

Hameedia Hardware Stores, Represented ... vs B. Mohan Lal Sowcar on 29 March, 1988

Equivalent citations: 1988 AIR 1060, 1988 SCR (3) 384, AIR 1988 SUPREME COURT 1060, 1988 (2) SCC 513, (1988) 1 JT 664 (SC), (1988) 1 APLJ 49, 1988 (1) JT 664

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, N.D. Ojha

PETITIONER:

HAMEEDIA HARDWARE STORES, REPRESENTED BY ITS PARTNER S. PEER

Vs.

RESPONDENT:

B. MOHAN LAL SOWCAR

DATE OF JUDGMENT 29/03/1988

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

OJHA, N.D. (J)

CITATION:

1988 AIR 1060 1988 SCR (3) 384

1988 SCC (2) 513 JT 1988 (1) 664

1988 SCALE (1) 615

CITATOR INFO :

D 1989 SC 751 (9)

RF 1991 SC 2160 (18)

RF 1992 SC 2166 (3)

ACT:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960
Whether it is necessary for a landlord who institutes a
petition under section 10 (3)(a)(iii) thereof to establish
that his requirements is bona fide or not.

HEADNOTE:

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The respondent's brother was carrying on his business
in the front portion of the ground floor of the premises in

question, which belonged to the father of the respondent. The appellant purchased the said running business from the brother of the respondent. After purchasing the business, the appellant became a tenant under the father of the respondent. In the rear portion of the ground floor of the premises, one Mrs. Janaki Ammal was residing as a tenant. Mrs. Janaki Ammal vacated the said residential portion and the appellant took that portion also on rent from the father of the respondent. The ownership of the premises in question was transferred in favour of the respondent by his father. On 9.6.1982, an agreement was entered into in respect of both the portions specifying that the lease should remain in force till 8.5.1983. After the expiry of the said period, the respondent instituted a petition for eviction of the appellant in the Court of the Controller under section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground that the premises in question were needed by his wife for carrying on her business which she was carrying on somewhere else. The appellant contended inter alia that the requirement of the wife of the respondent was not bona fide. The Controller dismissed the petition, holding that the tenancy in question was in respect of both the residential and non-residential portions and the respondents could not seek eviction of the appellant as the major portion of the demised premises was of residential character. Aggrieved by the decision of the Controller, the respondent preferred an appeal before the Appellate Authority. The Appellate Authority dismissed the appeal. The respondent filed a revision petition before the High Court. The High Court allowed the revision petition holding that it was not necessary for the respondent to establish that his requirement was bona fide as the question of the bona fides of a landlord's requirement did not

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arise in a case under section 10 (3)(a)(iii) of the Act. It, however, held the claim of the respondent to be bona fide. Aggrieved by the decision of the High Court, the appellant filed this appeal before this Court for relief by special leave.

Allowing the appeal, the Court,

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HELD: The crucial question which arose for consideration in this case was whether a landlord, who sought eviction of a tenant from a non-residential building (other than a non-residential building used for keeping a vehicle or adapted for such use) under section 10 (3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (the Act) was required to prove that he required the said building for his own use or for the use of any member of his family bona fide. [390C-D]

The Act was enacted to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of the rents of

such buildings and the prevention of unreasonable eviction of the tenants therefrom in the State of Tamil Nadu. The Act is an ameliorating piece of legislation. Similar Acts are in force in almost all the States in India. The provision in question-section 10(3)(a)(iii)-has to be examined against this background. [390D;392G]

Having regard to the pattern in which clause (a) of sub-section (3) of section 10 of the Act is enacted and also the context, the words "if the landlord required it for his own use or for the use of any member of his family", found in sub-clause (ii) of section 10 (3)(a) of the Act, have to be read also into sub-clause (iii) of section 10 (3)(a) of the Act. Subclauses (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one sub-clause by adding a conjunction 'and' between the said two sub-clauses, in which event the clause would have read thus: 'in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own, and in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own.' If the two sub-clauses are not so read, it would lead to an absurd result. The non-residential building referred to in sub-clause (ii) is a building used for the purpose of keeping a vehicle or adapted for such use, and all other non-

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residential buildings fall under sub-clause (iii). The State legislature cannot be attributed with the intention that it required a more stringent proof by insisting upon proof of bona fides of his requirement or need also when a landlord is seeking eviction of a tenant from a garage than in the case of a non-residential building occupied by a large commercial house for carrying on business. It is no doubt true that the Court, while construing a provision should not easily read into it words not expressly enacted, but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted, the Court should construe it in a harmonious way to make it meaningful. [398C-H; 399A]

In the present case, by insisting on the proof of the bona fide of the requirement of the landlord, the Court is not doing any violence to the statute nor embarking upon any legislative action. The Court is only construing the words of the statute in a reasonable way having regard to the context. [399E]

By merely proving that the premises in question is a non-residential building and that the landlord or any member

of his family is not occupying, for the purpose of a business which he or any member of his family is carrying on, any residential building in the city, town or village concerned which is his own, the landlord cannot in the context in which section 10 (3)(a)(iii) appears, get a tenant evicted. He must show in view of clause (e) of section 10 (3) that his claim is bona fide. The word 'claim' means "a demand for something as due", or "to seek or ask for on the ground of right", etc. In the context of the Rent Control Law, which is enacted for the purpose of giving protection to the tenants against unreasonable evictions and for the purpose of making equitable distribution of buildings amongst persons who are in need of them, in order to prove that his claim is bona fide, a landlord should establish that he deserves to be put in possession of the premises which is in the occupation of a tenant. Any decision on the question whether a landlord deserves to be put in possession of a premises in the occupation of a tenant should naturally depend upon the bona fides of the landlord's requirement or need. The word 'claim' in clause (e) of section 10(3) of the Act should, therefore, be construed as 'the requirement' of the landlord or his deservedness. Since clause (e) of section 10(3) of the Act is also applicable to a petition filed under sub-clause (iii) of section 10(3)(a) of the Act, it becomes necessary to examine whether the requirement of the landlord is bona fide; otherwise, a landlord will be able to evict a tenant to satisfy his whim by merely proving the ingredients mentioned in section 10(3)(a)(iii) of the Act. If the requirement of "claim" being "bona fide" as contained in section 10(3)(e) is construed

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to mean that genuineness of the need of the landlord for the non-residential building is not to be considered and the circumstances that the landlord on the date of making the application is factually carrying on business and has no non-residential building of his own in his occupation in the city, town or village concerned, is to be construed sufficient to make his claim bona fide, the tenancy of no non-residential building will be secure. It will be preposterous to attribute such an intention to the legislature. The need of the landlord should be genuine. The landlord should bona fide need the premises for his own use and occupation or for the occupation by any of the members of his family, as held by this Court in *Phiroze Bamanji Desai v. Chandra Kant M. Patel and Ors.*, [1974] 3 S.C.R. 267 and *Mattulal v. Radhe Lal*, [1975] 1 S.C.R. 127. [399F-H; 400A-G]

The High Court was in error in this case in holding that the landlord need not prove that his requirement was bona fide but that his claim was bona fide as provided in clause (e) of section 10(3) of the Act. The High Court made a distinction between 'requirement' and 'claim' without

there being a difference. [400H; 401A]

The Court was of the view that M/s. Mahalakshmi Metal Industries v. K. Suseeladevi, [1982] 2 Mad. L.J. 333; M. Abdul Rahman v. S. Sadasivam, [1984] 1 Mad. L.J. 410 'and A. Khan Mohammed v. P. Narayanan Nambiar & Ors., 99 Law Weekly 965, relied upon by the respondent, were wrongly decided and were liable to be over-ruled. The Court overruled them. A landlord seeking eviction of a tenant from a non-residential premises under section 10(3)(a)(iii) of the Act should in order to succeed in his petition, establish that he bona-fide requires the premises in addition to proving the other ingredients referred to therein. The judgment of the High Court set aside. Since the High Court had approached the case from a wrong angle, the Court directed the High Court to decide the case afresh in the light of what the Court had said in this appeal. Case remanded to the High Court to decide it afresh. If the High Court found that the case should be remanded to the Trial Court to enable any of the parties to lead evidence on the question of bona fide requirement of the landlord, it might remit the case to the Trial Court. [401B-D]

Mahalakshmi Metal Industries v. K.Suseeladevi, [1982] 2 Mad. L.J. 333; M. Abdul Rahman v. S. Sadasivam, [1984] 1 Mad. L.J. 410, and A. Khan Mohammed v. P.Narayanan Nambiar and others, 99 Law Weekly 965, overruled.
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Moti Ram v. Suraj Bhan and Others, [1960] 2 S.C.R. 896; Neta Ram v. Jiman Lal, [1962] 2 Supp. S.C.R. 623; Nathala Sampathu Chetty v. Sha Vajingjee Bapulal, [1967] 1 Mad. L.J. 289; Madras District Central Co-operative Bank Limited, Mylapore Branch, Madras-4 v. A. Venkatesh, 99 Law Weekly 714; M/s. Thilagaraj Match Works, through its partner S. Chidambaram v. C. Sundresan, [1985] 1 Mad, Law J. 106; P. Thanneer-Malai Chettiar v. S.J. Dhanraj and another, [1986] Mad. L.J. 115; Seaford Court Estates Ltd. v. Asher, [1949] 2 All. E.R. 155 at 164; M. Pentiah and Ors. v. Muddala Veeramallappa and Ors., [1961] 2 S.C.R. 255 at 314; Bangalore Water Supply & Sewerage Board, etc. v. R. Rajappa
JUDGMENT:

Chandrakant M. Patel & Ors., [1974] 3 S.C.R.267 and Mattulal v. Radhe Lal, [1975] 1 S.C.R.127,referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No.1014 of 1988.

From the Judgment and Order dated 25.1.1988 of the Madras High Court in C.P.P. No. 215 of 1986.

Mrs. Nalini Chidambaram, Ms. Setia Vaidalingam, N. Thiagarajan and Ms. Radha for the Appellant.

S. Srinivasan for the Respondent.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The question which arises for consideration in this case is whether a landlord who seeks eviction of a tenant from a non-residential building (other than a non-residential building which is used for keeping a vehicle or adapted for such use) under section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter referred to as 'the Act') is required to prove that he requires the said building for his own use or for the use of any member of his family bona fide in the proceedings instituted before the Controller.

The appellant is a partnership firm represented by its partner, 5. Peer Mohammed. The respondent's brother was carrying on business in hardware in the front portion of the ground floor of the premises bearing No. 157, Kutcheri Road, Mylapore, Madras-4. The appellant purchased the said running business from the brother of the respondent on 5.7.1974. The said building, however, belonged to the father of the respondent. After purchasing the business, the appellant became a tenant under the father of the respondent by paying an advance of Rs.1,500 and agreeing to pay a rent at the rate of Rs.450 per month for the portion in which it commenced to carry on the business. In the rear portion of the ground floor of the premises one Mrs. Janaki Ammal was residing as a tenant. Mrs. Janaki Ammal vacated the said residential portion in October, 1974. With effect from 5.10.1974 the appellant took the portion vacated by Mrs. Janaki Ammal also on rent from the father of the respondent by paying Rs.525 as advance and agreeing to pay a monthly rent of Rs.175. The rent of this portion was increased subsequently to Rs.315 per month. On 25.11.1980 the appellant received a notice from an advocate, who was acting on behalf of the father of the respondent terminating the tenancy of the appellant in respect of both the portions with effect from 31.12.1980 and requiring the appellant to deliver possession of the two portions of the ground floor of the premises in question to the father of the respondent on the ground that he needed the premises for the occupation of his son. The appellant sent a reply denying the right of the respondent's father to evict the appellant from the premises. Thereafter it is stated that the ownership of the premises in question was transferred in favour of the respondent by his father. Thereafter the respondent asked the appellant to increase the rent payable for the premises. In order to avoid litigation, the appellant agreed to pay a consolidated amount of Rs.1,000 per month by way of rent for both the portions in the year 1981 and also paid a sum of Rs.7,500 as advance. On 9.6.1982 an agreement was entered into in respect of both the portions specifying that the lease should remain in force till 8.5.1983. After the expiry of the said period, it is stated, the respondent again demanded enhanced rent. On the appellant not complying with the said demand the respondent instituted a petition for eviction of the appellant in the Court of the Controller at Madras under section 10(3)(a)(iii) of the Act on the ground that the premises in question were needed by his wife for carrying on pawn broker business which she was carrying on elsewhere. The appellant resisted the petition. It was inter alia contended by the appellant that the requirement of the wife of the respondent was not bona fide and the petition was liable to be dismissed. After trial, the Controller dismissed the petition holding that the tenancy in question was in respect of both the residential and non-residential portions and that the respondent could not seek eviction of the appellant as the major portion of the demised premises was of residential character. Aggrieved by the decision of the Controller the respondent preferred an appeal before the Appellate Authority. The Appellate Authority dismissed the appeal. Thereupon the respon-

dent preferred a revision petition before the High Court of Madras in Civil Revision Petition No. 215 of 1986. That petition was allowed by the High Court holding that it was not necessary for the respondent to establish that his requirement was bona fide as the question of bona fides of a landlord's requirement did not arise for consideration at all in case falling under section 10(3)(a)(iii) of the Act. It, however, held that the claim of the respondent was bona fide. Accordingly, the High Court allowed the revision petition and directed the appellant to quit and deliver vacant possession of the premises in question to the respondent. This appeal by special leave is filed against the judgment of the High Court of Madras.

The crucial question which arises for consideration in this case is whether it is necessary for a landlord, who institutes a petition under section 10(3)(a)(iii) of the Act, to establish that his requirement is bona fide or not. As can be seen from the long title of the Act it was enacted by the State Legislature to amend and consolidate the law relating to the regulation of the letting of residential and non-residential buildings and the control of rents of such buildings and the prevention of unreasonable eviction of tenants therefrom in the State of Tamil Nadu. Section 10 of the Act provides that a tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of section 10 or sections 14 to 16 of the Act. The material portion of sub-section 3(a) of section 10 of the Act, which is relevant for purposes of this case reads thus:

"10(3)(a). A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building.

(i) in case it is a residential building, if the landlord required it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned;

(ii) in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own;

(iii) in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own;

(e) The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application."

For purposes of sub-section (3) of section 10 of the Act the buildings are classified into two categories by the Act, namely, residential buildings and non-residential buildings. Sub-clause (i) of clause (a) of sub-section (3) of section 10 of the Act provides that a landlord may subject to the provisions of clause (d) apply to the Controller for an order directing the tenant to put the landlord in possession of a residential building, if the landlord required it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned. Sub-clause (ii) of clause (a) of sub-section (3) of section 10 of the Act relates to eviction from a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use. If the landlord required such a building for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own he can apply for the eviction of the tenant therefrom. Sub-clause (iii) of clause (a) of sub-section (3) of section 10 of the Act deals with other kinds of non-residential buildings. If the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own, a landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of such a building. It may be stated here that the words 'if the landlord required it for his own use or for the use of any member of his family' are not to be found in sub-clause

(iii) of section 10(3)(a) of the Act. Clause (e) of section 10(3) of the Act, however, provides that the Controller shall, if he is satisfied that the claim of the landlord is bona fide make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application. Clause (e) of section 10(3) applies to all cases of eviction falling under section 10(3) of the Act. The decision in this case depends upon the effect of the omission of the words 'if the landlord required it for his own use or for the use of any member of his family' in sub-clause (iii) of section 10(3)(a) of the Act. It is argued on behalf of the appellant that reading sub-clause (ii) and (iii) of section 10(3)(a) of the Act together, which relate to the eviction from non-residential buildings, the words 'if the landlord required it for his own use or for the use of any member of his family' which are found in sub-clause (ii) of section 10(3)(a) should be read into sub-clause (iii) of section 10(3)(a) also and that a landlord should establish in order to succeed in a petition for eviction filed under section 10(3)(a)(iii) of the Act that his requirement or the requirement of a member of his family is bona fide. It is also argued in the alternative that the word 'claim' in the words 'that the claim of the landlord is bona fide' in clause (e) of section 10(3) of the Act refers only to the requirement of the landlord and to nothing else. On the other hand it is urged on behalf of the respondent relying upon three decisions of the High Court of Madras in (i) *M/s. Mahalakshmi Metal Industries v. K. Suseeladevi*, [1982] 2 Mad. L.J. 333; (ii) *M. Abdul Rahman v. S. Sadasivam*, [1984] 1 Mad. L.J. 410 and (iii) *A. Khan Mohammed v. P. Narayanan Nambiar & Others*, 99 Law Weekly 966 that there was no need for a landlord to establish the bona fides of his requirement or the requirement of a member of his family when a petition is filed under section 10(3)(a)(iii) of the Act and it is enough if his claim is proved to be bona fide. The High Court has upheld the said plea of the respondent relying upon the said three decisions. The correctness of these three decisions is questioned before us by the appellant.

We have already noticed that the object of the Act was to prevent unreasonable evictions of tenants from buildings. The Act is an ameliorating piece of legislation. Similar acts are in force in almost all the States in India. The provision in question has to be construed against this background. The Act has been in force from 1960.

In *Moti Ram v. Suraj Bhan & Other*, [1960] 2 S.C.R. 896 this Court was required to construe section 13(3)(a)(iii) of the East Punjab Urban Rent Restriction Act, 1949 which at the relevant time provided that a landlord might apply to the Controller for directing a tenant to put the landlord in possession of the building in question if he required it for the re-construction of that building or for its replacement by another building or for the erection of other buildings. In that case the Rent Controller and the Appellate Authority had rejected the claim of the landlord on the ground that the landlord had not established that the premises in question were required by him bona fide. The High Court while accepting that the requirement in question must be shown to be bona fide held that on the evidence the findings of the Courts below that the landlord's requirement was not bona fide were not correct. The High Court accordingly directed the eviction of the tenant in question. This Court while affirming the decision of the High Court held that the landlord had, in fact, made out that he required the premises bona fide for purposes of re-construction. Thus it is seen that in the context of a law enacted for preventing unreasonable evictions this Court read into a ground on which a landlord could seek the eviction of his tenant that the landlord should establish that his requirement was bona fide. A mere desire on the part of the landlord to re-construct a building was not sufficient to evict a tenant from the premises. He had to establish that he needed the premises bona fide for re-construction it. In a later case, i.e., *Neta Ram v. Jiwan Lal*, [1962] 2 Supp. S.C.R. 623 which arose under the provisions of the Patiala and East Punjab States Union Urban Rent Restriction Ordinance, one of the grounds on which the landlord sought the eviction of the tenants in occupation of the premises involved in that case was that the premises were in a state of disrepair and were dilapidated and, therefore, the landlord wished to rebuild on the premises after dismantling the structure. On the said issue the Rent Controller held that in deciding whether the tenant should be ordered to hand over the possession to the landlord the Courts must have regard to the bona fide requirement of the landlord which meant that the desire to rebuild the premises should be honestly held by the landlord but that the condition of the building also played an important part in determining whether the landlord had the intention genuinely and the landlord was not using the said excuse as a device to get rid of the tenants. In that connection the Rent Controller observed that the state of the building, the means of the landlord and the possibility of the better yield by way of rent should be kept in mind. The Controller, holding that the claim of the landlord was not bona fide, decided the said issue against him. On appeal the Appellate Authority held that the shops and chobaras were in good condition and that the landlord was not, in good faith, wanting to replace the building, when he had no means to build it. The High Court, however, allowed the revision petition filed before it holding that upon the evidence on record it had been established beyond doubt that the landlord genuinely and bona fide required the premises for re-building. On appeal by special leave to this Court, this Court observed that the very purpose of the Rent Restriction Act would be defeated if the landlords were to come forward and to get tenants turned out, on the bare plea that they wanted to reconstruct the house without first establishing, that the plea was bona fide with regard to all circumstances, viz. that the houses needed reconstruction or that they had means to reconstruct them. Accordingly, the judgment of the High

Court was reversed and the petitions for eviction were dismissed. Following the observations made in the above decisions in *Nathella Sampathu Chetty v. Sha Vajingjee Bapulal*, [1967] 1 Mad. L.J. 289 a Division Bench of the High Court of Madras construed section 10(3)(a)(iii) of the Act thus:

"Section 10 of the Madras Buildings (Lease and Rent Control) Act, 1960, provides for eviction of tenants in certain circumstances. Sub-section 3(a)(iii) of the section allows a landlord to apply to the Controller for an order directing a tenant to put him in possession of the building if the landlord is not occupying for purposes of business which he is carrying on, a non- residential building in the city, town or village concerned which is his own. The second proviso to this clause is to the effect that where a landlord has already obtained possession of a building under this provision, he shall not be entitled to apply again for possession of another non- residential building of his own. If the conditions of these provisions are satisfied, the Controller may make an order as asked for by the landlord provided he is further satisfied that the claim of the landlord is bona fide.

(underlining by us) In the *Madras District Central Co-operative Bank Limited, Mylapore Branch, Madras-4 v. A. Venkatesh*, 99 Law weekly 714 a single Judge of the High Court disagreed with the views expressed by another single Judge in *Abdul Rahman's* case (*supra*) and observed thus:

"The question now is whether an order directing the tenant to put the landlord in possession should be made. It is pointed out by the learned counsel for the respondent landlord following a ruling of this Court in *Abdul Rahman v. S. Sadasivam*, that there is no jurisdiction for the Rent Controller to go into the question of bona fide requirement in a claim under s. 10(3)(a)(iii) of the Act. *Ramanujam, J.* took the view that a distinction has to be made between the two sections, s. 10(3)(a)(i) and s. 10(3)(a)(iii) in view of the word 'require', occurring in s. 10(3)(a)(i) and in the absence of that word, in s. 10(3)(a)(iii) in other words, what the learned Judge points out is that the Rent Controller has no jurisdiction to go into the question whether the requirement of the landlord is bona fide, as the Rent Controller has to pass an order of eviction in case the landlord is not occupying for the purpose of business which he is carrying on, any non-residential building in the city which is his own. The learned Judge further pointed out that when the provisions of s. 10(3)(a)(i) and s. 10(3)(a)(iii) use different expressions, it should be taken that the Legislature intended these provisions to have different operations. With respect to the learned Judge, I may point out that the mere absence of the word 'require' in s. 10(3)(a)(iii) would not necessarily lead to the inference that the Legislature did not intend that the Rent Controller should go into the question of bona fides of the requirement of the landlord in respect of the requirement of a non-residential premises under s. 10(3)(a)(iii) of the Act. My reasons for holding so are as follows: S. 10 enumerates certain grounds for the eviction of the tenant. In other words eviction under the Rent Control Act can be effected only on the grounds mentioned in s. 10. The landlord may have a right to evict the tenant under the general law. S. 10(3)(a)

says that the landlord may, subject to the provisions of Cl. (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the buildings. S. 10(3)(a)(i) deals with residential buildings. S. 10(3)(a)(ii) deals with non-residential buildings used for purpose of keeping vehicles. S. 10(3)(a)(iii) is in respect of non-residential buildings. S. 10(3)(b) gives a right to religious, charitable, educational or other public institutions, to institute proceedings before the Controller if the institution requires the building. S. 10(3)(c) is for additional accommodation. S. 10(3)(d) speaks of tenancy for specified period agreed between the landlord and the tenant and it prohibits the landlord from applying, before the expiry of such period. Now after these sections, S. 10(3)(e) runs thus:

'The Controller shall, if he is satisfied that the claim of the landlord is bona fide make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application.' I find in the judgment of Ramanujam, J. this S. 10(3)(e) has not been adverted to. S. 10(3)(e) applies to Ss. 10(3)(a)(i), 10(3)(a)(ii) and 10(3)(a)(iii) and also to Ss. 10(3)(b) and 10(3)(c). If the Legislature intended that the provisions of S. 10(3)(a)(i) and S. 10(3)(a)(iii) to have different operations, the Legislature would not have stated in S. 10(3)(e) that the Controller should be satisfied that the claim of the landlord is bona fide, before he makes an order directing the tenant to put the landlord in possession, and the further words 'if the Controller is not so satisfied, he shall make an order rejecting the application' very clearly show that the Controller should, before passing an order for eviction, be satisfied with the bona fide of the claim, or else he should dismiss it."

The main ground on which the learned Judge who decided the above case disagreed with the decision in Abdul Rahman's case (supra) is that in Abdul Rahman's case (supra) section 10(3)(e) of the Act, which applied to all the three sub- clauses, namely (i), (ii) and (iii) in section 10(3)(a) of the Act had not been adverted to. The learned Judge also held that the mere absence of the word 'require' in section 10(3)(a)(iii) of the Act did not necessarily lead to the inference that the Legislature did not intend that the Controller should not go into the question of bona fides of the requirement of the landlord in a petition for eviction filed under that provision. Another learned Judge of the Madras High Court has taken the same view in *M/s. Thilagaraj Match Works, through its partner S. Chidambaram v. C. Sundaresan*, [1985] 1 Mad. Law J. 106. It is observed in that case thus:

"In the present case, the Appellate Authority has not adverted to these features at all and in one place he observes that the bona fide of the claim of the landlord is extraneous and it should not be tested too severely. This exposes his wrong approach to the question of bona fide which is a relevant one. The very ingredient of section 10(3)(e) of the Act requires that the question of bona fide has got to be tested and it has got a due place while adjudicating a petition for eviction by the landlord under the concerned provisions. It is not the desire of the landlord, but there must be an element of need for the landlord before it could be stated that he requires the

premises for his own occupation. The features referred to above, cannot be eschewed as irrelevant, for after all bona fide will have to be proved in an ordinary manner like any other fact in issue, and the entire gamut of facts and circumstances has to be adverted to on this question. As already stated, I am not expressing any opinion over these features on merits, and it is for the Appellate Authority to advert to them and adjudicate upon the question afresh one way or the other. The discussions above oblige me to interfere in revision and accordingly the revision is allowed and the matter stands remitted to the Appellate Authority for him to consider it afresh taking note of all the relevant features and factors of the case on the question of bona fides, and pass appropriate orders. Both the counsel represent that for the purpose of comprehensive adjudication of the matter, further evidence has to be adduced. I take note of the request of both the counsel and I direct that the Appellate Authority will permit the parties to place further evidence and he will decide the matter afresh after such evidence is placed, the Appellate Authority will do well to dispose of the matter expeditiously and in any event within a period of three months from the date of receipt of the copy of this order."

In *P. Thanneermalai Chettiar v. S.J. Dhanraj*, [1986] Mad. L.J. 115 another learned Judge of the High Court of Madras has construed section 10(3)(e) of the Act thus:

"It is not disputed that section 10(3)(e) of Act 18 of 1960 is applicable to the case of residential building as well as non-residential building and it is provided therein that if the Controller is satisfied that the claim of the landlord is bona fide, he shall make an order directing the tenant to put the landlord in possession of the building; otherwise, he has to reject the application. In the instant case, considering the various circumstances and also the fact that the petitioner was residing in a house of his own at Devakottai where he has got vast extent of properties and was carrying on business along with other members of his family, the claim of the petitioner that he required the premises for his own use and occupation is not proved and in any event there is no bona fide in the same"

The main ground on which the learned Judge who decided Abdul Rahman's case (*supra*) held that it was not necessary to establish the bona fide equipment of the landlord when he made an application for eviction under section 13(3)(a)(iii) of the Act was that, the word 'require' was not to be found in section 10(3)(a)(iii) of the Act. We are of the view that having regard to the pattern in which clause (a) of sub-section (3) of section 10 of the Act is enacted and also the context, the words 'if the landlord required it for his own use or for the use of his any member of the family' which are found in sub-clause (ii) of section 10(3)(a) of the Act have to be read also into sub-clause (iii) of section 10(3)(a) of the Act. Sub-clause (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one sub-clause by adding a conjunction 'and' between the said two sub-clause, in which event the clause would have read thus: 'in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any other

non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own.' If the two sub-clauses are not so read, it would lead to an absurd result. The non-residential building referred to in sub- clause (ii) is a building which is used for the purpose of keeping a vehicle or adapted for such use and all other non- residential buildings fall under sub-clause (iii). The State Legislature cannot be attributed with the intention that it required a more stringent proof by insisting upon proof of bona fides of his requirement or need also when a landlord is seeking eviction of a tenant from a garage than in the case of a non-residential building which is occupied by large commercial house for carrying on business. The learned counsel for the respondent was not able to explain as to why the State Legislature gave greater protection to tenants occupying premises used for keeping vehicles or adapted for such use than to tenants occupying other types of non- residential buildings. It is no doubt true that the Court while construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful.

In *Seaford Court Estates Ltd. v. Asher*, [1949] 2 All. E.R. 155 at 164. Lord Denning L.J. said:

"When a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give 'force and life' to the intention of the legislature A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven but he can and should iron out the creases."

This rule of construction is quoted with approval by this Court in *M. Pentiah and Ors. v. Muddala Veeramallappa and Ors.*, [1961] 2 S.C.R. 295 at 314 and it is also referred to by Beg, C.J. in *Bangalore Water-Supply & Sewerage Board, etc. v. R. Rajappa & Ors.*, [1978] 3 S.C.R. 207. In the present case by insisting on the proof of the bona fides of the requirement of the landlord, the Court is not doing any violence to the statute nor embarking upon any legislative action. The Court is only construing the words of the statute in a reasonable way having regard to the context.

We are of the view that by merely proving that the premises in question is a non-residential building and that the landlord or any member of his family is not occupying for the purpose of a business which he or any member of his family is carrying on any residential building in the city, town or village concerned which is his own, the landlord cannot in the context in which section 10(3)(a)(iii) appears get a tenant evicted. He must show in view of clause (e) of section 10(3) that his claim is bona fide. The word 'claim' means "a demand for something as due" or "to seek or ask or for on the ground of right" etc. In the context of Rent Control Law which is enacted for the purpose of giving protection to tenants against unreasonable evictions and for the purpose of making equitable distribution of buildings amongst persons who are in need of them in order to prove that his claim is

bona fide a landlord should establish that he deserves to be put in possession of the premises which is in the occupation of a tenant. Any decision on the question whether a landlord deserves to be put in possession of a premises in the occupation of a tenant should naturally depend upon the bona fides of the landlord's requirement or need. The word 'claim' in clause

(e) of section 10(3) of the Act should, therefore, be construed as 'the requirement' of the landlord or his deservedness. 'Deserve' means 'to have a rightful claim' or 'a just claim'. Since clause (e) of section 10(3) of the Act is also applicable to a petition filed under sub-clause

(iii) of section 10(3)(a) of the Act it becomes necessary to examine whether the requirement of the landlord is bona fide. Otherwise a landlord will be able to evict a tenant to satisfy his whim by merely proving the ingredients mentioned in section 10(3)(a)(iii) of the Act. Take a case where a landlord for some oblique reason wishes to get rid of his tenant from a non-residential building of the category mentioned in section 10(3)(a)(iii) and to achieve his aim fakes to start money-lending business (for which indeed no specified separate portion in a building may be needed) in a building not belonging to him and to create evidence even actually lends money to some of his friends or relatives and a week thereafter applies for eviction of the tenant on the ground that he is carrying on business and has no non-residential building of his own in his occupation in the city, town or village concerned. Apparently, the conditions prescribed in the aforesaid sub-clause (iii) are fulfilled. If the requirement of "claim" being "bona fide" as contained in section 10(3)(e) is construed to mean that genuineness of the need of the landlord for the non-residential building is not to be considered and the circumstances that the landlord on the date of making the application is factually carrying on business and has no non-residential building of his own in his occupation in the city, town or village concerned is to be construed sufficient to make his claim bona fide, the tenancy of no non-residential building will be secure. It will be preposterous to attribute such an intention to the legislature. Such a contingency should be avoided as it would be against the very object of the Act itself. The need of the landlord should be genuine. That is the object of enacting clause (e) of section 10(3) of the Act. When once we reach the above conclusion it is not enough that the landlord should merely desire to use or occupy the premises. What is necessary is that he should bona fide need them for his own use and occupation or for occupation by any of the members of his family as held by this Court in *Phiroze Bamanji Desai v. Chandrakant M. Patel & Ors.*, [1974] 3 S.C.R. 267 and *Mattulal v. Radhe Lal*, [1975] 1 S.C.R. 127. The learned Judge who decided the case out of which this appeal arises was, therefore, in error in holding that the landlord need not prove that his requirement was bona fide but that his claim was bona fide as provided in clause (e) of section 10(3) of the Act. The learned Judge has made a distinction between 'requirement' and 'claim' in the present case without there being a difference.

In the circumstances we are of the view that *M/s. Mahalakshmi's case* (supra), *M. Abdul Rahman's case* (supra) and *A. Khan Mohammed's case* (supra) have been wrongly decided. They are liable to be overruled. We accordingly overrule them. We hold that a landlord seeking eviction of a tenant from a non-residential premises under section 10(3)(a)(iii) of the Act in order to succeed in his petition should establish that he bona fide requires the premises in addition to proving the other ingredients referred to therein. The judgment of the High Court which has proceeded on a wrong basis has, therefore, to be set aside. Since the High Court while allowing the revision petition has

approached the case from a wrong angle, it is necessary to direct the High Court to decide it afresh in the light of what we have stated above. We, therefore, set aside the judgment of the High Court and remand it to the High Court again to decide it afresh. If the High Court finds that the case should be remanded to the Trial Court to enable any of the parties to lead evidence on the question of the bona fide requirement of the landlord it may remit the case to the Trial Court.

The appeal is accordingly allowed. There shall be no order as to costs.

S.L.

Appeal allowed.