

(2008) 02 MAD CK 0256

In the Madras High Court

Case No : C.R.P. (NPD) . No"s. 1095 to 1097 of 2004

N. Jagadeesan

APPELLANT

Vs

K. Selvam, M. Srinivasan and S. Sivanesan

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(2), 10(3), 10(4), 19, 2(8)

Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20, 8(1)

Citation : (2008) 02 MAD CK 0256

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : G. Kathirvelu, for the Appellant; R.T. Syamala, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The revision petitioner in C.R.P. Nos. 1095 to 1097 of 2004 is the landlord who filed the petitions R.C.O.P. Nos. 1156, 1158 and 1157 of 2001 on the file of XVI Judge, Court of Small Causes, Chennai against the respondents/tenants u/s 10(3)(a)(iii) and 10(3)(c) of TN Buildings (Lease and Rent Control) Act, 1960.

2. The learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai has passed orders in R.C.O.P. Nos. 1156, 1158 and 1157 of 2001 on 22.11.2002 dismissing the petitions filed by the revision petitioner/landlord with costs.

3. The revision petitioner/landlord has filed R.C.A. Nos. 189, 191 and 190 of 2003 before the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai as against the orders passed in R.C.O.P. Nos. 1156, 1158 and 1157 of 2001 by the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai and the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai has dismissed the aforesaid three R.C. As without costs, confirming the orders passed by the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai.

4. Aggrieved against the orders passed by the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in R.C.A. Nos. 189, 191, 190 of 2003 dated 13.02.2004, the landlord/petitioner has filed these three revisions viz., C.R.P. Nos. 1095 to 1097 of 2004 before this Court.

C.R.P. No. 1095 of 2004:

5. According to the learned Counsel for the revision petitioner/landlord/petitioner, both the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai and the Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai ought to have seen that the RCOP petition has been filed for the eviction of the contiguous shops No. 3 to 6 in ground floor of the premises No. 20, Gajapathylala Street, Triplicane, Chennai occupied by the respondent and other tenants for the purpose of carrying on business by the second son of the revision petitioner/landlord and that the revision petitioner/landlord's son is working temporarily as Khalasi in Railways and that his son does not wish to continue in the job, which has no prospects and that he has experience in dealing with the electrical goods because of his employment in Electrical Department and that his son will resign the job on the respondent vacating the portion and carry on the business and this fact was not taken note of by both the authorities and that the revision petitioner/landlord who worked in the Electrical Department as Shop Superintendent will be assisting his son in carrying on the business and thus the revision petitioner requires the petition premises bonafide. It is the further stand of the revision petitioner/landlord/petitioner is that the authorities below have ignored the P.W.1's evidence in regard to the preparation for doing a business and very fact that the revision petitioner/landlord's son is ready to resign his temporary job and commence business itself, is a first step taken in the right direction to carry on the business.

6. Advancing arguments, the learned Counsel for the revision petitioner submits that the authorities below ought to have seen that the shops No. 1, 2 and 7 are not vacant in the real sense and that the said shops are very small one compared to other shops and that they are not contiguous and further that the respondent/tenant cannot dictate terms to the landlord and it is for the revision petitioner/landlord /petitioner to select which portion will be convenient for his occupation.

7. The revision petitioner/landlord/petitioner in the petition R.C.O.P. No. 1156 of 2001 has inter alia specifically averred that he has two sons J. Hariharan and J. Kirupakaran, both of them married and living with him and that his second son, Kriupakaran got married in the year 2000 and presently working as semiskilled in the Electrical Department of the Southern Railway Perambur Works and that his salary is very meagre and on marriage he is desirous of starting an electrical business for chalking out a better career and in pursuance of which he expressed his wish that the ground floor shops No. 3 to 6 could be secured for doing his own business etc.

8. The revision petitioner/landlord in his RCOP petition No. 1156 of 2001 in para

6 has categorically stated that his second son would relinquish the Government employment when he sets up his own business and that even on the ground of additional accommodation for establishing of a business for his second son Kirupakaran, no hardship will be caused to the respondent and that the balance of convenience is in favour of the revision petitioner. In short, the civil revision petitioner has prayed for an order of eviction against the respondent/tenant on the ground of revision petitioner's bonafide requirement for the purpose of establishing the business of the second son Kirupakaran u/s 10(3)(a)(iii) of the TN Buildings (Lease and Rent Control) Act, 1960 or in the alternative as additional accommodation u/s 10(3)(c) of the Act in respect of shop No. 4 and 5 of the petition premises.

9. The learned Counsel for the revision petitioner contends that the very fact that the revision petitioner has stated that his second son is ready to resign his temporary job and start the business, which is a first step in the right direction to carry on the business and the second step is that the undertaking given by the revision petitioner that his second son is willing to resign his Khalasi temporary job, which will go to show the bonafide requirement to carry on the business and in support of this proposition he relied on the decision 1997 2 L.W.607 Thirunavukkarasu v. Vasantha Ammal, wherein it is held as follows:

Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), Sections 10(3)(iii)(b) and 25 - Requirement by landlady for her son to set up a clinic after his completing in six months time, the Medical Course - Need has already arisen and tenant cannot plead and insist that she should wait till her son finishes the course and then only file a petition.

"Carrying on business", measuring of - If a step is taken with intent to do actual business in future, that will mean "carrying on business" and will be sufficient compliance of the Section - If such step is taken in contemplation of future need, it will tantamount to "carrying on business".

Factum of bonafide need can be proved in any manner known to law - Not necessary that son alone should come and give evidence - Landlady's deposition is sufficient.

Rights of parties having to be decided as on date of petition will not prohibit landlady from taking into consideration the requirement which she is likely to face in the near future.

10. He relied on the decision 2001 2 L.W. 532 Subbiah Pandian V. C. Balasundaram, wherein it is observed as follows:

Tamil Nadu Buildings (Lease and Rent) Control Act (18 of 1960), Section 10(3)(iii) - bonafide requirement for the landlord's brother who is unemployed for starting a betel nut shop, petty business which does not require elaborate arrangement being made - Finding of two authorities directing eviction not to be interfered in revision.

11. The contention of the respondent/tenant is that the petition premises comprises of seven shops in the ground floor of which only shop No. 4 and 5 are in occupation of the respondent/tenant and shop No. 6 was rent out to Srinivasan for running a Cycle Shop, and shop No. 3 is let out to Sivanesan for Gas Welding and Painting and the Shop No. 1, 2 and 7 are kept vacant and it is now under lock and key of the revision petitioner and if really the revision petitioner is in requirement of the shops for establishing the business of his second son, he can very well utilise these three shops even without vacating the tenant and if the respondent/tenant is asked to vacate, he will be put to severe hardship and his coconut business running for the last 25 years will be affected, since he has customers in and around the area and distributing tender coconuts in Triplicane, Mylapore and Royapettah areas.

12. It is also the plea of the respondent/tenant that the petition filed u/s 10(3)(a) (iii) of the Act as well as u/s 10(3)(c) cannot be clubbed together in law, since the same is not maintainable and on this technicality the petition deserves to be dismissed.

13. The learned Counsel for the respondent/tenant cited the decision Bata India Limited and Bata Shoe Mart Vs. M.R. Manickam, , whereunder it is held as follows:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(3)(a)(iii) - Owners occupation - Ingredients of - Ingredient necessary to maintain petition for eviction on ground of owners occupation are (a) building should be non-residential in character (b)landlord should be carrying on business on date of application for eviction (c)landlord should not be occupying any building belonging to him and (d)claim should be bonafide and not found to be indirect or false attempt to evict tenant to obtain more rent or to harass tenant.(para 7)

Tamil Nadu Buildings (Lease and Rent Control), Act 1960, Section 10(3)(a)(iii) - Landlord found to be in occupation of his own building in same town carried on business - Landlord found to be partner in firm which carried on business in aforesaid premises - Landlord shall be deemed to be in possession of his own premises for non-residential purposes - Petition for eviction cannot be sustained. (Para 17)

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(3)(a)(iii) - bonafide requirement - Landlord carrying on business in partnership occupying non-residential building in same town - Landlord admitted such fact in evidence but omitted to state so in his petition for eviction - Requirement of landlord is not bonafide.

14. Yet another decision 2002 (1) CTC 631 Irene v. V.S. Venkataraman and Anr., is relied on the side of respondent/tenant whereby it is laid down as follows:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(2)(ii)(a) and (b) and 10(3)(c) - Eviction sought by Trust on ground of unauthorised sub-

letting, change of user and requirement of landlord for additional accommodation - First floor of premises is in occupation of landlord - Ground floor is in occupation of tenant who is a foreigner - While tenant goes out of country, tenanted premises is under the care of representative of tenant, a care-taker, driver and watchman who occupy premises during absence of tenant from the country - Rent Controller and Appellate Authority held that premises in occupation of employees tenant to look after tenancy premises when tenant is away in foreign country do not amount to sub-letting - Authorities also negative the plea of landlord regarding change of user since premises was used only for residential purposes - Requirement on ground of additional accommodation was held against landlord as premises in occupation of landlord was not proved or be inadequate insufficient for requirement of landlord - Concurrent findings of Rent Controller and Appellate Authority were set aside by High Court in revision and order of eviction was passed against tenant - On appeal held that High Court was wrong in holding that occupation of tenanted premises by servants of tenant when tenant was away in foreign country amounted to sub-letting - Such occupation does not amount to sub-letting - High Court was wrong in shifting the burden of proof regarding change of user on to tenant - High Court without adverting to requirement of landlord for additional accommodation recorded a finding of comparative hardship in favour of landlord - Approach of High Court was causal and cursory - High Court re-appreciated evidence in revision - Approach adopted by High Court is perverse as no such findings could be arrived at in reversal of concurrent findings of authorities - Power of High Court in revision under Rent Control Act is not as wide as power of appellate court.

15. The learned Counsel for the respondent/tenant pressed into service the decision *Kathan Vs. Scaw Manak Chand Shohaji*, , wherein it is held as follows:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(3)(a)(iii) - Eviction on the ground of owner's occupation - Requirement of landlord for his own occupation - Mere desire is not equivalent to requirement - Requirement implies greater urgency and need - Landlord has to prove that he has no other premises in his occupation in same city, town or village - Landlord had not even pleaded that he is not in occupation of residential building of his own - Basic requirement of section not satisfied - Dismissal of Eviction Petition confirmed in revision.

16. Ex.P.1 is the letter of the respondent/tenant addressed to the revision petitioner/landlord/petitioner wherein he has mentioned that his father P. Kalidas expired on 04.07.2001 and that his father was running tender coconut business in the two shops occupied by him on rent in premises No. 20 Gajapathilala Street and after his death, he is managing the said shops and that he will hand over the two said shops during March 2002 to the landlord.

17. In 1998 2 L.W. 89 *Mohammad Alias Bawa Sahib and Anr. v. B. Vimalchand*, it is held as follows:

Tamil Nadu Buildings (Lease and Rent Control), Act (18 of 1960), Section 10(3)(iii)(a)-Major share of the property belonging to the joint family - Application for eviction on the ground of requirement for owner's occupation - Mere desire on the part of the landlord is not enough - Landlord has to prove more than desire.

18. In 1994 2 L.W.152 A. Sankaran and Anr. v. S.K. Balasundaram and Anr., it is observed as follows:

Madras Buildings (Lease and Rent Control) Act (18 of 1960), Section 10(2)(i), 10(3)(a)(iii) and (e) - Landlord manipulating circumstances in order to evict tenant - No urgent need - Mere desire to use or occupy premises not enough - bonafide need for own use and occupation should be proved - Need should be genuine.

19. In Kannika Vs. Krishnasamy, , it is laid down as follows:

(D) Pondicherry Buildings (Lease and Rent Control) Act (V of 1969), Section 10(3)(a)(iii) - The landlord and his son are already in occupation of a shop of their own - The landlord has no right to seek eviction on the ground of own and occupation.

20. In T. Soundarapandian Vs. G. Rathinam, , it is observed as follows:

(B)Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960 as amended by Act XXIII of 1973 and I of 1980), Section 10(3)(a)(iii) - Requirement for own use and occupation - Necessary ingredients - Landlord has admitted that other shops are also vacant - But has not occupied them - Landlord has not stated that the vacant shops are not suitable - Landlord lacks bonafide - Eviction cannot be ordered.

21. In 1998 (2) M.L.J. 50 A. Perumal and Ors. v. P. Mohammed Sarbuddeen, it is observed as follows:

Tamil Nadu Buildings Lease and Rent Control Act (XVIII of 1960), Section 10(3)(a)(iii) - Landlord putting tenant on notice to vacate for the purpose of carrying on business - Failing to mention in notice as well as in eviction petition that he is already carrying on business and needs premises for that purpose - Landlord however stating in evidence that he is carrying on business and needs premises for that purpose - Proving by means of oral and documentary evidence that he is in business - Orders of court below evicting tenant confirmed.

22. In 2000 T.L.N.J. 347 K.V.C. Pandithurai v. Samrath Bibi (Died) and Ors., it is held as follows:

Tamil Nadu Buildings (Lease and Rent Control) Act 1960 as amended Section 10(3)(a)(iii) - bonafide requirement - Landlord files petition after petition- Requirement for son- prior to and pending proceedings other buildings owned by landlord become vacant and let out to others - No explanation for not occupying them - Petition lacks bonafides:

Tamil Nadu Buildings (Lease and Rent Control) Act 1960 as amended S 25 -

Decision based on the evidence - available evidence not taken note of - Power of Revisional court to set aside the order - made out:

Tamil Nadu Buildings (Lease and Rent Control) Act 1960 as amended Section 19 - Requirement for one son was sought - Petition dismissed - Requirement for another son - Not hit by Section 19 - Every limb of controversy should have been raised in the earlier petition to attract Section 19 bar u/s 19.

23. In *Mattulal Vs. Radhe Lal*, , it is observed as follows:

(iii)The mere assertion on the part of the landlord that he requires the non-residential accommodation in the occupation of the tenant for the purpose of starting or continuing his own business is not decisive. It is for the court to determine the truth of the assertion and also whether it is bonafide. The test which has to be applied is an objective test and not a subjective one and merely because a landlord asserts that he wants the non-residential accommodation for the purpose of starting or continuing his own business, that would not be enough to establish that he requires it for that purpose and that his requirement is bonafide. The word "required" signifies that mere desire on the part of the landlord is not enough but there should be an element of need, and the landlord must show - the burden being upon him - that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business.

24. P.W.1-Jagadeesan (landlord), in his evidence has deposed that the respondent/tenant occupying two shops in the petition mentioned premises and the monthly rent for the two shops is Rs. 700/- in all and that the respondent's father was a tenant under him for 10 years and the monthly rent for the one shop is Rs. 350/- and that respondent is doing business in tender coconuts and that his second son Kirupakaran is employed in Railways as Khalasi and the petition property is required for doing electrical business and since his second son is doing the temporary job, there are no chances for getting promotion and after the death of the respondent's father, the respondent came to him and asked for time to vacate the portion occupied by him and the said letter written by the respondent is Ex.P.1 and the rent receipt is Ex.P.2.

25. The specific case of the revision petitioner/ landlord/petitioner is that for starting an electrical business for his son the portion occupied by the respondent is required bonafide and that the petition property is also required for additional accommodation and if his son leaves the Khalasi job and start doing electrical business, then he will get good income.

26. It is the evidence of the P.W.1, the landlord that at the time of filing of the present petition three shops were vacant and that no attempts were made to do business in the said vacant shops and since those vacant shops were not in same row, no business was started.

27. R.W.1-Selvam (respondent/tenant), has deposed that he is doing wholesale

business in tender coconuts and that this business is conducted from the days of his father for 25 years and that his father expired on 04.07.2001 and in the petition premises there are totally seven shops and three shops are vacant and two other shops are let out for rent.

28. R.W.1, the respondent/tenant in his cross examination has categorically stated that three shops are kept locked by the revision petitioner/landlord and one shop is kept locked for 5 years and another two shops are kept locked for 3 years and in another place he has deposed that the locked shops are kept locked for 10, 15 years.

29. The revision petitioner/landlord/petitioner has filed the RCOP petition No. 1156 of 2001 u/s 10(3)(a)(iii) and 10(3)(c) of the Act, 18 of 1960. However, the revision petitioner/landlord/petitioner in the prayer portion of the petition has mentioned Section 10(3)(a)(iii) of the Act or Section 10(3)(c). The respondent/tenant in the counter has taken a plea that the RCOP petition filed u/s 10(3)(a)(iii) of the Act as well as u/s 10(3)(c) is not at all maintainable in law and both the Sections cannot be clubbed together and order of eviction cannot be prayed for and on this technical aspect the petition is to be dismissed.

30. It is to be pointed out that Section 10(3)(a)(iii) concerns with the whole building in occupation of a tenant which is distinct and separate from the non-residential building in the occupation of the landlord. Whereas as per Section 10(3)(c) is concerned both the landlord and the tenant are in the same building and the landlord requires it for additional accommodation thereby seeking eviction.

31. It cannot be gainsaid that Section 10(3)(c) will not govern Section 10(3)(a)(iii). As a matter of fact, the landlord should be in occupation if he invokes Section 10(3)(c) for additional accommodation. In fact, the scope of Section 10(3)(a)(iii) is different from that of Section 10(3)(c). Each Section will come into operative play under different situations.

32. As long as the ingredients of Section 10(3)(c) are satisfied the landlord is entitled to evict the tenant whether he is occupying the premises for residential or non-residential premises. Moreover, the occupation of landlord and tenant in one structure is visualised as per Section 10(3)(c). It is not out of place to point out that Section 10(3)(c) will apply only in case where the landlord is occupying a building which is his own. As per Section 10(3)(c) an exception is carved out in a case where the landlord is occupying a portion of the building, which is also occupied by the tenant in another portion.

33. In 1991 L.W. 277 Bengal Trading Company v. G.M. Natarajan, it is observed that "even if a room is occupied by the landlord, kept under lock and key it is deemed that the landlord is in occupation of a portion of the building".

34. At this juncture, it is pertinent to point out that the expression "not withstanding contained in Clause (a)" indicates that a landlord can claim

possession of a building which is in the occupation of a tenant, if he requires it for his own occupation either for his residential or non-residential purpose depending on the nature of the building. u/s 10(3)(c) if it is a non-residential building, the landlord can obtain additional accommodation only for the purpose of his business which he is carrying on as per decision 1980 TLNJ 145 Tirupathi Nadar v. Kantha Rao.

35. In C.R.P. No. 2436 of 1995 order dated 30.07.1999 S. Mohammed Iqbal v. M. Padmanabhan at para 8, it is inter alia observed that

The argument of the learned senior counsel for the petitioners that the petition u/s 10(3)(a)(iii) of the Act is not maintainable and only a petition u/s 10(3)(c) of the Act is maintainable, as the landlord is in occupation of a portion of the very same premises" does not appear to be correct, in view of the judgment of the V. Radhakrishnan Vs. S.N. Loganatha Mudaliar, referred to above. Even if this argument is correct, yet I am of the opinion that the order of the authorities below cannot be interfered with for more than one reason. Mere quoting a wrong provision of law cannot be a ground to deny the relief to the landlord, if the materials otherwise available on record enables him to get the relief, is too well settled. It is no doubt true that in the rent control petition, the provision of law quoted is only u/s 10(3)(a)(iii) of the Act and there is no pleading on the ground of additional accommodation as well on the ground of relative hardship. In the counter affidavit of the first respondent, a point has been taken that the petition u/s 10(3)(a)(iii) alone is maintainable and in that event the relative hardship should be gone into. There is also no pleading by the respondent before the rent controller on relative hardship.

36. In the aforesaid decision reported in S. Mohammed Iqbal Vs. M. Padmanabhan, , it is held as follows:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, Section 10(3)(c) - Quoting wrong provision of law - Petition filed for owner's occupation whereas requirement amounted only to additional accommodation - Mis-quoting of provision law would not disentitle relief to party if he is otherwise entitled to such relief. (Para 20)

Procedure Law - Misquoting of provision of Law - Quoting wrong provision of law - Petition filed for owner's occupation whereas requirement amounted only to additional accommodation - Mis-quoting of provision law would not disentitle relief to party if he is otherwise entitled to such relief. (Para 20).

37. In 2003 (2) TLNJ 449 Dr. Anthony Sheik Shib Pong v. S.E. Mahboob Basha, wherein it is held that:

Tamil Nadu Buildings (Lease and Rent Control) Act - 18 of 1960 as amended Section 10(3)(a)(iii) - Eviction petition - non residential building - main ingredient is land lord who seeks eviction for his own occupation should not be in occupation of his own premises - need not proved to be genuine - eviction

cannot be ordered.

38. In (2001)1 T.L.N.J. 267 P. Sundaram v. R. Gangadharan and Anr., it is held as follows:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended Section 10 - Eviction - Failure to ask for additional accommodation instead of owners occupation - Effect of - settled law tenant cannot dictate which premises the landlord chooses

Tamil Nadu Buildings (Lease and Rent Control) Act 1960 as amended Section 10(3)(a)(iii) - Part of the buildings occupied by landlord - only relief of additional accommodation can be asked for - :

Tamil Nadu Buildings (Lease and Rent Control) Act 1960 as amended Section 10(3)(c) - See Section 10(3)(a)(iii).

39. The legal issue about the maintainability of the petition u/s 10(3)(a)(iii) of the Act instead of as per Section 10(3)(c) of the Act can be raised by a party inasmuch as there is no estoppel against statute.

40. In 1994 L.W. 487 R.V. Dharmalinga Mudaliar v. K. Annamalai, it is held that "the landlord, who is in occupation of a part of a building, cannot maintain an application u/s 10(3)(a)(iii) of the Act, but only u/s 10(3)(c) of the Act".

41. As far as the present case is concerned, the revision petitioner/landlord/ petitioner is residing in upstairs portion, but the respondent/tenant is in occupation of the ground floor shop No. 4 and 5. Originally the respondent/ tenant's father was a tenant under the civil revision petitioner/landlord and admittedly, he expired on 04.07.2001. Considering the fact that the civil revision petitioner/landlord is in need of the shop No. 4 and 5 of the petition premises, which is occupied by the respondent/ tenant and inasmuch as the revision petitioner/landlord requires the same for commencing an electrical business for his second son, the same can be construed only for additional accommodation in the eye of law and therefore, this Court opines that Section 10(3)(c) of the Act squarely applies and the RCOP petition No. 1156 of 2001 is perfectly maintainable u/s 10(3)(c) of the Act.

42. Admittedly, the revision petitioner/landlord/ petitioner second son, Kirupakaran is employed as semiskilled in the Electrical Department of the Southern Railway, Perambur Works. According to the revision petitioner/landlord/ P.W.1, his second son if he leaves the Khalasi job and if he commence electrical business, then he will get good income. The shop No. 4 and 5 in the petition premises which is in occupation of the respondent/tenant is required by the revision petitioner/landlord for starting the electrical goods wholesale business of his second son, as per the evidence of P.W.1. The learned Rent Control Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in the judgment in R.C.A. No. 189 of 2003 dated 13.02.2004 has observed that there is no evidence whether any licence has been obtained for commencement of electrical business

of landlord's second son and further observed that there is no evidence to the effect that whether any goods for the said electrical business have been acquired and stored etc. It is also observed by the learned Appellate Authority in his Judgment in R.C.A. No. 189 of 2003 dated 13.02.2004 that there is no evidence to show that any endeavour has been made by the landlord's second son Kirupakaran to leave his job. Equally, the learned Appellate Authority has also further opined that there is no evidence let in to prove as to the previous experience of the landlord second son Kirupakaran in doing the electrical business. Moreover, the learned Appellate Authority has also taken the view that there is no evidence on the side of revision petitioner/landlord as to how much capital is required for commencement of the said electrical business and source from which the same is to be obtained. According the learned Appellate Authority mere desire of the landlord that he requires the non-residential portion in occupation of the respondent/tenant for starting his son's business is not sufficient for ordering eviction of the tenant. More than that, in pursuance of his said desire other preparatory works should have been undertaken by the civil revision petitioner/landlord.

43. The learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai in the orders in R.C.O.P. No. 1156 of 2001 dated 22.11.2002 has observed that the revision petitioner/landlord has not produced documents to show that his son is working in the Electrical Department as Khalasi and that he has prior experience in electrical business. The learned Rent Controller has also further observed that the son of the revision petitioner/landlord/petitioner for whose benefit the petition property is required for own use has not appeared before Court to express his desire/intention. Furthermore, the learned Rent Controller has also stated that the revision petitioner/landlord has not produced document to show that his son Kirupakaran's appointment is not permanent. It is the evidence of the P.W.1/revision petitioner/landlord that his second son has not left the job and still he continues to be employed as Khalasi. The learned Rent Controller has also opined that preparatory arrangements in connection with the commencement of electrical business has not been made by the revision petitioner/landlord. Like the learned Appellate Authority, the Rent Controller has also taken the view that the revision petitioner/landlord has not stated what is the capital to be invested for the commencement of said electrical business and further that even on assumption what will be the income that will be derived out of the said business has also not been adverted to. The views of the authorities referred supra are under challenge in this revision.

44. It is to be noted that "carrying on business" does not mean actually carrying on business. As a matter of fact, it will suffice if the landlord takes one significant step or has taken some steps for the purpose of carrying on business, in the considered opinion of this Court. Furthermore, the term "carrying on business" does not mean also that all steps required for carrying on business should have been taken and it is enough that if one step is taken and established. As far as the present case is concerned, the commencement of electrical business by the

revision petitioner/landlord's second son does not require elaborate arrangements being made thereto. One cannot expect that the revision petitioner/landlord's second son to resign his job as semiskilled Khalasi for starting the electrical business, as it concerns not only with his employment (which is said to be temporary) but also with his bread and butter. In fact, the need for commencement of electrical business has arisen and it cannot be pleaded that the revision petitioner should wait till his second son Kirupakaran resigns his job in Railways and then only can file a petition and therefore, the contrary view taken by the learned Rent Controller and the learned Appellate Authority are not correct. However, one as to see whether the civil revision petitioner/landlord has made out a case for evicting the respondent/tenant on account of comparative hardship or relative hardship. Strictly speaking, relative hardship can be well established by evidence, even though there may not be pleading in this regard either by the landlord or the tenant, in the considered view of this Court. On the aspect of comparative hardship, the duty is caused on the authorities under the TN Buildings (Lease and Rent Control) Act to render a finding. It is a sine-qua-non that unless the landlord deserves to get possession, the eviction cannot be ordered. Certainly, it is not open to the tenant to dictate as to the requirement of the landlord and as to where he shall carry on business. To put it differently, it is not for the tenant to find out to what is the nature of the business which the landlord desires to do.

45. P.W.1, Jagadeesan in his evidence has stated that at the time of filing of the petition three shops are vacant and that no steps were taken to start the business in the said vacant shops and the reason being that those vacant shops were not in same row. However, R.W.1-Selvam in his evidence has deposed that in the petition property, there are totally seven shops out of which three shops are vacant and if the revision petitioner desires to start electrical business then he can commence the same in the three vacant shops. No doubt it is not open to the respondent/tenant to dictate terms to the revision petitioner/landlord as to where he should commence his business in the petition mentioned property. However, the Court has to look into the relative hardship which may be caused to the respondent/tenant in dealing with the application u/s 10(3)(c). The Court can reject the petition of the landlord if it comes to the conclusion that the relative hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.

46. R.W.1-Selvam in his evidence has deposed that his father was doing the tender coconut business for the last 25 years till his death and after his demise on 04.07.2001, he is looking after the said wholesale business and that he used to supply tender coconuts to the shop vendors in Triplicane area and that for small traders he used to supply tender coconuts on loan and he has an outstanding due of Rs. 5,00,000/- and if he vacates the two shops occupied by him, then he cannot collective dues and further that he will not get another shop in the area. It is not in dispute that the R.W.1's father was doing the tender coconut business till his life time and further that P.W.1-Jagadeesan has deposed

that the shops were let out to R.W.1's father 10 to 15 years before and from that time onwards the said tender coconut business was run. After the demise of the R.W.1's father, R.W.1/respondent is continuing the said coconut business in the two shops occupied by him and certainly he would have earned a good name/good will in that area. Therefore, if the respondent is asked to vacate from the two shops occupied by him then it will create hardship and disadvantage to him in the considered opinion of this Court. At this juncture, a perusal of Ex.P.1 letter written by the R.W.1/respondent to the P.W.1/petitioner do indicate that the respondent/tenant has stated in clear terms that he will hand over the two shops in his possession to the revision petitioner/landlord in March 2002. R.W.1-Selvam in his evidence has stated that in Ex.P.1 letter only the words that he is doing business in the petition property after his father's demise only were written and these words were written by the revision petitioner/landlord and in Ex.P.1, the recitals that he will hand over possession of shops to the landlord during March 2002 were not written at the time of putting his signature. In effect, the R.W.1/respondent has denied that he has agreed to hand over the vacant shops to the landlord during March 2002. However, a perusal of the Ex.P.1 letter, wherein the respondent/R.W.1 has signed do clearly indicate this Court that the said letter in entirety is a true one and the version of the respondent/tenant that the recitals to the effect that he will hand over possession of shops during March 2002 were not there at the time of putting his signature in the said document is devoid of truth and the same is rejected.

47. Dehors Ex.P.1-letter, the revision petitioner/ landlord has to prove his bonafide in terms of the ingredients of TN Buildings (Lease and Rent Control) Act, 1960. The respondent/tenant in his counter has stated that shop No. 1, 2 and 7 are kept vacant and the same is now under lock and key of the revision petitioner/landlord. The shops No. 1 and 2 are adjacent ones and why they are not to be made use of by the revision petitioner there is no satisfactory explanation on his side, in the present case on hand. Though R.W.1-Selvam in his evidence has stated that the house he resides in one portion is covered with tiles and in another portion the same is covered by cement sheet, in that residential portion there are no shops. Considering the fact that the shop No. 1 and 2 which are vacant and adjacent ones, wherein the revision petitioner/landlord can start the electrical business of his second son Kirupakaran and viewed in that perspective, the relative hardship of the respondent in the event of eviction will be more and will outweigh the advantage to revision petitioner/landlord and therefore, this Court is of the view that eviction of the respondent/tenant cannot be ordered in the eye of law and the same is not bonafide and resultantly, the civil revision petition is dismissed. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

C.R.P. No. 1096 OF 2004:

The revision petitioner is a landlord who has filed R.C.O.P. No. 1158 of 2001 on the file of learned Rent Controller viz., XVI Judge, Court of Small Causes,

Chennai u/s 10(3)(a)(iii) and 10(3)(c) of Act 18 of 1960, praying for eviction of the respondent/tenant on the ground of revision petitioner/landlord's bonafide requirement for the purpose of establishing the business of the second son Kirupakaran or in the alternative as additional accommodation u/s 10(3)(c) of the Act in respect of shop No. 6 in premises No. 20, Gajapathilala Street, Triplicane, Chennai-5.

2. The respondent/tenant has taken a plea in the counter that he is in occupation of shop No. 6 and shop No. 3 is in occupation of one Sivanesan and shop No. 4 and 5 are in the occupation of Selvam and shop No. 1, 2 and 7 are vacant and shop No. 2 is vacant for 8 years and shop No. 7 is vacant for 10 years and that entire electricity fitting fixtures and construction was done at his cost and that the landlord has not disclosed what arrangements and preparations are made for commencing the business and the term "desire" is not a bonafide requirement and one of the sons of the revision petitioner/landlord Kirupakaran is only desirous of starting electrical business for which the revision petitioner/landlord wants ground floor shops 3, 4, 5 and 6 and so there is no need for the landlord or his son and there is no absolute necessity and as such the petition is not maintainable.

3. Another significant plea taken by the respondent/tenant in the counter is that the revision petitioner/landlord has not disclosed about the vacant shops available in the building and that he has not chosen to occupy the vacant shops and therefore, the petition suffers from defect. The learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai has passed orders in R.C.O.P. No. 1158 of 2001 on 22.11.2002 dismissing the petition filed by the revision petitioner/landlord. As against the said dismissal order, the landlord filed R.C.A. No. 191 of 2003 before the Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai and the learned Appellate Authority has passed orders on 13.02.2004 dismissing the appeal.

4. Aggrieved against the orders passed by the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai passed in R.C.A. No. 191 of 2003 dated 13.02.2004, the landlord has filed this Civil Revision Petition before this Court.

5. The respondent/tenant harps on the aspect that the revision petitioner/landlord cannot ask for relief either in one or the other provisions and that he must come forward with specific provision and that there is no question of any alternative relief. The citations relied on both sides and the decisions quoted in C.R.P. No. 1095 of 2004 are not repeated for the purpose of repetition but the principles are borne in mind by this Court.

6. P.W.1-Jagadeesan has deposed that the respondent is running cycle shop by keeping 30 cycles and apart from that the respondent is employed in legal department of the Secretariat and that the respondent owns a house at No. 6, Canal Bank Road and that the petition premises is required for his sons electrical

wholesale business.

7. R.W.1-Srinivasan in his evidence has stated that he is employed in the legal department of the Secretariat as Record Clerk and he is in employment from in the year 1974 and that his father till his death in 1996 was looking after the cycle shop and thereafter, his son is looking after the said shop and that he owns an Auto. R.W.1-Srinivasan in his evidence has further stated that out of the three shops in one shop, one Mani was there and the landlord filed a case against the said Mani and evicted him.

8. In G.O.Ms. No. 3440 Home dated 27th Oct. 1960, it is mentioned that "all departments of the State and Central Governments in the State shall be deemed to be engaged in essential service for the purpose of Sub-section (4) of Section 10 of the Act". In this Connection, it is useful to refer to relevant portion of Section 10(4) of TN Buildings (Lease and Rent Control) Act, 1960 which reads as follows:

(4)No order for eviction shall be passed under Sub-section (3):

(i) against any tenant who is engaged in any employment or class of employment notified by the Government as an essential service for the purpose of this sub-section, unless the landlord is himself engaged in any employment or class of employment which has been so notified, or

9. The learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai in the orders passed in R.C.O.P. No. 1158 of 2001 dated 22.11.2002 has observed that in G.O.Ms. No. 3440 dated 27.10.1960 the employees of Central and State Government in essential service cannot be evicted and accepted the argument of the respondent/tenant counsel in this regard etc.

10. It is pertinent to refer that as per Rule 8(1)(a) of Tamil Nadu Government Servants' Conduct Rules "no employee shall engage himself directly or indirectly in any trade or business except with the previous sanction of the Government".

11. It is to be noted that employees should not involve themselves in any business. But the wife/husband of the employee may be permitted to do business etc. - G.O.Ms. No. 447, Public (Services-A) Dept. dt. 24.02.72.

12. It is not out of place to make a mention that Rule 20 of the Tamil Nadu Government Servants' Conduct Rules enjoins that "every employee shall maintain absolute integrity and devotion to duty and shall do nothing which is unbecoming of a member of the service".

13. At this juncture, Section 2(8) defines "tenant" meaning any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any son, or daughter, or the legal representative of a deceased tenant who:

(i)in the case of a residential building, had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant, and

(ii) in the case of a non-residential building, had been in continuous association with the tenant for the purpose of carrying on the business of the tenant up to the death of the tenant and continues to carry on such business thereafter, and

a person continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building by its tenant or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a Municipal Council or a Panchayat Union Council or the Municipal Corporation of Madras or the Municipal Corporation of Madras.

14. In *Dr. N. Natesan Vs. Mrs. S. Santhalakshmi*, it is held that "the definition in Section 2(8) will only take in sons or daughters or the legal representatives of the tenant only after the death of the tenant and not when the tenant himself is alive".

15. In 1991 (1) MLJ 532 A. *Madasami Nadar v. A.J.Khaja Nizamudeen and Anr.*, it is observed that "the term "tenant" in Section 2(8) of the Act concerns not only heritable relationship that matters but also his association with the business carried on by the deceased tenant in the petition mentioned premises till death".

16. No wonder, a reading of the definition of the "tenant" u/s 2(8) it is quite obvious that when the tenant, by whom rent is payable, is alive, his spouse, son or daughter or other legal representatives cannot claim rights as a tenant.

17. It is significant to point out that the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in the orders passed in R.C.A. No. 191 of 2003 on 13.02.2004 has observed that when the respondent/tenant is a government servant then he cannot run business separately in the petition mentioned property and if any shop is taken on rent for doing business separately without obtaining prior permission from the Government then it is in violation of Government Servants' Conduct Rules and therefore, the benefit of Section 10(4) of TN Buildings (Lease and Rent Control) Act, 1960 and G.O.Ms. No. 3440, Home dated 27th October 1960 and therefore, the contrary view taken by the Rent Controller viz., XVI Judge, Court of Small Causes, Chennai is not correct but however, held that the eviction sought for by the landlord is not based on bonafide reason and if eviction of tenant is ordered then more hardship will be caused to the tenant etc.

18. *R.W.1-Srinivasan*, (employed in the Secretariat Law Department as Record Clerk) has stated that in his evidence that he is employed from 1974 and his father after retirement, started cycle shop and till his death in 1996 he was looking after the said shop and thereafter, out of his two sons, the younger son is looking after the said shop and that he took the petition mentioned shop for the purpose of running cycle shop on monthly rent of Rs. 60/- in 1980 and the present monthly rent is Rs. 350/- and that he has paid total advance of Rs. 3,000/-. As a matter of fact, *R.W.1/tenant* nowhere in his evidence has stated that he has obtained prior permission from the Government or his higher up for

running the cycle shop in the petition premises. It is also not known where he has obtained prior permission for the purpose of running cycle shop business and no documentary evidence has been placed in the R.C.O.P. No. 1158 of 2001 proceedings before the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai. Suffice it to point out that running a business or private trade without prior permission constitute breach of Rule 20 of the TN Government Servants' Conduct Rules. It is to be pointed out that the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai has not dealt with anything about the obtaining of prior permission or otherwise by the respondent/tenant as to the running of cycle shop business from the competent authority. Equally, though the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in his orders passed in R.C.A. No. 191 of 2003 dated 13.02.2004 has only generally observed about a government servant running a separate business without obtaining prior permission but has not specifically adverted to whether the respondent/tenant has obtained prior permission from the Government or Competent Authority.

19. In 1976 TLNJ 106 M. Govindarajan v. N. Jayaraman, wherein it is inter alia observed that "when there is such a mandatory direction prohibiting the Court to pass any eviction order against that person who comes squarely u/s 10(4) of the Act, the finding on other issues regarding the bonafides must be construed as abinitio void".

20. In 1969 (2) S.C.J. 23 the Hon'ble Supreme Court has held that "it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject matter of the suit. It's jurisdiction must include the power to hear and decide the question at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

21. In Gangappa Gurupadappa Gugwad Gulbarga Vs. Rachawwa Gugwad and Others, it is laid down as follows:

It is open to a Court not to decide all the issues which may arise on the pleadings before it if it finds that the plaint on the face of it is barred by any law. If, however, final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point - each of which by itself would be sufficient for the ultimate decision - the decision on each of these points operates as res judicata between the parties.

22. In Sri Rajagopal Transports (P.) Ltd. Vs. The Presiding Officer, Labour Court and Others, it is observed that:

In industrial disputes, there is a specific interdict on tribunals to entertain and adjudicate upon disputes, to be cautious in cases where the question of jurisdiction is raised. If once such a tribunal comes to the conclusion that it has no jurisdiction to entertain and a fortiori to adjudicate upon the subject before it,

then the ban becomes operative and it has no further right to deal with the subject-matter. If however it considers further its finding can be treated as an equation of non est. The want of jurisdiction in matters tried by the quasi-judicial or judicial tribunals, is one which goes to the core of the matter and if its absence is unchallenged, then there is no foundation for such tribunals to proceed further, hear parties and record findings on the so called merits of the case.

23. It cannot be gainsaid where there is such a mandatory direction fettering the Court to pass any eviction against an individual who comes within the purview of Section 10(4) of the Act, the finding on other issues regarding bonafides should be construed ab initio void.

24. In view of the fact that there is a prohibition u/s 10(4)(i) of TN Buildings (Lease and Rent Control) Act, 1960, the finding on the point in regard to the bonafide requirement of the revision petitioner/landlord in R.C.O.P. No. 1158 of 2001 dated 22.11.2002 should be construed as ab initio void and inasmuch as the learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai has not specifically adverted to as to whether the respondent/tenant has obtained prior permission from the Government or competent authority to run cycle business in the petition mentioned premises and since evidence of R.W.1 is lacking in this regard, this Court without going into the merits of the case, remits the matter back to the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai to go into the issue of bonafide requirement of the revision petitioner/landlord/petitioner and deal with R.C.O.P. No. 1158 of 2001, after giving due opportunity to both parties to adduce further oral and documentary evidence in the manner known to law and in that view of the matter, the Civil Revision Petition is allowed. Consequently, the order of the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai passed in R.C.O.P. No. 1158 of 2001 dated 22.11.2002 and in the orders passed by the learned Appellate Authority in R.C.A. No. 191 of 2003 dated 13.02.2004 are hereby set aside in furtherance of substantial cause of justice.

25. Since the Rent Control proceedings is of the year 2001, the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai is directed to dispose of the R.C.O.P. No. 1158 of 2001 within a period of four months from the date of receipt of a copy of this order. Considering the facts and circumstances, the parties are directed to bear their own costs.

C.R.P. No. 1097 OF 2004:

The revision petitioner/landlord/petitioner has filed R.C.O.P. No. 1157 of 2001 on the file of learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai u/s 10(3)(a)(iii) and 10(3)(c) of Act 18 of 1960, praying for eviction of the respondent/tenant on the ground of revision petitioner/landlord's bonafide requirement for the purpose of establishing the business of his second son Kirupakaran or in the alternative as additional accommodation as per Section

10(3(c) of the Act in respect of shop No. 3 in premises No. 20, Gajapathilala Street, Triplicane, Chennai-5.

2. The respondent/tenant has taken the stand in the counter that he is in occupation of shop No. 3 and that shop No. 1, 2 and 7 are vacant and shop No. 2 is vacant for 8 years and shop No. 7 is vacant for 10 years and that the entire electricity fitting, fixtures and constructions are done by him. It is the further plea of the respondent/tenant that the revision petitioner/landlord filed a case against the tenant for eviction, for providing staircase but the same was not provided and the revision petitioner/landlord kept it vacant and nearly one ground is available in the backside of the building.

3. The learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai has passed orders in R.C.O.P. No. 1157 of 2001 dated 22.11.2002 dismissing the petition filed by the revision petitioner/landlord. The learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai has passed orders on 13.02.2004 dismissing R.C.A. No. 190 of 2003.

4. The learned Counsel for the revision petitioner/ landlord urges that the authorities below ought to have seen that the preparation to commence business depends on the nature of the business and that for starting an electrical business the essential requirement is the place for storing and sale and that the revision petitioner/landlord has ample means to start the business and the electrical goods can be purchased immediately on getting possession of the petition premises and that the fact that the revision petitioner worked in Electrical Department as Shop Superintendent will be assisting his son in carrying on the business was not taken note of by the authorities below and that the shops 3 to 6 required which are contiguous (roughly an extent of 350 sq.ft.) and this fact was also not taken note of by the Courts below and the fact that the petitioner's son is ready to resign his temporary job and start the business, has spoken to by P.W.1 in his evidence, is a first step taken in the right direction to commence the business and the authorities below have misunderstood the scope of proof of bonafide and the fact that the petitioner's second son is temporarily employed in Southern Railway without any prospects of promotion and may be terminated at any time was not taken note of by the authorities below and viewed in this perspective, the orders of both the authorities are liable to be set aside in law.

5. P.W.1-Jagadeesan in his evidence has stated that the respondent/tenant is conducting spray painting business on a monthly rent of Rs. 350/- in the third shop, out of the four shops in the petition premises and that the respondent is the tenant under him and that the petition mentioned building is required for the purpose of business after vacating all the shops and that he has retired from Railways and he will looking after the business along with his son and that his second son got married in the year 2000 and that his son's job is not permanent.

6. R.W.1-Sivanesan in his evidence has deposed that he came as a tenant in the petition shop in 1977 on a monthly rent of Rs. 50/- and the present rent is Rs.

350/- and he has paid an advance of Rs. 500/- initially and later after electricity connection paid Rs. 3,000/- and he is doing painting job and welding job.

7. It is the further evidence of R.W.1 that three shops are vacant and out of three shops, Krishnasamy has vacated the shop 10 years ago and Iyer vacated the shop 15 years ago and Mani was evicted after filing of the case and that he is doing business for the past 24 years and in the three vacant shops the petitioner/P.W.1 is not doing any business and for so many years, the three shops are under lock and they are not let out for rent and he does not know that Khalasi job is Collie work and that he does not know what type of preparatory arrangements are made by the petitioner.

8. It is significant to point out that R.W.1-Sivanesan has deposed that the petition shop is near the place going to the upstairs and that the petitioner has not built up the staircase and he is using the old staircase.

9. The plea of the respondent/tenant is that the revision petitioner/landlord must come forward with a definite plea under specific provision and he cannot pray for any alternative relief or avail one or other provision of the TN Buildings (Lease and Rent Control) Act, 1960 and therefore, the petition is not maintainable in law.

10. The revision petitioner/landlord relied on 1997 2 L.W.607 Thirunavukkarasu v. Vasantha Ammal and 2001 2 L.W. 532 Subbiah Pandian v. C. Balasundaram to show that factum of bona fide need can be proved in any manner known to law and not necessary that son alone should tender evidence and for starting a petty business no elaborate arrangement is required.

11. The learned Counsel for the respondent/tenant cited Bata India Limited and Bata Shoe Mart Vs. M.R. Manickam, 2000 (1) CTC 631 Irene v. V.S. Venkataraman and Anr. decision Kathan Vs. Scaw Manak Chand Shohaji, , to bring it to the notice of this Court that the requirement of landlord is not bona fide, and that the requirement on the ground of additional accommodation was held against the landlord as premises in occupation of landlord was not proved or be inadequate, insufficient for requirement of the landlord and that the landlord has not even pleaded that he is not in occupation of residential building of his own and therefore, the basic requirement of Section is not satisfied.

12. In 1998 2 L.W. 89 Mohammed Alias Bawa Sahib and Anr. v. B. Vimalchand, it is inter alia observed that "mere desire on the part of the landlord is not enough and that he has to prove more than desire".

13. In 1994 2 L.W. 152 A. Sankaran and Anr. v. S.K. Balasundaram and Anr., it is held that "bona fide need for own use and occupation should be proved and the need should be genuine".

14. In T. Soundarapandian Vs. G. Rathinam, , it is among other things laid down that "when the landlord has admitted that other shops are also vacant and has not occupied them and not stated that the vacant shops are not suitable and that the landlord lacks bona fide and eviction cannot be ordered".

15. In *Kannika Vs. Krishnasamy*, it is held that "the landlord has no right to seek eviction on the ground of own and occupation".

16. In 1998 (2) M.L.J. 50 A. *Perumal and Ors. v. P. Mohammed Sarbuddeen*, it is laid down that "failing to mention in notice as well as in eviction petition that the landlord is already carrying on business and needs premises for that purpose, however stating in evidence that he is carrying on business and needs premises for that purpose and proving by means of oral and documentary evidence that he is in business, orders of court below evicting tenant confirmed".

17. In (1974) 2 SCC 565 *Mattulal v. Radha Lal*, it is inter alia observed that "the word "required" signifies that mere desire on the part of the landlord is not enough but there should be an element of need, and the landlord must show and burden being upon him that he genuinely requires the non-residential accommodation for the purpose of starting or continuing his own business".

18. In 2000 T.L.N.J. 347 K.V.C. *Pandithurai v. Samrath Bibi (Died) and Ors.*, it is held on the bonafide requirement that "the landlord files petition after petition for requirement of his son and prior to and pending proceedings other buildings owned by landlord become vacant and let out to others and no explanation for not occupying them, the petition lacks bona fide".

19. It is to be pointed out that Section 10(3)(c) will not govern Section 10(3)(a)(iii). In fact, the landlord should be in occupation if he seeks the aid of Section 10(3)(c) for additional accommodation. The scope of Section 10(3)(a)(iii) is different from that of Section 10(3)(c) each Section will come into play under different contexts. It cannot be gainsaid that Section 10(3)(c) will apply only in case where the landlord is occupying a building which is his own. As a matter of fact, the occupation of landlord and tenant in one structure is seen as per Section 10(3)(c), an exception as per Section 10(3)(c) is made out in a case where the landlord is occupying a portion of the building, which is also occupied by the tenant in another portion. u/s 10(3)(c) if it is a non-residential building, the landlord can obtain additional accommodation only for the purpose of his business which he is carrying on as per decision 1980 T.L.N.J. 145 *Tirupathi Nadar v. Kantha Rao*.

20. In *S. Mohammed Iqbal Vs. M. Padmanabhan*, it is held that "petition filed for owners occupation, whereas requirement amounted only to additional accommodation and that misquoting of provision of law would not disentitle the party to seek relief if he is otherwise entitled to".

21. The maintainability of the petition u/s 10(3)(a)(iii) of the Act instead of as per Section 10(3)(c) of the Act can be raised by a litigant inasmuch as there is no estoppel against constitute.

22. It is to be noted that in 1994 L.W. 487 R.V. *Dharmalinga Mudaliar v. K. Annamalai*, it is laid down that "the landlord, who is in occupation of a part of a building, cannot maintain an application u/s 10(3)(a)(iii) of the Act, but only u/s

10(3)(c) of the Act".

23. In the present case on hand, the revision petitioner/landlord is residing in the upstairs portion. The respondent/tenant is occupying shop No. 3 in the ground floor. According to the revision petitioner/landlord/P.W.1, his second son Kirupakaran if he leaves the Khalasi job and if he start electrical business, then he will get good income. At this juncture, it is to be noted that "carrying on business" does not mean actually carrying on business. In fact, it will suffice if the landlord takes one significant forward step or has taken some steps for the purpose of carrying on business, in the considered opinion of this Court. Moreover, the term "carrying on business" does not mean also that all steps required for carrying on business should have been taken and it is enough that if one step is taken and established as far as the present case is concerned, the commencement of electrical business by the revision petitioner/landlord second son does not need elaborate preparatory arrangements being made thereto. In fact, in the case on hand, the need for starting electrical business has arisen and it cannot be said that the revision petitioner must wait till his second son Kirupakaran resigns his job in Railways and then only can file a petition and in that view of the matter, the contrary view taken by the learned Rent Controller and the learned Appellate Authority are not correct, in the considered opinion of this Court. It is not significant to point out that taking note of the fact that the revision petitioner/landlord is in need of the shop No. 3 in the petition premises, which is occupied by the respondent/tenant and inasmuch as the revision petitioner/ landlord requires the sale for starting an electrical business for his second son Kirupakaran working in Southern Railway, the same shall be construed only for additional accommodation as per law and as such this Court is of the considered view that Section 10(3)(c) of the Act squarely applies and that R.C.O.P. No. 1157 of 2001 is rightly maintainable u/s 10(3)(c) of the Act.

24. The main question that arises for rumination in the present case on hand is that whether the landlord/civil revision petitioner has made out a case for evicting the respondent/tenant in lieu of comparative hardship. In fact, the relative hardship or comparative hardship can well be established by evidence, though there may not be a pleading to this effect either by the landlord or tenant, in the opinion of this Court. It cannot be gainsaid that unless the landlord deserves to get possession, the eviction cannot be ordered. It is not for the tenant to dictate as to requirement of the landlord and as to where he shall carry on the business or what is the nature of the business which the landlord desires to do.

25. It is the specific evidence of R.W.1-Sivanesan/tenant that his father-in-law has purchased a house in the name of his wife, which is in 4th floor and that he cannot do his painting and welding works. P.W.1-Jagadeesan/revision petitioner/ landlord has clearly admitted in his cross examination that he is in possession of three shops. Though on the side of revision petitioner/landlord, it is informed that shops No. 3 to 6 are contiguous and convenient for landlord's occupation,

there is no satisfactory explanation on the side of the revision petitioner as to why he is not utilising the shop No. 1 and 2 which are vacant and adjacent ones, wherein the revision petitioner/landlord can commence the electrical business of his second son.

26. It is to be borne in mind that even if the bonafides of landlord has been proved, the comparative hardship of the parties in the event of eviction should also be considered by the Court, before ordering eviction and viewed in that angle, as far as the comparative hardship of the respondent is concerned, in the event of eviction, the hardship will be more to him which will outweigh the advantage to the revision petitioner/landlord. There is also no pleading in regard to the hardships that are being undergone by the landlord in the present place which he occupies for his residential purpose, in the considered opinion of this Court.

27. From the foregoing discussions, this Court is of the considered view that eviction of the respondent/tenant cannot be ordered in the eye of law and resultantly, the Civil Revision Petition is dismissed. Considering the facts and circumstances of the case, the parties are bear their own costs.

In fine, C.R.P. Nos. 1095 and 1097 of 2004 are dismissed and resultantly, the order passed by the authorities below are confirmed for the reasons assigned in these two revisions.

In fine, this Court without going into the merits of the case, remits the matter back to the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai to go into the issue of bona fide requirement of the revision petitioner/landlord and deal with R.C.O.P. No. 1158 of 2001, after giving due opportunity to both parties to adduce further oral and documentary evidence in the manner known to law and in that view of the matter, C.R.P. No. 1096 of 2004 is allowed. The order of the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai passed in R.C.O.P. No. 1158 of 2001 dated 22.11.2002 and the orders passed by the learned Appellate Authority in R.C.A. No. 191 of 2003 dated 13.02.2004 are set aside and since the Rent Control proceedings is of the year 2001, the learned Rent Controller viz., XVI Judge, Court of Small Causes, Chennai is directed to dispose of R.C.O.P. No. 1158 of 2001 within a period of four months from the date of receipt of a copy of this order.

Having regarding to the facts and circumstances of the case, the parties are directed to bear their own costs.