

**(1999) 07 MAD CK 0022**  
**In the Madras High Court**  
**Case No : C.R.P. No. 345 of 1996**

A. Mohan and 2 others

APPELLANT

Vs

Smt. Kamalam Ammal and 5 others

RESPONDENT

**Date of Decision :** 05-07-1999

**Acts Referred:**

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2)(i), 10(3)(c)

**Citation :** (1999) 07 MAD CK 0022

**Hon'ble Judges :** M. Karpagavinayagam, J

**Bench :** Single Bench

**Advocate :** V. Raghavachari, for the Appellant; P. Jothimani, for the Respondent

## **Judgement**

M. Karpagavinayagam, J.—The petitioners are landlords and the respondents are the tenants in this revision. The landlords filed a petition

for eviction of the tenants from the premises 89-A, Vadakkuradha Veedhi, Dindigul on two grounds:- i) willful default in payment of rent and ii)

Building is required for additional accommodation to run the business.

2. After enquiry, the Rent Controller passed an order of eviction upholding both the grounds.

3. Aggrieved by the said order, the tenants have filed an appeal challenging the order of eviction before the Appellate Authority. After hearing the

counsel for the parties, the Appellate Authority set aside the order of eviction holding that the landlords are not entitled to ask for eviction. As

against that order in appeal, the landlords, petitioners herein, have filed this revision before this Court.

4. During the enquiry before the Rent Controller, on the side of landlords, PW.1 Alagesan was examined and Exs. A1 to A 17 were marked. On

the side of tenants, RW.1 Sankaran was examined and Exs. R1 to R5 were marked.

5. The case projected by the landlords through the materials placed before the Rent Controller is as follows:-

There are four shops 89, 89-A, 89-B and 89-C owned by landlords. All are situated in the same place adjacently. One Amirthalingam Asari

entered into a Rental Agreement with the father of the petitioners, the landlords, to have the premises of 89-A. Two years ago, Amirthalingam

Asari died. So, the present tenants, being his legal heirs, agreed to pay Rs. 160/- per month from November, 1986 to the present landlords. The

shop at the eastern side i.e., next to 89-A was occupied by the landlords having the cycle hiring and repairing shop. Since the rents were not paid

from January 1987 to June 1987 i.e., for six months, the landlords sent a notice demanding the amount of Rs. 960/- towards six months rental

arrears and asking to vacate the premises since it was required for additional accommodation. Only on receipt of notice, the tenants paid Rs. 800/-

, rent amount for five months, instead of Rs. 960/-, the rental arrears for six months. Therefore, another notice was sent by the landlords to the

tenants asking to pay the rent for the month of June, 1987. Neither reply nor money was sent. Then, several notices were sent by the landlords.

Despite the service of notices, no reply was sent by the tenants. Cycle business of the landlords has considerably improved and they require the

premises for additional accommodation.

6. The case of the tenants, as projected through the materials produced by them, could be narrated as follows:-

The tenant's father was doing gunny bag business for 35 years. Initially, the rent was fixed at Rs. 15/- and from November, 1986, the rent was

enhanced to Rs. 160/-. Landlords demanded the increased rent of Rs. 200/- from January, 1987. That was not agreed by the tenants. When Rs.

160/- was given in the month of February towards the rent for January, the landlords refused to receive the same. When the tenants received a

notice in July 1987, they sent Rs. 800/- towards the rental arrears. However, after filing of the petition, in the first hearing, the entire rent was paid.

The landlords have got several shops. Since the increased rent was refused to be paid. The petition has been filed mala fide. The landlords are

having their cycle shop only for the past two years.

7. After scrutiny of the materials, the Rent Controller held that the tenants have committed willful default in paying the rent in respect of the month

of June, 1987 and that the requirement for additional accommodation of the landlords was bona fide. However, this order was set aside by the

Appellate Authority holding that the landlords failed to prove both these grounds.

8. Mr. Raghavachari, the learned counsel appearing for the petitioners, the landlords, would contend that the well considered order of the Rent

Controller has been set aside by the Appellate Authority on the reasonings which are manifestly erroneous and opposed to material evidence on

record, and that the Appellate Authority committed a serious illegality by not referring about the reasonings given by the Rent Controller and by not

appreciating the evidence on record by misreading the same.

9. On the other hand, Mr. Jothimani, learned counsel appearing for the tenants, respondents herein, would submit in support of the order of the

Appellate Authority that the Appellate Authority is correct in holding that the landlords have failed to prove their case and held that the hardship

which would be caused to the tenants in the event of an order of eviction is passed would out-weigh the hardship on the landlords.

10. I have carefully considered the rival contentions.

11. On going through the order of the Rent Controller, directing the eviction of tenants, I find that the Rent Controller has discussed the evidence

let in by both parties elaborately and given various reasonings for accepting the plea of the landlords. On the other hand, the order of Appellate

Authority does not reveal that the Authority has properly applied its judicial mind and appreciated the materials available on record.

12. The landlords filed a petition for eviction of the tenants on two grounds, one is u/s 10(2)(i) i.e., for willful default and another is u/s 10(3)(c),

i.e., for additional accommodation, of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

13. The reasonings given by the Appellate Authority in his order, rejecting the ground of willful default, could be stated as follows:-

Landlords sent notice Ex. A1 on 13.7.1987 demanding the rental arrears. Immediately, on receipt of the notice dated 13.7.87, the tenants sent the

amount of Rs. 800/- and the same was received by the landlords. Again on

28-7-1987, another notice Ex.A3 was sent by the landlords reminding the tenants that rent for the month of June was not paid. On perusal of the notice Ex.A3 would show that the figure earlier written in Ex.A3 was struck off and corrected as Rs. 960/-. Therefore, the document Ex.A3 creates suspicion. It is the case of the tenants that the rent for the month of June was paid and the same was refused to be received by the landlords. Therefore, nonpayment of rent for the month of June is not the willful default.

14. The above reason for rejecting the ground of willful default does not seem to be, both legally as well as factually, sound.

15. It is the case of the landlords, petitioners herein, that the tenants had already paid the rents upto December 1986 and from 1-1-1987 to 30-6-

1987, the rents were not paid even after the oral demand for the same. Therefore, the landlords issued a notice dated 13-7-1987 demanding the

tenants to pay the rental arrears of six months viz., January to June, 1987 of Rs. 960/- and asking the tenants to vacate and hand over the premises

to the landlords. As the same is required for additional accommodation for expanding their cycle business which they are having in the next

building. Admittedly, this notice was received by the tenants on 15.7.1987. On 22-7-1987, a reply notice was sent and the amount of Rs. 800/-

was sent by Money Order to the landlords. Ex.RI, the Money Order Acknowledgement, would show that it was received by the landlords under

protest and since the entire rental arrears amount was not paid as demanded by the landlords, again they sent another notice Ex.A3 on 28-7-1987

reminding the tenants that June month's rent was not sent and asking them to send the same. Admittedly, this notice was also received by the

tenants as indicated in Ex.A4. Even then, there was no reply nor the June month's rent was paid. Thus, it is clear, despite the receipt of reminder

notice, the tenants did not care to pay the June month's rent nor to give any explanation for the same.

17 The case of the tenants is that earlier they have attempted to pay the rent to the landlords, but they refused to receive it, since they demanded

the enhanced rent. This may not be correct for the reason that if the said contention is true, the landlords would not have received the amount of

Rs. 800/- towards five months arrears of rent having sent Rs. 800/- towards 5

months arrears of rent at the rate of Rs. 160/- per month, as

admitted by the tenants, there was no reason nor explanation as to why the rent for the month of June was not paid till the eviction petition was filed.

17. "The Appellate Authority is quite strange to observe that there was a correction in the figure 960 in Ex.A3 and therefore, the said document creates suspicion. To make such an observation, in my view, there is no basis.

18. Even according to the tenants, the monthly rent is Rs. 160/-. The Ex.A3 was sent only on 28-7-1987. Even prior to that, notice Ex.A1,

demanding the arrears of rent towards six months of Rs. 960/- was sent on 13-7-1987 itself which was received by the tenants on 15-7-1987.

Since out of Rs. 960/- only Rs. 800/- was sent, the landlords were constrained to send another notice on 28-7-1987 intimating the tenants that they

have demanded Rs. 960/- towards six months arrears, but tenants had sent only Rs. 800/- towards five months arrears and that therefore, they had

to pay the rent for the month of June also. When there is no dispute, even by the tenants, with reference to the rate of rent, namely, Rs. 160/- per

month and the months, namely, January to June, 1987, then it is not understandable as to how the alleged correction in Rs. 960/- in Ex.A3, which

was sent on 28-7-1987, would create any suspicion. At the risk of repetition, I would reiterate that even according to the tenants, there were

arrears from January to June 1987 and that was the reason they paid the rent for the month of June after filing of the eviction petition i.e., on the

first hearing. Therefore, the mere correction of the figure in Ex.A3, cannot at all be a ground to reject the plea of landlords that the tenants have

committed a willful default in making the payment of rent in respect of June, 1987.

19. No doubt, it is true that Exs.R3 and R4 would show that subsequently, rents were paid for the months of July and August. But, this factor

cannot absolve the tenants from the charge of having committed the willful default in paying the rent in respect of June, 1987..

20. Time and again, the courts have held that it is the duty of the tenant to pay the rent regularly, every month, as enjoined by the statute even

without expecting any demand from the landlord. The tenants should have taken care to pay the rent every month as required by law. Having

defaulted in payment of rent regularly, the conduct of the tenants amounts to supine indifference and there cannot be any doubt that if such a default is made, the same is willful.

21. In the decision reported in *Mranalini B. Shah and Another Vs. Bapalal Mohanlal Shah*, the Supreme Court would observe that, the provisions of the Rent Control Act, which are mandatory in nature, must be strictly complied with by the tenant. The word "regularly" has a significance of its own, which enjoins a payment or tender characterised by reasonable punctuality. Therefore, when the rent is payable by the month, the tenant must, if he wants to avail the benefit of the provisions of the Act, tender or pay it every month as it falls due.

22. In 1984 (II) MLJ 383 (*Emberumanar v. Raghava*) it is held by this Court as follows :-

It may be that the default in the payment of the rent was not for a long period. But, that would not really make the default any the less willful

default, if otherwise the evidence indicates that it was so.

In the instant case, it may be a default of one month, but it shall be noticed that the landlords have demanded the amount orally, but the amount of

rents was not paid for the months of January to June. This necessitated the landlords to issue the notice on 13.7.1987. As indicated earlier, despite

the receipt of notice, only five months rent was sent and thereupon, the reminder was sent by the landlords demanding the balance amount of

arrears towards the month of June, but the tenants did not choose to pay the amount. Despite the receipt of several notices, the tenants have not

paid the rent nor any proper explanation offered before the Court.

23. Under these circumstances. I am not able to hold that the Appellate Authority is correct in rejecting the plea of willful default for the reasonings

mentioned in the order impugned. However, in this context, it is argued by the learned counsel for the respondents that though there, may be a

default in paying the rent for one" month, it may not be considered to be willful since, for all the subsequent months, the amounts were paid and

that therefore, the non-payment of one month rent shall be considered to be a mistake.

24. "In the context of this submission, let us now go into the reason given by the Appellate Authority for rejecting another plea namely, requirement

for additional accommodation. The said reason is as follows:-

The tenants were doing the business for the past 35 years in the premises in question, whereas the landlords were running the shops only for two

years. If the tenants are evicted, the hardship that may be suffered by the tenants would be comparatively more than the hardship suffered by the

landlords. Exs.A16 and A17, the Police charge sheet and the judgment were marked by the landlords in order to show that they were convicted

for having done their cycle business at the road side near the shop, and thereby the need arose for additional accommodation to expand their

business. In Ex.A1 7, judgment of the Criminal Court, it is said that the landlord was convicted for carrying on the business at the road side in

Vadakkuradha Veedhi"". But, Ex.A16, toe charge sheet, does not show that they run the shop at the road side in ""Vadakkuodha Veedhi"" and

therefore, Exs.A16 and A17 had to be rejected. Ex.A15 is the document to show that the landlord has asked the loan for doing the business

through ""Self-employment Scheme"". This document has to be rejected because it is dated 26-9-1989 and the same has been obtained subsequent

to the filing of the eviction petition.

25. The above reasonings given by the Appellate Authority are also, in my view, without any basis.

26. No doubt, it is the case of the tenants that they were doing the gunny bag business in the premises in question for about 35 years. It is an

admitted case that originally the father was a tenant and after his death, in the year 1986, the present tenants have entered into a rental agreement

with the landlords for the rent of Rs. 160/- per month agreeing to pay the rent on or before fifth of every month, which is a written one. It is also

admitted by PW.1, the landlord, that upto December, 1986, the payment of rent was made regularly. Subsequently, from 1.1.1987 to 30-6-1987,

for six months, the rental arrears of Rs. 960/- were not paid. PW.1 would specifically state that the tenant himself would come and pay the rent for

every month and since the amount was not paid regularly, he went and orally demanded the amount and even then; the arrears were not paid. He

would also state while deposing before the Court that he is doing the Cycle business from the year 1980. It is seen from the records that the

deposition was recorded on 14-8-1992. This would show that he was having the

cycle shop for 12 years. PW.1 never admitted that he was having the business only for 2 years. Even in the cross-examination, no suggestion was put to PW.1. Therefore, it may not be correct to say that the cycle business was being run by PW.1, the landlord, only for 2 years. However, the relative hardship cannot be assessed in terms of the arithmetical calculation over the years of the business. Moreover, the relative hardships shall be proved by the respective parties. In the instant case, except a suggestion put by the tenants that the hardship of the tenants would be more in the event of eviction, there is no material produced by the tenants to establish his comparative hardship. On the other hand the landlords produced some documents to show their bona fide in the requirement for premises for additional accommodation and also the relative hardship that they have already suffered due to the want of accommodation. But, these documents have not been given due credence, by the Appellate Authority.

27. Ex.A15 is the document produced by the landlord to show that he has applied for loan for conducting his business through the "Self-employment Scheme". No doubt, it is true that Ex.A15 is dated 12-9-1989, subsequent to the filing of the eviction petition. But, there may not be any bar for taking into consideration of the subsequent evidence when the eviction proceedings are pending in order to decide about the issue in the eviction petition. This Court has repeatedly held that the subsequent events also may be taken note of even though the eviction petition was filed earlier.

28. In the decision reported in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , the Apex Court would hold as follows:-

For making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases, must take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

Thus, it is well settled that any subsequent event can be taken into account before the final adjudication of the matter by the Tribunal, if the said event has the material bearing on the landlord's right to evict. On the strength of the Supreme Court's decision, there are other decisions rendered

by this Court, which are as follows:-

1. 1995-1 L.W. 689 (Subramaniam, S. v. Palanisamy Gounder, G.R.)

2. 1997-3-L.W. 235 (Jermons, J. v. Alimmal & Others)

29. In the light of the above principles, in the present case, the Appellate Authority ought to have taken into account the document, though it has

come into existence subsequent to the filing of the eviction petition and found out whether it has got any bearing on the issue in question and ought

not to have rejected the same merely on the ground that the said document was obtained after filing of the eviction petition.

30. There is yet another aspect of the matter. Exs.A16 is the charge sheet and Ex.A1 7 is the judgment. These documents are dated 10-12-1987.

The above documents also would relate to the date subsequent to the filing of the eviction petition. However, curiously, the Appellate Authority

would not reject these documents on mis ground, but considered the same and rejected them on some other ground. When these documents,

Exs.A16 and A17 were taken into account by the Appellate Authority for considering the plea of additional accommodation, there is no reason as

to why the Appellate Authority would reject the Ex.A15 alone on the ground that the same was obtained subsequent to the filing of the eviction

petition. This is nothing but blowing hot and cold.

30. A Now, let us go into the reasonings given by the Appellate Authority for rejecting Exs.A16 and A17. According to the Appellate Authority,

though in Ex.A17, judgment of Criminal Court, it is stated that PW1 Alagesan was convicted for running the business at road side shop at

Vadakkuradha Veedhi"" and in Ex.A16, charge sheet it is mentioned as ""Merkuradha Veedhi"" and therefore, these documents are liable to be

rejected. This reasoning given by the Appellate Authority is factually not correct.

31. The landlords are conducting the cycle business at No. 89, ""Vadakkuradha Veedhi", Dindigul. Ex.A16, petty case charge sheet, was

containing the particulars about four persons having involved in running the business at four places. The Petty Case numbers are given as 1302,

1199,1424 and 1425. The last number 1425 relates to the Alagesan, the present landlord. In the said document, the names of all the four persons

and their residing addresses were given. A reading of the document would show mat these four persons had been running the road side business

and they were charged with an offence u/s 22 read with 53 of M.T.R. Rules. For the first name, Krishnamurthy, the address is given as

Merkkuradha Veedhi", Dindigul, for the second name, Murugesan the address is given as "Sannadhi Them", for the third person Sekar, the

address is given as "RX. Church, Dindigul", and for the fourth person A. Alagesan, the address given as No. 89, Vadakkuradha Veedhi", Dindigul.

On 5-11-1987, the police found these persons were running the road side business at various places mentioned in their respective addresses.

Therefore, in Ex.A16, it is mentioned in the column "Charge" as follows:-

A reading of this column would make it clear that the road side business conducted by these persons created disturbance to the traffic in so many

places like "Merkkuradha Veedhi" etc. Therefore, it cannot be contended that in the charge sheet, Alagesan, the landlord, was having the road side

business in "Merkkuradha Veedhi". and not in "Vadakkuradha Veedhi". But, in Ex.A17, for the Petty Case No. 1425, corresponding to STC. No.

4936/87, it is clearly stated that PW1 Alagesan was putting the cycles at platform in the road side at "Vadakkuradha Veedhi" and causing

disturbance to the traffic and public. This document would also show that PW1 was fined and he paid the same. Therefore, the reasoning given by

the Appellate Authority stating that the "Vadakkuradha Veedhi" was not mentioned in the charge-sheet is quite wrong. If in this perspective, these

documents are looked into, there is no difficulty in coming to the conclusion that the landlords have already suffered hardship due to the want of

accommodation.

32. It is pointed out that there are other shops. But, PW.1 would state that the premises in question was only the next shop and there is only a

small wall in between the shops which is occupied by the landlord and the shop premises in question. Therefore, there is bona fide in the claim of

PW.1 in seeking the eviction of tenants from the premises in question. The tenants cannot contend that the landlords want the premises for

additional accommodation since the landlords had demanded enhanced rent and the same was refused, as there is no evidence for the same. As

indicated earlier, if it is so the landlords would not have received the amount of Rs. 800/-. Even assuming that there was such a demand, the mere

fact that at an earlier stage, the landlords have demanded enhanced amount of

rent would not show that the claim of the landlords for additional accommodation is mala fide as held by this Court in M. Abdul Rahman Vs. S. Sadasivam, .

33. With reference to the question of comparative hardship, as it is pointed out earlier, the landlords have proved their hardship and also the future

hardship in the event of order of eviction is not being passed. It is no doubt true, that the tenants will have to be ousted from Door No. 89-A if an

order for eviction is passed. Such an event would certainly happen whenever an order for eviction is passed. That by itself, would not be a valid

ground, either to hold that the tenants will have more hardship or for refusing the landlords an order of eviction. In deciding the hardship that maybe

caused in case a decree is passed or is refused, each party has to prove his relative advantages or disadvantages. This principle has been laid

down in the decision reported in 1996 T.N.L.J. 364 (R. Srinivasan And Another v. K.S. Muthu Mudaliar & Sons And Others).

34. Thus, in the present case, the cumulative effect of the factual aspects discussed above do indicate that the petitioners, the landlords, clearly

established that the requirement of premises in question as additional accommodation is perfectly bona fide in as much as more space is required

for them to carry on their business of hiring and repairing cycles. Under the above circumstances, the order passed by the Appellate Authority

reversing the well-reasoned order of the Rent Controller has to be set aside, so as to rectify the illegality committed by the Appellate Authority in

rejecting the claim of the landlords for eviction of the tenants. Accordingly, this revision is allowed. Order of the Appellate Authority is set aside

and the order of the Rent Controller in R.C.O.P. No. 76 of 1987 is restored. No costs.

After the pronouncement of the order, Mr. Jothimani, the learned counsel appearing for the tenants/respondents requests nine months' time to

vacate the premises and to hand-over the possession of the same to the landlords. For this course, the learned counsel appearing for the petitioners

has agreed. Therefore, nine months' time is granted to the respondents for vacating the premises and handing over the possession of the same to

the petitioners, subject to the filing of an affidavit of undertaking to that effect before this Court within two weeks from today.