RCPs, and vide common order dated 30.3.2004, allowed the Rent Control Petitions on the grounds under Sections 11(7) and 11(8) of the Act. Aggrieved by the said order, the tenants preferred R.C.A. No. 49 of 2004 before the Rent Control Appellate Authority, Thrissur. Vide common judgment dated 30.8.2010, the learned Rent Control Appellate Authority has concurred with the findings rendered by the Rent

Control Court and dismissed the R.C.A. and the two other connected R.C.As., and hence the present Rent Control Revision.

2. The petition scheduled room, which forms part of the ground floor of the South Indian Bank building, belongs to the landlord. The same was rented out to the tenants on a monthly rent of Rs. 60/-. Even after the period of lease, the tenants continued to be in possession of the room as per the same terms and conditions. According to the landlord, the Main Branch of the Bank is functioning in the other floors of the building. Due to the increase in the business transactions and since new avenues have been opened in the banking industry, with the existing facilities available, the Bank finds it extremely difficult to carry on its normal activities for want of space. The landlord is in dire need of additional accommodation and the ground floor which includes the petition scheduled room, is required for Bank's bona fide need for expansion of the Main Branch. On getting vacant possession of the ground floor including the petition scheduled room, the landlord will be able to, effectively and conveniently discharge its functions and duties to the public by adding the room to its present space available. The hardships, if any, that may be caused to the tenants in case of an eviction will never outweigh the advantages to the landlord.

3. The landlord has been making repeated demands to the tenants to vacate the premises. The notice issued on 10.3.1990, by calling upon the tenants to vacate the premises, could only invite a reply from the tenants, in which untenable contentions have been resorted to. The lawyer's notice dated 1.7.1991 caused to be issued to the tenants also could only invite a reply in which false and vexatious contentions were resorted to. According to the landlord, anticipating an amicable settlement in the matter, the landlord did not take any hasty steps. As there was no positive response, the landlord again caused to issue lawyer's notice dated 25.11.1993 to the tenants thereby calling upon them to surrender vacant possession of the premises with arrears of rent. On receipt of the said notice, the tenants issued a reply thereby setting forth false and untenable contentions. The case of the landlord is that the landlord is a banking institution registered under the Banking Regulation Act and is a public institution intended for serving the public.

4. The tenants opposed the R.C.P. through a written objection contending inter alia as follows: The R.C.P. is not maintainable. The landlord is not a public institution. With a view to throwing out the tenants from the premises, the Bank authorities have been taking recourse to illegal activities like flooding the shop with water and cement by passing water into the scheduled shop room thereby destroying and damaging valuable goods of the tenants, and thus causing heavy financial loss in the business of the tenants. The landlord has let out the adjacent room to M/s. P.E. Varkey and Sons for extending their shop and to start a supermarket a few years back, on a monthly rent of Rs. 4 per sq.ft. The rooms in the ground floor of the building have been constructed and used only as shop rooms from the beginning and the same are not suitable for banking purposes.

There is no bona fides on the part of the landlord in claiming additional accommodation. There is no need, much less dire need, for the Bank, as claimed. There is sufficient space available in other storeys of the building. The top floor is totally vacant. Most of the departments of the Bank, which were housed in the building, have been shifted to Bank's own other multi storied buildings nearby, in the town itself. The Bank has vacated the Chamber of Commerce building, and opened a branch in the High Road, just a few metres away from the building in question and also constructed an additional floor in the Head Office building, situated nearby. The tenants have been depending mainly on the income being derived from the business in the scheduled shop room for their livelihood. It is not possible to get another building in the locality, and in case of eviction, the hardships that will be caused to the tenants will far outweigh the advantages, if any, to the landlord. There is no necessity at all to the landlord for additional space, as claimed.

5. Heard the learned counsel for the petitioners Sri. P.B. Krishnan and the learned Senior Counsel for the respondents Sri. T. Krishnan Unni. The learned counsel for the petitioners has attacked the impugned judgment mainly on two grounds. Firstly, that the landlord South Indian Bank Ltd. being a bank functioning in private sector, is not one coming within the category of "other public institutions" as contained in S. 11(7) of the Act and therefore, the landlord is not entitled to get an order directing the tenant to put the landlord in possession of the scheduled room on the ground under S. 11(7) of the Act; secondly, the landlord has failed to adduce any evidence relating to the additional-accommodation as claimed in the Rent Control Petition and that the evidence adduced with a view to maintaining an independent need as the one contemplated under S. 11(3) of the Act cannot be relied on for maintaining an order under S. 11(8) of the Act. Per contra, the learned Senior Counsel for the respondents has argued that South Indian Bank Ltd., which is a scheduled bank functioning under the guidelines of the Reserve Bank of India, has all the characteristics of a public institution as envisaged under S. 11(7) of the Act and therefore, the same can be categorised as one among "other public institutions" coming under S. 11(7) of the Act. It is also argued that the evidence adduced by PW 1 is relating to the additional accommodation claimed by the Bank, and therefore, the findings entered by both the courts below do not call for any interference.

6. The learned counsel for the petitioners has invited our attention to a decision in *Rev. Mother General Vs. Philip and Others*, wherein it was held that even the word "institution" by itself is Capable of importing the element of public benefit. Even though, in the wider sense, it may include an organization which is purely a private institution, the word "institution" is specifically used to mean an institution for the public benefit. From the tenor of the decision noted supra, it can be seen that the word "public" used as a prefix to the word "institution" under S. 11(7) of the Act is not mere surplusage. It is used for the purpose of excluding institutions which are purely private and for emphasizing that the sub-

section applies only to those institutions, which function for the public benefit.

7. Based on the decision in Rev. Mother General (supra), the learned counsel for the petitioners has pointed out that an institution becomes a "public institution" within the meaning of S. 11(7) of the Act, only when it is an institution that function for the public benefit. Even when the word "institution" denotes some thing like an institution for the public benefit, the added word "public" used as a prefix to the word "institution" is for the purpose of totally excluding the institutions that are private in nature.

8. In Rev. Mother General (supra) it was held:

Sub-section (7) was enacted for a different kind of public institutions, namely, for institutions that serve the public good. The policy underlying the statute is that such institutions must be protected and encouraged in the public interest, and, while sub-s. 11(11) of the section saves recognised educational institutions (recognised, and therefore assumed to be functioning for the public benefit) from eviction under the provisions of sub-ss. (1) to (10), sub-s. (7) on the other hand enables religious, charitable, educational and other institutions functioning for the benefit of the public, to obtain eviction.

(emphasis supplied)

It follows that an institution can be brought within the purview of "public institution" as contained under S. 11(7) of the Act, only when the said institution is for the advancement of any object of public good, or general public utility or public benefit.

9. It was further held in Rev. Mother General (supra),

In other words, those decisions called institutions functioning for the public benefit, public institutions; and that is precisely what the sub-section we are now construing does. Instead of using the word, "institution" which might include private institutions it uses the expression, "public institution".

It was held therein that even educational institutions become public institutions, only when it is opened to the general public.

10. Regarding the importance of the objects for which such institutions are constituted in order to decide whether such institution can be termed as "public institution", the learned counsel for the petitioners has invited our attention to the decisions in The Young Women's Christian Association, Trivandrum Vs. S. Jacob and others, and Haridas v. Mercantile Employees Association (1915 KLT 437). In Young Women's Christian Association (1969 KLT 919) supra, a Single Bench of this Court has considered the objects of the institution for which it was constituted, to decide the question whether it was a "public institution" or not within the meaning of S. 11(7) of the Act. In the decision in Haridas v. Mercantile Employees" Association (supra) a Division Bench of this Court held:

We have gone through the constitution of the respondent - Association and

scrutinized the objects and purposes for which the said Association has been established. It is clear, that judged by the objects for which the Association stands and the nature of its membership which consists of various classes of industrial workers and commercial employees who certainly constitute a substantial section of the public, the Association cannot be said to be a private body and must be held to be a public institution. We reject the petitioner's contention and confirm the finding entered by the revisional court and by the appellate authority that the first respondent is a Public Institution falling within the scope of the said expression as used in S. 11(7) of the Act.

(emphasis supplied)

Therefore, the precedents on the point are leading us to the scrutiny of the objects of such an institution for which it is constituted, in order to conclude whether it is a "public institution" within the meaning of S. 11(7) of the Act.

11. The question whether a Cinema Theater is a "public institution", came up for consideration in the decision in K.V. Mathew Vs. District Manager, Telephones, Ernakulam and Another, . The question therein was whether Cinema Theater is a "public institution" which forms a category under the Non-OYT special category, for obtaining priority in getting telephone connections. It was held therein,

The petitioner is only an individual, not an institution. His cause is personal, not public. He carries on business to make profit. The profit he makes is his private property, not for public account. Cinema is a place of public resort. But all public places are not institutions. The word "institution", of course, is not capable of precise definition. It should in large measure have an enduring value. It does not represent the need of the hour, but the need of all time. The public has an abiding interest in the maintenance and preservation of an organisation or establishment which is an institution. It cannot be the momentary or fleeting interest of the public which sustains this organisation. Institution has deeper and permanent value in society. A cinema which can be closed to the public whenever the owner chooses cannot be exalted to the status of an institution. The description of public institution in the guideline of the P & T Department or the examples cited therein cannot convert a cinema, private enterprise, to a public institution.

12. In order to meet the arguments forwarded by the learned Senior Counsel for the respondents that the South Indian Bank Ltd. is a banking company which is a scheduled bank functioning purely under the control of the Reserve Bank of India for public benefit and therefore, it is a public institution, the learned counsel for the petitioners has invited our attention to the decision in Federal Bank Ltd. Vs. Sagar Thomas and Others, wherein it was held that the banking companies have not been setup for the purposes of building economy of the State; on the other hand, such private companies have been voluntarily established for their own private purposes and interest; but their activities are kept under check so that their activities cannot go way ward and harm the economy in general.

13. In paragraph 40 of Federal Bank Ltd. *supra*, it was held:

A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though case of nationalised banks stands on a different footing. There may, well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its share-holders. It works like any other private company in the banking business having no monopoly status at all. Any company carrying on banking business with a capital of five lacs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The banking companies have not been set up for the purposes of building economy of the State on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by the Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities may be manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardised for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the private companies. The care

is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their production which is important for the economy may not go down yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies.

14. In paragraph 42 of the Federal Bank Ltd. (supra), it was held:

As indicated earlier, share capital of the appellant bank is not held at all by the Government nor any financial assistance is provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant bank does not enjoy any monopoly status nor it can be said to be an institution having State protection. So far control over the affairs of the appellant bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the appellant bank nor anyone of them is a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the malfunctioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purposes of maintaining the healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities. It deserves to be noted that it hardly makes any difference that such supervisory vigilance is kept by the Reserve Bank of India under a statute or the Central Government. Even if it was with the Central Government in place of the Reserve Bank of India it would not have made any difference

15. In paragraph 43 of Federal Bank Ltd. supra, it was held,

There are a number of such companies carrying on the profession of banking. There is nothing which can be said to be close to the governmental functions. It is an old profession in one form or the other carried on by individuals or by a group of them. Losses incurred in the business are theirs as well as the profits. Any business or commercial activity, may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money, are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified one falling in the category of discharging duties, functions of public nature.

16. Matters being so, even in cases wherein the either Reserve Bank of India or even the Central Government or State Government has any supervisory vigilance on such a banking company, it will not assume the characteristic of a public institution. When such institutions are not discharging the duties and functions of

public nature, it cannot be classified as one falling under the category of "public institution".

17. The main function of such banking companies is money lending on interest and also procurement and collection of deposits on interest. Such a profession is being carried out by several individuals or by several groups of individuals or banking companies. As held by the Apex Court, the amounts incurred in such business are the amounts of such individuals or groups of individuals or such banking companies. Similarly, the profits in the said business will also go to such individuals, group of individuals or the banking companies as the case may be, and not to the Government or public. Therefore, such banking companies even if be a scheduled bank, cannot be categorized as institutions discharging duties and functions of public nature. Merely because Reserve Bank of India lays down the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth for carrying out an equilibrium in the case of borrowing and lending, having due regard to the interests of the depositors etc., it cannot be said that those private companies carry on the business of money lending and borrowing or some other functions of Banking interest etc., discharge any public function or public duty.

18. In *Federal Bank Ltd. (supra)*, it was held that the Federal Bank Ltd. is a private company carrying on banking business as a scheduled bank and the same cannot be termed as an institution or company carrying on any statutory or public duty. It was further held that merely regulatory provisions are there, to ensure such activity carried on by private bodies work within a discipline, does not confer any such status upon the company.

19. The learned Senior Counsel for the respondents has argued that what is contemplated under S. 11(7) of the Act to make available the said privilege to an institution is that, it need only be a "public institution" and not a "public authority" within the meaning of first proviso to S. 11(1) of the Act. It is true that the term contained in the first proviso to S. 11(1) of the Act is "other public authority" notified under the Act.

20. The first proviso to S. 11(1) of the Act is a provision which denies the tenants, the protection of S. 11 of the Act, in respect of buildings of which State Government or Central Government or other Public Authority notified under the Act is the landlord. The argument is that in order to attract S. 11(7) of the Act, the institution need not be a public authority. In cases where the landlord of a building comes within the category of "other public authority" notified under the Act, the tenant cannot avail the protection of S. 11 of the Act. Even if the landlord is an authority, the said exemption as per the proviso to S. 11(1) of the Act comes into play only when such authority is notified under the Act. The argument of the learned Senior Counsel for the respondent is that the decision in *Federal Bank Ltd. (supra)* has no application in the case of a "public institution" within the meaning of S. 11(7) of the Act, as the question in the case in the decision noted *supra* was confined to the question whether the Federal Bank Ltd.

is an "authority" within the meaning of Art. 12 of the Constitution of India. The learned Senior Counsel for the respondents has invited our attention to the decision in *The Electric and Motor Works (P) Ltd. Vs. Y.W.C.A., Trivandrum*, wherein it was held:

The word "public" is wide enough to include within its connotation a section of the public. It is clear that a section of the public or a community can itself be called "public". If a thing is not private then it is public. In this sense the Y.W.C.A., Trivandrum can hardly be called a private body. That does not stand for the promotion of the welfare of a particular body or family of persons even if it calls itself a private institution. But in effect it is an organisation for the promotion of some public object which must be brought under the category of public institution. A society or organisation established for some object, especially cultural, charitable or beneficial is an institution. It follows that the Y.W.C.A., Trivandrum is a public institution.

It clearly reveals that a Single Bench of this Court has held that Y.W.C.A., Trivandrum is a "public institution" within the meaning of S. 11(7) of the Act, after going through the objects of the said organization and on finding that the same was established for some objects, especially cultural, charitable or beneficial to a section of the public.

21. Our attention was also invited to the decision in *Avinash V. Saraf and Another Vs. Ernakulam Karayogam Society*, wherein it was held:

The landlord was a society registered under the Act for the Registration of Literary, Scientific and Charitable Societies in Cochin (Cochin Act II of 1088) evidenced by the Certificate of Registration issued by the District Registrar General, Ernakulam. The society was in existence at the commencement of the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act (Act XII of 1955). Act II of 1088 was repealed and the landlord society is deemed to be registered under Act XII of 1955 by virtue of S. 34 thereof. The bye laws of the society amply reflect that its objects include conduct of charitable institutions like hospitals, hostels, orphanages, educational institutions etc. The courts below have concurrently held that the landlord falls within the sweep of "religious, charitable, educational or other public institution" as contemplated under S. 11(7) of the Act. The entitlement of the landlord to call in aid S. 11(7) of the Act was therefore not seriously challenged by any one of the tenants in these Rent Control Revisions.

The aforesaid discussion clearly reveals that the bye-laws of the Ernakulam Karayogam Society reflects its objects, including conduct of charitable institutions like hospitals, hostels, orphanages, educational institutions etc.

22. We have carefully gone through the decision in *Federal Bank Ltd. (supra)* in its entirety. It cannot be said that the question therein was not merely confined to the question whether the Federal Bank Ltd. is an "authority" within the meaning of Art. 12 of the Constitution of India. The main question considered

there was whether the Federal Bank Ltd., which is a scheduled bank carry on business of banking, has been discharging any public function or public duty. The question was answered in the negative. After the detailed discussion, the portions of which were extracted by us above, the Apex Court found that the activities of the Federal Bank Ltd. cannot be classified as one falling under the category of discharging public duties or functions of public nature. After the discussion it was held therein that the Federal Bank Ltd. is purely a private banking company; in the normal functioning of which there is no participation or interference by the State or its authorities. The South Indian Bank Ltd. has no case that it is an institution mainly established for any cultural, charitable or beneficial objects.

23. In Federal Bank Ltd. (supra) it was held that the business activity of the Federal Bank Ltd. remains to be a private activity of the said banking company. Similarly, South Indian Bank Ltd. has not been constituted for any public good. There is no participation of the State in managing the affairs of the South Indian Bank Ltd. In the case of Young Women's Christian Association, Trivandrum (1969 KLT 919) (supra), it was held that the constitution of the Y.W.C.A. states among other things its objects shall be to promote spiritual, social, intellectual and physical welfare of the women of Trivandrum and to present fellowship and service as an ideal life. In Rev. Mother General Vs. Philip and Others, it was held that "public" as used in the phrase "public institution" in S. 11(7) of the Act means "devoted or directed to the promotion of general welfare".

24. No documents have been made available by the Bank in this case to prove the objects for which the South Indian Bank Ltd., which is a private banking company acting as a scheduled bank, has been established or constituted. Here, the South Indian Bank Ltd. has no case that it was established and constituted for any public good, public welfare or in order to carry out any charitable purpose. Matters being so, the said institution cannot be said to be a "public institution" within the meaning of S. 11(7) of the Act.

25. On going through the claim of the landlord under S. 11(8) of the Act, it could be seen that the landlord has claimed a direction to the petitioners to put the landlord in possession of the scheduled room on the ground under S. 11(8) of the Act, on the specific plea that the scheduled room is required by way of additional accommodation for the expansion of the Main Branch of the landlord Bank, it has been pleaded that the Bank finds it extremely difficult to carry on its normal activities due to want of space and therefore, the Bank is in bona fide need of the ground floor, which includes the scheduled room for the expansion of the Main Branch of the Bank. The learned counsel for the petitioners has argued that PW 1 has no case that the scheduled room is required to the Bank for the expansion of its Main Branch. We were taken through the deposition of PW 1.

26. The Assistant Manager of the Bank was examined as PW 1. According to him, the scheduled room is a part of the ground floor of the building belongs to the Bank. The first floor of the building is occupied by the Thrissur Main Branch of

the Bank. The Thrissur Regional Office of the Bank is situated in the second-floor. The third floor is being used as the Staff Training College of the Bank. The fourth floor is being used as rooms for the teaching staff and faculty members. The fifth floor is being used for keeping old records. According to PW 1, all the remaining portions of the building except the scheduled room are in the possession of the Bank, and the said space is not sufficient for the smooth functioning of the Bank. The Bank can smoothly function only on getting the vacant possession of the scheduled room also.

27. According to PW 1, the Bank is in need of the scheduled room for the following purposes viz., (1) for the installation of an Automatic Teller Machine, (2) for the starting of a specialised branch for issuing Demand Drafts, and (3) to bring the NRI Branch of the Bank presently functioning in a rented building, into this building. In cross-examination, he has stated in evidence that the Bank has presently no separate counter for issuing D.D. In the words of PW 1, "for dealing it extra", not only a counter is sufficient; but also a separate branch is required. When he was asked whether any of the Banks at Thrissur has a separate branch for issuing D.D. alone, he answered that no other Banks at Thrissur has such a separate branch for the said purpose, and that is why the Bank wants to start such a separate branch for the said purpose. He has admitted that the Reserve Bank of India will not grant permission to start another regular branch in the very same building in which already a branch has been functioning. It is not a regular branch that is required for issuing D.D.; whereas, it is a specialised branch that is required for the same.

28. PW 1 has admitted that the number of staff members of the Bank in the Main branch in the said building during the period 1996-1997 has been considerably decreased thereafter. During 1996-1997, there were 300 staff members; whereas, presently it has been decreased to 225.

29. The learned counsel for the petitioners has pointed out that the need urged by PW 1 is totally different from the need that was projected in the Rent Control Petition. Ext. B. 17 is the copy of lawyer's notice dated 10.03.1990, caused to be issued by the Bank to the petitioners. The need specifically projected therein is that the Main Branch of the Bank was in dire need of additional accommodation and that the portion of the building in the occupation of the petitioners is required for the Bank's own personal use, for expansion also. Ext. B4 is the copy of lawyer's notice dated 1.07.1991 wherein the very same need as projected in Ext. B17 was shown. Ext. B6 is lawyer's notice dated 25.11.1993, wherein the need was shown as,

The Main Branch of my clients is functioning in the other floors of the said building and my client has found it extremely difficult to carry on its normal activities for want of space. My client is in dire need of additional accommodation and the portion of the building in your possession is required for the Bank's own use, for expansion of the Main Branch.

The need projected by the landlord in those notices was the very same need specifically projected by the landlord in the Rent Control Petition. The ground under S. 11(8) of the Act has been specifically pleaded in the Rent Control Petition by stating that the Bank is in need of additional accommodation of the space in the occupation of the petitioners, for the expansion of the Main Branch of the Bank.

30. The learned counsel for the petitioners has argued that even though what has been claimed in the Rent Control Petition is additional accommodation, when evidence came, the Bank has conveniently given a go by to that claim, and shifted the claim for some other independent need and not that of additional accommodation, and therefore, the respondents are not entitled to get an order under S. 11(8) of the Act in their favour. On a perusal of the order passed by the Rent Control Court as well as the judgment passed by the learned Rent Control Appellate Authority, it seems that both the courts below have not approached the question relating to the maintainability of the ground under S. 11(8) of the Act in that perspective. What was considered by the courts below is whether the Bank being an inanimate body can maintain a ground under S. 11(8) of the Act by forwarding "personal use". They have not approached the question whether an order directing the tenant to put the landlord in possession of the building on the ground under S. 11(8) of the Act could be passed, when only independent need has been projected in evidence.

31. The learned counsel for the petitioners and the learned Senior Counsel for the respondents have invited our attention to the decision in *S. Sivasubramanya Iyer Vs. S.H. Krishnaswamy*, *S.R. Babu Vs. T.K. Vasudevan and Others*, and *Indian Saree House Vs. Radhalakshmy*. It was held in those decisions that the grounds under Sections 11(3) and 11(8) of the Act are mutually exclusive. In *S. Subramanya Iyer's* case *supra*, it was held that if the landlord wants to accommodate persons dependent on him independently in the portion sought to be recovered from the tenant, S. 11(3) will apply. But, if he wants to take his dependents to his own residence and live with them, S. 11(8) will apply. The decision in *Babu's* case *supra*, and *Indian Saree House's* case *supra*, also clearly support the said view. In this particular case, it seems that the landlord after pleading the ground under S. 11(8), has adduced evidence relating to the ground under S. 11(3) of the Act. We are unable to comprehend the argument forwarded by the learned Senior Counsel for the respondents that the proof of the bona fide need of the landlord under S. 11(3) is much more rigorous than the proof of the claim of the landlord under S. 11(8) of the Act, and therefore, even if the need proved by the landlord is one under S. 11(3) of the Act, it can be treated as the proof of the bona fides of the claim of the landlord under S. 11(8), and an order can be passed in favour of the landlord under S. 11(8) of the Act.

32. Both the parties have understood the pleadings as one confined to the ground under S. 11(8) of the Act and not as one under S. 11(3) of the Act. They proceeded to adduce evidence also by having understood the ground resorted to

by the landlord as the one under S. 11(8) of the Act. In such a case, it cannot be said that the tenant could have understood the case of the landlord as the one falling under S. 11(3) of the Act. When the need for additional accommodation under S. 11(8) of the Act is claimed on the specific plea in the Rent Control Petition that the scheduled room is required for the expansion of the Main Branch, the landlord ought to have adduced evidence on that aspect. At the same time, PW 1 has stated in evidence regarding the need of the landlord in respect of the scheduled room for the purposes of installation of an Automatic Teller Machine, for a specialised Branch for issuing Demand Drafts, and also for bringing the NRI Branch of the Bank presently functioning in a rented building, to the building in question. There is absolutely nothing to assume or to understand that the said needs projected by PW 1 during evidence, are the expansion of the Main Branch; whereas, the same can be understood only as independent needs. Of course, the Bank may forward a claim for such independent needs under S. 11(3) of the Act; at the same time, it cannot be a need for additional accommodation under S. 11(8) of the Act. The case forwarded by PW 1 in evidence is clearly contradictory to the pleadings of the landlord.

33. Regarding additional accommodation, the learned counsel for the petitioners has pointed out that the evidence adduced by PW 1 itself militates against the claim of the landlord for additional accommodation. According to PW 1, during the period 1996-1997, there were 300 staff members at the Main Branch functioning at the first floor of the building. Thereafter, there was considerable decrease in the number of staff members, and presently there are only 225 staff members. In such a case, the landlord is expected to offer some explanation on that aspect as to why any additional space is required. It seems that no such explanation has been offered by the landlord. From all the above, we are of the considered view that the landlord has failed to establish the bona fides of the claim for additional accommodation within the meaning of S. 11(8) read with S. 11(10) of the Act, and therefore, the landlord is not entitled to an order directing the tenants to put the landlord in possession of the scheduled room on the ground under S. 11(8) of the Act. Both the courts below have failed to appreciate the above aspects in its correct perspective and they have arrived at incorrect conclusions. The decisions rendered by both the courts below on the aspects under Sections 11(7) as well as 11(8) are clearly illegal, irregular, and improper, and therefore, the same are liable to be set aside. We find that the Bank is not entitled to an order directing the petitioners to put the Bank in possession of the scheduled room on the grounds under Sections 11(7) and 11(8) of the Act. The Rent Control Petition filed on both the said grounds, is not maintainable. In the result, this Rent Control Revision is allowed and the impugned judgment passed by the learned Rent Control Appellate Authority as well as the order passed by the Rent Control Court, are set aside. The Rent Control Petition stands dismissed. In the nature of this Rent Control Revision, there is no order as to costs.