
(2010) 08 MAD CK 0117

In the Madras High Court

Case No : C.R.P. (NPD) . No. 1867 of 2009 and M.P. No. 1 of 2010

Radhakrishnan

APPELLANT

Vs

Lakshmipathi @ A.L. Pathy and Ananda Ganapathi

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227
Easements Act, 1882 — Section 52
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 1(3), 10(2), 10(2), 10(3), 12(2)
Transfer of Property Act, 1882 — Section 105, 108

Citation : (2010) 08 MAD CK 0117

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : A. Chidambaram, for the Appellant; M.L. Ramesh, for the Respondent

Judgement

G. Rajasuria, J.—Animadverting upon the order dated 30.4.2009 passed by the Principal Subordinate Judge, (Rent Control Appellate

Authority), Chengalpattu, in R.C.A. No. 16 of 2008, reversing the order dated 24.1.2008 passed by the District Munsif (Rent Controller),

Chengalpattu in RCOP No. 3 of 2005, this civil revision petition is focussed by the landlord.

2. Niggard and bereft of unnecessary details, the germane facts for the disposal of this civil revision petition could pithily and precisely be set out

thus:

(i) The revision petitioner herein filed the RCOP No. 3 of 2005 invoking Sections 10(2)(i), 10(2)(ii)(a), 10(2)(ii)(b), 10(2)(iii) and 10(3)(c) of the

Tamil Nadu Buildings Lease and Rent Control Act (hereinafter referred to as the "Act" for short) seeking eviction of the respondents, citing R1 as

the chief tenant and R2 as the unauthorised sub-tenant, on the following grounds:

- (i) "Wilful default" in paying the rent by the tenant;
- (ii) The tenant sub-let the demised premises concerned;
- (iii) The tenant used the demised premises for a purpose other than that for which it was leased;
- (iv) The tenant committed the act of waste;
- (v) The demised premises concerned is required by the landlord for "additional accommodation";

(b) During trial, on the side of the revision petitioner/landlord, he examined himself as P.W.1 along with one Babu alias B. Mohamed Nasrulla as

P.W.2 and Exs.P1 to P9 were marked. On the side of the respondents/tenants, the first respondent herein examined himself as R.W.1 along with

one Rajeshwar as R.W.2 and the second respondent herein as R.W.3 and Ex.R1 to R22 were marked.

(c) Ultimately, the rent controller ordered eviction on all the five grounds.

(d) As against the said order, the tenant preferred the appeal in RCA. No. 16 of 2008 and the appellate authority set aside the order of the Rent

Controller and dismissed the RCOP in toto.

3. Being aggrieved by and dissatisfied with the order of the learned appellate authority, this revision has been filed by the landlord on various

grounds:

4. The learned Counsel for the revision petitioner, placing reliance on the grounds of revision would develop his arguments, the warp and woof of

them would run thus:

(i) The Rent Controller failed to apply the law relating to sub-tenancy. No one could precisely with mathematical precision establish the sub-

tenancy as the chief tenant would surreptitiously sub-lease the property in such a manner that others would not be able to know the terms and

conditions of the same. Hence it would be preposterous on the part of the Court to expect that the landlord should prove the quantum of the rent

paid by the sub-tenant to the chief tenant.

(ii) The appellate authority wrongly understood the law as though if at all sub-tenancy has to be established, the chief tenant's total departure from

the premises should be found established. Even if the sub-tenant is found to be in occupation of a part of the demised premises, then that would be sufficient to attract eviction on the ground of sub-tenancy.

(iii) The change of user so far this case is concerned is so obvious and axiomatic that no additional evidence is required.

(iv) The Rent Controller taking into consideration the pros and cons of the matter appropriately and appositely held that there was change of user

as RW1-the tenant candidly and categorically admitted in his deposition that the property was leased out only for the purpose of conducting his

business in selling xerox machines and servicing the same and nowhere it is found stated that he was given carte blanche to do any business which

is not illegal.

(v) Here the tenant categorically admitted that in the demised premises PCO as well as D.T.P. Centre are being conducted and in such a case it is

quite obvious that the appellate authority should have accepted the findings of the Rent Controller, but erroneously he set aside the order of the

Rent Controller.

(vi) Admittedly and indisputably, unarguably and unassailably the landlord is running his own business in the adjacent shop to the demised premises

and in the event of the tenant vacating the demised premises he would be able to expand his business in conducting PCO as well as xerox copy

business etc.

(vii) The Rent Controller taking into consideration the bona fides ordered eviction, but the appellate authority erroneously applied the law as though

there was no proof substantiating the plea of the landlord etc.

5. The learned Counsel for the revision petitioner/landlord would submit that he is not pressing the grounds relating to "wilful default" and "the act

of waste" and accordingly, the learned Counsel prays for setting aside the order of the appellate authority and confirming the order of the Rent

Controller by allowing this civil revision petition.

6. Refuting and challenging, impugning and gainsaying the contentions and arguments as put forth on the side of the learned Counsel for the

revision petitioner/landlord, the learned Counsel for the respondents/tenants would advance his arguments, which could tersely and briefly be set

out thus:

(i) The law is well settled that it is the duty of the landlord to prove the sub-tenancy. It cannot be assumed or presumed as though the tenant sub-

leased the demised premises in favour of a person who is found present in the demised premises. Mere presence of a person other than the tenant

in the demised premises would not lead to the irresistible conclusion that there was sub-tenancy in favour of such person, who is present in the

demised premises.

(ii) The alleged "change of user" should be substantiated so as to attract eviction. Mere addition in the conduct of existing business by the tenant

would not attract eviction.

(iii) There should be proper pleadings highlighting the less hardship of the tenant as well as the corresponding high benefit that would accrue to the

landlord. But in this case, in the absence of pleadings, the landlord cannot press into service the ingredients as contemplated in Sub-clause (e) of

Section 10(3) of the Act.

(iv) The Rent Controller did not take into consideration the relative hardship of the tenant and the corresponding benefit that would accrue in

favour of the landlord in the event of evicting the tenant. As such, the order of the Rent Controller is basically wrong and the High Court cannot for

the first time consider the relative hardship and the consequent benefit of the landlord as contemplated under Sub-clause (e) of Section 10(3) of the

Act.

Accordingly, the learned Counsel for the respondents/tenants prays for the dismissal of the CRP.

7. The points for consideration are as under:

(i) Whether the landlord established before the Courts below that the tenant sub-leased the demised premises?

(ii) Whether there is ample evidence to show that there is "change of user" concerning the demised premises?

(iii) Whether there is objective evidence to show the bona fides of the landlord in seeking "additional accommodation"?

(iv) Whether there is any perversity or illegality in the orders passed by the Courts below?

8. Point No. (i): Relating to the plea of sub-letting is concerned, I would like to refer to the following judgments:

(i) Jagdish Prasad Vs. Smt. Angoori Devi, . An excerpt from it would run thus:

2. ...As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of a person other than the tenant in the shop cannot be assumed. The Act does not require the court to assume a sub-tenancy merely from the fact of presence of an outsider....

(ii) Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others, . An excerpt from it would run thus:

19. ...""In the instant case, exclusive possession was given to the sub-lessee and the tenant had transferred the right to possess in that portion. It is clear that sub-letting was done without the consent in writing of the landlord. If that is so, there was inevitably breach of the covenant.

(iii) Rajbir Kaur and Another Vs. S. Chokesiri and Co., . Certain excerpts from it would run thus:

22. It is essential to the creation of a tenancy that the tenant be granted the right to the enjoyment of the property and that, further, the grant be for consideration. While the definition of "lease" in Section 105 of the Transfer of Property Act, 1882, envisages the transfer of a right to enjoy the property, on the other hand the definition of a "licence" u/s 52 of the Indian Easements Act, 1882, consistently with the above, excludes from its pale any transaction which otherwise, amounts to an "easement" or involves a transfer of an interest in the property, which is usually involved in the case of a transfer of right to enjoy it. These two rights, viz., easements and lease in their very nature, are appurtenant to the property. On the other hand, the grant only for the right to use the premises without being entitled to the exclusive possession thereof operates merely as a licence. But the converse implications of this proposition need not necessarily and always be true. Wherever there is exclusive possession, the idea of a licence is not necessarily ruled out. English Law contemplates what are called "Possessory Licences" which confer a right of exclusive possession, marking them off from the more usual type of licences which serve to authorise acts which would otherwise be trespasses. Thus exclusive possession itself is not decisive in favour of a lease and against a mere licence, for, even the grant

of exclusive possession might turn out to be only a licence and not a lease where the grantor himself has no power to grant the lease. In the last analysis the question whether a transaction is a lease or a licence turns on the operative intention of the parties"" and that there is no single, simple litmus test to distinguish one from the other. The ""solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties"".

24. In *Associated Hotels of India v. R.N. Kapoor* this Court referring to the classic distinction between a lease and a licence said:

There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as

a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. u/s 108 of the said Act, the lessee

is entitled to be put in possession of the property. A lease is therefore, a transfer of an interest in land. The interest transferred is called the lease-

hold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to

the exclusion of the lessor.

28. In *Dipak Banerjee v. Smt. Lilabati Chakraborty Sabyasachi Mukharji, J.*, observed : (SCC pp. 165-66, para 6)

But in order to prove tenancy or subtenancy two ingredients had to be established, firstly the tenant must have exclusive right of possession or

interest in the premises or part of the premises in question and secondly that right must be in lieu of payment of some compensation or rent.

33. In *B.M. Lall* case, this Court observed:

The question is not of words but of substance and the label which the parties choose to put upon the transaction, though relevant, is not decisive.

The test of exclusive possession is not decisive...though it is a very important indication in favour of tenancy.

(iv) 1997(I) MLJ 581 (*S.K. Raffuddin and Ors. v. N. Yeswantha Rao and Ors.*)

18. It is settled law that to prove sub-lease, initially the landlord will have to prove that the tenant is parted with legal possession and a stranger is in

exclusive possession of the building. So long as the exclusive possession is not even spoken to by PW1, there cannot be any question of sub-lease.

Both the authorities below have not entered a finding that the second

respondent, Jaleel, is in exclusive possession of any portion of the building.

Both the authorities below have come to the conclusion that Jaleel might be in possession on the ground that he is having independent business.

According to the Authorities below, from his presence in the premises, such an inference can be had.

19. I do not think, law goes to the extent of saying that a mere presence of a person in a shop will amount to sub-lease.

21. What is sub-letting is also defined by the Supreme Court in the decision reported in Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others,

. In paragraph 17 of that judgment (at page 78), their Lordships said thus:

...parting to the legal possession means possession with the right to include and also right to exclude others. That, in our opinion, is the matter of fact....

So, the alleged sub-tenant must be in a position to exclude others from interfering with his enjoyment of the building. The entire premises must be

under his control and only under him the other person can be included within the premises. Evidence in this regard is absolutely lacking in this case.

22. In Dev Kumar (Died) through LRs. Vs. Smt. Swaran Lata and others, , the only evidence that was let in was, a Commissioner's Report....

Apart from the Commissioner's report, a cash bill under the so-called name of the sub-tenant was also produced. Considering these two evidence,

their Lordships of the Supreme Court said thus:

...At the most, the conclusion can be that while the tenant was continuing his own business as well as a business of Commission Agent of M/s. Ram

Saran Bhola Nath, respondents 2 to 4 have also been permitted to continue their business in the name of Ram Saran Rattan Chand. But that does

not establish either the exclusive possession of respondents 2 to 4 or that the tenant has parted with his possession. The exclusive possession of the

premises being the first criterion for establishing sub-letting and the same not being established, the conclusion of the High Court about sub-letting is

vitiated.

In our considered opinion the landlady, respondent No. 1 has utterly failed to establish the plea of sub-letting....

In paragraph 9 of the judgment, their Lordships said thus:

...the conclusion on the question of subletting is a conclusion on a question of law derived from the finding on the materials on record as to the

transfer of exclusive possession and as to the said transfer of possession being for consideration....

23. Similar is the case reported in *Rajbir Kaur and Another Vs. S. Chokesiri and Co.*, wherein also, their Lordships reiterated that

if exclusive possession is established, and the version of the tenant as to the particulars and the incidents of the transaction is found unacceptable in

the particular facts and circumstances of the case, as in the present case, it may not be impermissible for the court to draw an inference that the

transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of sub-letting in the

guise of licences are in their very nature, clandestine arrangements between the tenant and the sub-tenant and there cannot be direct evidence. It is

not, unoften, a matter for legitimate inference.

The burden of making good a case of subletting and establishing facts and contentions which support the party's case is on the party who takes the

risk of non-persuasion, viz., the landlord. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will

lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party

bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial.

24. So, the basic ingredient to prove the case of sub-lease is "parting with possession". The alleged sub-lessee must have the right to include and

exclude others. If evidence on that aspect is lacking, as held in the decisions cited *supra*, a finding on subletting can only be considered as illegal.

Since the conclusion on sub-letting is a question of law, even though the finding of the authorities below is concurrent, this Court is competent to

reverse that finding.

9. The learned Counsel for the revision petitioner/landlord cited the following judgment of the Honourable Apex Court:

1998 1 L.W. 690 - *Bharat Sales Ltd. v. Life Insurance Corporation of India*, certain excerpts from it would run thus:

Delhi Rent Control Act, Section 14(1)(b)/Subletting - What constitutes

subletting- Giving up possession of the tenanted accommodation wholly or in part by the tenant and putting another person in exclusive possession - Mutual agreement or understanding, in which landlord is kept out of the scene - Difficult to prove by direct evidence by landlord - Law does not require that payment should be proved by affirmative evidence - Inference from facts permissible.

10. A mere poring over and perusal of the above decisions would clearly show that even though a landlord might not be called upon to establish with mathematical precision the actual transaction between the tenant and his sub-tenant, yet there should be some objective circumstances from which the Court must be able to draw legal inference about the existence of sub-tenancy.

11. Here the appellate authority while setting aside the order of the Rent Controller simply misapplied the law to the effect that there should be total segregation of the tenant from the demised premises leaving the sub-tenant in the said premises. But it is quite obvious and axiomatic that such a proposition of law is not tenable. Law does not envisage that to attract the plea of sub-tenancy the sub-tenant should be in exclusive possession of the demised premises. Even if part of a premises is sub-let, then that would attract eviction under the provisions of the Act. A plain reading of the records would display and evince that absolutely there is no clinching evidence to prove sub-tenancy, except the ipse dixit of the landlord. The relevant portion of deposition extracted in the order of the lower Court would be insufficient to come to any firm conclusion. As such, the findings of the appellate authority on that ground is erroneous and he has to reconsider the same. Accordingly point No. (i) is decided.

12. Point No. (ii): Relating to the plea of change of user, I would like to refer to the decisions cited on both sides:

(a) The learned Counsel for the revision petitioner/landlord cited the following precedents:

2000 MLJR 158 - Muthu Thevar v. S. Indirani and Anr.-certain excerpts from it would run thus:

17. So far as the present case is concerned, it is quite evident that the premises was leased out only for running a petty shop. In common parlance, a petty shop is a place meant for sale of small and sundry items and introducing

a xerox machine cannot in any manner, be termed as an item that is being sold or transacted by a petty shopkeeper. It may be true on the part of the petitioner(tenant) that the might have installed the xerox machine in such a manner as not to cause any damage or loss to be occasioned to the landlords on account of the new introduction and that is the parameter that is to be considered when the question of different user of the premises by the tenant is to be decided for the tenant.

18. Considering the proposition arrived at in the judgment reported in K. Panchavarnammal (Died) and Others Vs. E. Saraswathiammal and Others, , which is more relevant to the facts of the case in hand and the subject matter of different user as well remarked by the learned Counsel for the respondents, it squarely applies to the facts of the present case in hand and in such event, it has to be held that by introduction of the xerox copiers machine into the premises, which was rented out for the purpose of running a petty shop would definitely amount to making use of the premises for the purpose other than for which it was rented out in favour of the tenant. Hence, the only question of different user that is to be answered in this case is that the premises has been used for purpose other than for which it was rented out. No other valid or tangible reason has been shown either for irregular or improper procedures adopted or denial of opportunity, violation of natural justice, etc., was established on the part of the revision petitioner, so as to warrant interference by this revisional Court. Hence, in the above circumstances, this Court is left with no option but to confirm the findings rendered by both the Rent Controller and appellate authority in a concurrent manner.

(emphasis supplied)

(b) The learned Counsel for the respondents/tenants cited the following decisions: Jagdish Chand Vs. Surinder Kumar, , certain excerpts from it would run thus:

9. The findings on the change of user are that there is no machinery installed in the demised shop. The tenant-respondent has, however, started selling stationery items like note-books instead of cloth. Even when the benefit of the judgments of the Supreme Court in Rana Vi Bhushan Singh v.

Rati Ram 1969 Unreported Judgments (SC)86 and Rai Chand Jain Vs. Miss Chandra Kanta Khosla, is granted to the landlord-petitioner of

reading lease-deed for a collateral purpose u/s 49 of 1908 Act, still the change of

user for cloth merchant to stationery merchant would not be such a change of user as to require written consent of the landlord-petitioner. The nature of the user of premises continues to the same and instead of cloth, the tenant-respondent has started selling the stationery items the present time of fast changing work, switching over from one business to another without harming the nature of use of the premises has to be considered permissible without being by the mischief of Section 12(2)(ii)(b) of the Act. In Gurdial Batra's case (supra) it has been observed by the Supreme Court that some prejudice must be shown to have been caused to the interest of the landlord which is the rationale of Section 13(2)(ii)(b) of the Act.

10. When the principles laid down in Gurdial Batra's case (supra) and Atul Castings Ltd., (supra) are applied to the facts of the present case, then it becomes evident that no prejudice caused to the interest of the landlord-petitioner because some wooden shelves could be used for stocking the cloth where the tenant-respondent might have stocked the stationery items. Such a liberal approach would advance the object of the provision. It was because of such approach that in Gurdial Batra's case (Supra) sale of television along with the cycles rickshaw repair, when the rent note did not prohibit any other business was considered permissible. Therefore, there is no scope for interfering with the concurrent findings recorded by both the Courts below.

11. In the case of Jagdish Lal (Supra) on which reliance has been placed by learned Counsel the landlord-petitioner, it has been observed that if a new business started by the tenant in premises let out to him was allied business or a business which as ancillary to the business, then it would not amount to change of user. It has further been observed that it is enough for the tenant to argue that nature of the building has continued to be commercial matter to which changed use it has been put. In that case, the change was from gen merchant, ready-made and cloth merchant to the setting up of a restaurant for serving tea cold-drinks and it was found in those circumstances that it would be covered by the mischief Section 13(2)(ii)(b) of the Act. It is evident that there was prejudice caused to the landlord because making tea, serving the same would result into activities which are harmful to tenanted premises resulting prejudice to the interest of the

landlord. However, in present case, the change of user is from cloth merchant to stationery. Therefore, it cannot be said that there is such a drastic change in the nature of business so as to conclude prejudice is caused to the landlord-petitioner the tenant-respondent is to be ejected.

(ii) CDJ 2005 SC 675 - Hari Rao v. N. Govindachari and Ors. certain excerpts from it would run thus:

7. Learned Counsel for the landlord placed considerable reliance on the decision in M. Arul Jothi v. Lajja Bal. That case also arose u/s 10(2)(ii)(b)

of the Act. The transaction between the parties was governed by a lease deed. The tenant covenanted that the premises, ""shall be used by the

tenant only for carrying on his own business...and the tenant shall not carry on any other business than the abovesaid business"" (emphasis in

original) (SCC pp. 730-31, para 10). The business intended was dealing in radios, cycles, fans, clocks and steel furniture. Subsequently, the tenant

also started a trade in provisions (spices and dals, etc.). The landlord sought eviction and the courts below ordered eviction u/s 10(2)(ii)(b) of the

Act. The tenant had appealed to this Court. This Court referred to the earlier decisions of this Court including the one in M.K. Palaniappa Chettiar

v. A. Pennuswami Pillai. It also referred to Section 108(o) of the Transfer of Property Act. This Court distinguished the various decisions brought

to its notice under other sister enactments and took the view that the covenant in the rent deed not to use the premises for any purpose, other than

the one referred to in the rent deed, brought the user by the tenant within the mischief of Section 10(2)(ii)(b) of the Act and, therefore, the order

for eviction was justified. With respect, as we see it, Their Lordships rested their decision on the existence of the negative covenant in the lease

deed and on the view that a breach of that covenant would attract Section 10(2)(ii)(b) of the Act, and make the user one coming within the

mischief of that provision. In this case, as observed, there is no covenant as the one involved in Arul Jothi case. In M.K. Palaniappa Chettiar v. A.

Pennuswami Pillai the tenant, while continuing the business for which the building was taken on rent, was using a negligible portion of the building

for the purpose of cooking. This Court held that the High Court was in error in reversing the decision of the Rent Controller and the Appellate

Authority to the effect that no ground for eviction u/s 10(2)(ii)(b) of the Act was

made out. This Court dismissed the petition for eviction. In *Mohan Lal v. Jai Bhagwan* this Court, interpreting the corresponding provision in the Haryana Urban (Control of Rent and Eviction) Act, 1973, held that when a tenant who had taken a building on lease for the purpose of running a business in liquor, converted the business into that of general merchandise, in the absence of a negative covenant, the user did not amount to user for a purpose other than that for which the building was leased. The same position was adopted in *Gurdial Batra v. Raj Kumar Jain* where the premises were let out for repairing business and the tenant along with the repairing business, also carried on sale of television sets for a while. This Court held that there was no change of user which would attract the liability for eviction under the corresponding provision of the East-Punjab Urban Rent Restriction Act, 1949. It was clearly stated that the concept of injury to the premises which forms the foundation of Section 108(o) of the Transfer of Property Act is the main basis for a provision similar to the one in Section 10(2)(ii)(b) of the Act. We think that the case on hand is governed by the principles recognised in the latter decisions and the ratio of the decision in *Arul Jothi* has no application in the absence of a negative covenant as the one obtaining in that case. *Dashrath Baburao Sangale v. Kashimath Bhaskar Data* was a case where the premises were taken on rent for "sugarcane crushing with the help of an ox and for the shop thereof" and the tenant was to get constructed a temporary shed of tin-sheet for that purpose. The tenant started a cloth business in the premises. The courts below found that this was a user for a purpose other than that for which the premises were leased and this Court found no ground to interfere. This decision only reaffirms the position that everything would depend on the terms of the letting and the facts of the case. Obviously, the cloth business started, had no connection with crushing of sugarcane. The decision in *Ram Gopal v. Jai Narain* shows that the user by the tenant of a building taken on rent for the purpose of running a shop (commercial), for a manufacturing purpose, would entail his eviction on the ground of change of user. The tenant, in that case, installed an *atta chakki* and an *oil kolhu* in the shop. The case on hand is not one of that nature. In other words, in the present case, there was no change of user, from non-residential to residential or from business to manufacturing or

industrial. As emphasised already, there was also no negative covenant as was available in Arul Jothi case. In such a situation, we are satisfied that

the High Court was clearly in error in interfering with the decision of the Appellate Authority that there was no change of user in the case on hand

attracting Section 10(2)(ii)(b) of the Act. Merely because a tenant, who has taken a building for the purpose of running a trade, alters the

commodity in which he was trading when he took the building on lease or trades in other commodities also, he could not be held to be using the

premises for a purpose other than the purpose for which it was let. The purpose has to be understood, as the purpose of trade and in the absence

of a covenant barring the using of it for any other trade, it will be open to the tenant to use the premises for expanding his trade or even for taking

up other lines of trade as befits a prudent trader.

8. It is true that this Court has held in *Malpe Vishwanath Acharya v. State of Maharashtra* that the rent control legislation is enacted in the larger

interest of the society as a whole and it is not intended to confer any disproportionately larger benefit on the tenant to the disadvantage of the

landlord. But that does not mean that the rent control legislation should not be approached as a beneficial piece of legislation and with the

recognition that reasonable protection to the tenant is one of the objects of that legislation. While construing a provision of law imposing a liability

for eviction, like Section 10(2)(ii)(b) of the Act, one must see whether there has been such a change of user of the premises as to make it alien to

the purpose for which the building was let and deny eviction when the basic activity remains the same and there is only a variation in the manner or

mode of carrying on of that activity. Therefore, the interpretation placed on Section 10(2)(ii)(b) of the Act by the High Court in the decision under

appeal and in some other decisions of that Court referred to in the orders of the Rent Controller and the High Court, has to be held to be not

warranted or justified. The order of eviction passed by the High Court u/s 10(2)(ii)(b) of the Act has, therefore, to be reversed.

9. In support of his claim for eviction u/s 10(2)(iii) of the Act, what the landlord pleaded was that his tenant had put up new signboards and fixed

two additional racks by drilling holes in the wall and in the beam and had taken an independent electricity connection for which holes have been

drilled in the floor and the wall, and all this amounted to commission of acts of waste as are likely to impair materially the value and utility of the building. He also pleaded that the tenant had damaged the building while converting the shop for selling readymade dresses. He had installed additional showcases on the walls of the building by making holes therein. He had increased the consumption of electricity by fixing up more lights and fans. He had increased the electricity load, causing constant blowing out of the fuse in the building and causing damage to the electricity service connection to the whole building and the entire building could catch fire at any moment. He also put up a big nameboard outside, damaging the building and had also drawn heavy electrical lines and taken service connection to the nameboard, with a heavy load of electricity. The tenant admitted the putting up of signboards and the fixing up of racks but he denied that he had caused any damage. Whatever he had done was with the consent of the landlord and the claim put forward by the landlord was only an attempt to gain the sympathy of the Court. The Engineer PW 2 noted that new racks were fixed by making holes in floor, walls and also in the beams. Two new massive signboards were fixed in the front and side. Holes were made in the parapet wall of the first floor and angle irons supporting the signboards were fixed. The parapet wall was only 2 thick and it could not take the weight of the huge signboards and the parapet wall could collapse at any time. New electricity connection has been given by making holes in the foundation and the wall in front and a new meter board had been fixed. This report of PW 2 was not sought to be corroborated by any other material to show that there was any danger because of the taking of a new electricity connection or by the increase in load. It is true that for the purpose of his trade, the tenant fixed new racks by making holes in the floor, the walls and in the beams. But, in the absence of any other material, it cannot be said to be the commission of acts of waste as are likely to impair materially the value and utility of the building. We must say that there is hardly any evidence on the side of the landlord to show that there was material impairment, either in the value or the utility of the building by the acts of the tenant. The mere fixing of signboards outside the shop by taking support from the parapet wall, cannot be considered to be an act of waste which is likely to impair materially the value or utility of the building. The report of the Engineer PW 2 merely

asserts that the parapet wall will collapse at any time. There is no supporting evidence in respect of that assertion. Ext. B-1 letter of the landlord

giving permission to the tenant to fix boards, cannot also be ignored in this context. Moreover, when a trade is carried on in a premises, that too in

an important locality of a city, it is obvious that the tenant would have to fix signboards outside, to attract customers.

These are days of fierce competition and unless the premises are made attractive by lighting and other means, a trader would not be in a position to

attract customers or survive in the trade. Therefore, the acts of the tenant established, are merely acts which are consistent with the needs of the

tenant who has taken the premises on rent for the purpose of a trade in leather goods and shoes and in furtherance of the prospects of that trade.

The fixing of racks inside the premises even by drilling holes in the walls or beams cannot be said to be acts which are themselves acts of waste as

are likely to impair materially the value and utility of the building. Broadly, a structural alteration however slight, should be involved to attract

Section 10(2)(iii) of the Act. In fact, we see hardly any pleading or evidence in this case which would justify a conclusion that the acts of the tenant

amount to such acts of waste as are likely to impair materially the value and utility of the building. In *G. Arunachalam v. Thondarperienambi* dealing

with the same provision, this Court held that the fixing of rolling shutters by the tenant in place of the wooden plank of the front door by itself did

not amount to a structural alteration that impaired the value of the building and no eviction could be ordered u/s 10(2)(iii) of the Act. Of course, in

that case, there was also a report by an Engineer that the structural alteration made for fixing the rolling shutter, did not impair the value of the

building. In the context of the Kerala statute which spoke of impairment in the value or utility of the building materially and permanently, this Court

has recently held in *G. Reghunathan v. K.V. Varghese* that the fixing up of a rolling shutter and doing of the allied acts referred to in that decision,

would not amount to user that materially and permanently impairs the value or utility of the building. The Act here only speaks of acts of waste as

are likely to impair materially the value and utility of the building. The impairment need not be permanent. But even then, it appears to us that it must

really be a material impairment in the value or utility of the building. In *British Motor Car Co. v. Madan Lal Saggi* this Court considered the aspect

of material alteration or damage in the context of Section 13(2)(iii) of the East-Punjab Urban Rent Restriction Act, 1949. In the lease deed in that

case, there was a covenant that the lessee will not make any addition or alteration or change in the building during the period of the tenancy. This

Court referred to *Om Prakash v. Amar Singh*, *Om Pal v. Anand Swarup*, *Waryam Singh v. Baldev Singh*, *Gurbachan Singh v. Shivalak Rubber*

Industries, and *Vipin Kumar v. Roshan Lal Anand* and held: (SCC p. 11, para 12)

When the construction is alleged to have materially impaired the value and utility of the premises, the construction should be of such a nature as to

substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building.

There is hardly any material in the present case on the basis of which the Court could come to the conclusion that the act of the tenant here has

amounted to commission of such acts of waste as are likely to impair materially the value and utility of the building. The Rent Controller and the

High Court have not properly applied their minds to the relevant aspects in the context of the statute and have acted without jurisdiction in passing

an order of eviction u/s 10(2)(iii) of the Act. The Appellate Authority was justified in denying an order of eviction to the landlord on this ground.

(iii) *M.K. Palaniappa Chettiar and Another Vs. A. Pennuswami Pillai*, certain excerpts from it would run thus:

4. Even on the alternative point pressed before us that the High Court itself took an incorrect view, we are inclined to accept the submission made

on behalf of the tenant. The finding recorded by the revisional court acting u/s 25(1)(b)(ii) of the Act was to the effect that the portion of the

building, which was being used by the tenant for cooking, was very negligible, while the rest of the building was being continued to be used for the

purpose for which it was taken on lease. On this finding, the lower courts were quite correct in holding that there had been no such conversion in

breach of the terms of the lease as would render the tenant liable to eviction. The High Court interfered because, in its opinion, the lower courts

were not competent to decide the case on this basis as no plea had been taken on behalf of the tenant that, even if the lease was for trade purposes

only and a part of the building had been used for residence, it did not amount to use in contravention of the terms of the lease. In taking this view,

the High Court lost sight of the fact that, in this case, the landlord came as the applicant for eviction of the tenant and the burden was on the

landlord to prove all the ingredients which entitled him to seek eviction. It was, therefore, for the landlord to establish, independently of the plea of

the tenant, that the tenants use was in breach of the terms of the lease. When the landlord failed to show that by substantial part of the building was

being used for a purpose different for the purpose for which the building had been let out, the claim of the landlord had to fail irrespective of the

plea taken by the tenant to resist the application. On this ground also, the High Court had no justification to interfere.

5. Some other grounds were also urged on behalf of the tenant, but we need not deal with them in view of the fact that the tenant succeeds for the

two reasons mentioned above. The appeal is allowed, the judgment of the High Court is set aside, and the decision of the lower courts is affirmed.

The appellants would be entitled to their costs from the respondent.

(iv) 1990 T.L.N.J. 122- T.M. Ramaswamy Gounder v. Ranganayaki, certain excerpts from it would run thus:

Learned counsel for the petitioner(tenant) submitted that no doubt the petitioner has obtained the demised premises for non-residential purpose.

Since the purpose was not specified at the time when the premises was taken on lease, it is open to him to carry on any business in the demised

premises, provided that such carrying on business is not injurious to the demised premises. The approach of the learned appellate authority in fixing

the burden on the petitioner to prove the purpose of tenancy is not correct. The onus is on the respondent to prove the purpose for which the

premise was let out. He further submitted that the respondent/landlady in her evidence admitted that there was a written lease agreement and while

so the non production of such written agreement could be taken as one of the circumstances to show that no specific purpose, for which the lease

was taken, was indicated.

....

....

On consideration of the aforesaid facts, I am of the opinion that it is for the respondent herein to establish that the demised premises was let out

only for the purpose of carrying on the textile business and not for any other

business. The non-production of the lease deed on the part of the respondent is fatal to her case. It is the case of the petitioner that he had taken the premises on lease for nonresidential purposes. Since no specific purpose was indicated, it is open to the petitioner to carry on any business of his choice. In view of the decisions, referred to above, it is for the landlady to establish that the demised premises was let out only for textile business and not for any other purpose. In the instant case, the respondent has not discharged her burden to establish that the demised premises was let out for the purpose of carrying on textile business. In view of the decision reported in *Gurdial Batra Vs. Raj Kumar Jain*, even assuming that the petitioner carried on the business of arrack in the demised premises, as long as the interest of the landlady is not prejudiced a small change in the user would not be actionable. In the light of the views expressed by the Supreme Court in the decisions, referred to above, I am of the opinion that the use of the premises for arrack shop did not constitute a change of user within the meaning of Section 10(2)(ii)(b) of the Act so as to give a cause of action to the respondent to seek eviction of the petitioner/tenant.

13. A plain reading of those decisions would clearly highlight the fact that mere technical change in use of the premises would not attract eviction.

There should be substantial change in the user of the building.

14. Here the learned Counsel for the landlord would submit that except for the name board evincing that the tenant is allegedly doing business in selling xerox machines and servicing the same, actually he was not doing such business as on the date of filing of the RCOP by the landlord, but he was only using the demised premises for conducting PCO and also DTP. The learned Counsel for the landlord correctly argued that the appellate authority wrongly understood that the landlord was approbating and reprobating relating to the plea of change of user.

15. No doubt, the landlord would contend that the demised premises had been put to a different user and in the mean time, the same landlord also stated that the premises was sub-let. Even by sub-letting the premises, if the sub-tenant uses the building for a different use, it would attract both the grounds, so to say, change of user as well as sub-letting, for ordering eviction. As such, the appellate authority was once again wrong in understanding the two different pleas of the landlord as aforesaid.

16. The learned Counsel for the landlord would by inviting the attention of this Court to the deposition of R.W.1-the tenant, develop his arguments

that even though in the written lease agreement-Ex.R22 there is no specification as for what specific purpose the demised premises was let out, yet

R.W.1 candidly and categorically without mincing words admitted that the premises was let out only for the purpose of doing business in selling

xerox machines and servicing the same and in such a case what is there missing in Ex.R22 is found supplied by the tenant himself in his deposition

and taking his oral evidence conjunctively with Ex.R.22, it is clear that the premises was let out to the tenant purely for the purpose of conducting

his business in selling xerox machines and servicing the same and not for any other purpose. Over and above that there is a negative covenant in

clause No. 11 of the lease agreement-Ex.R22 that the demised premises should not be put into any other use other than the purpose for which it

was let out.

17. The learned Counsel for the landlord would submit that since the tenant himself admitted that the demised premises was let out for the specific

purpose of selling xerox machines and servicing the same and that he himself admitted that as on the date of filing of the RCOP, business in PCO

and DTP were being carried on in the demised premises, it is crystal clear that he violated the negative covenant attracting eviction order as against

him.

18. Whereas, the learned Counsel for the tenants placing reliance on the decisions of the Honourable Apex Court reported in (i) M/s. Atul

Castings Ltd. Vs. Bawa Gurvachan Singh, and (ii) M.K. Palaniappa Chettiar and Another Vs. A. Pennuswami Pillai, , referred to supra, would

develop his argument that simply because there might be some technical improvement or change in the nature of the business carried on by the

tenant that would not attract eviction on the ground of change in user. There should be clear evidence that there is substantial change in user.

19. I would like to agree with his submission that the law laid down by the Honourable Apex Court is clear to the effect that on mere technical

grounds, a tenant should not be evicted and that would not be in commensurate with the object of the enactment.

20. I hark back to the maxim - "Verba ita sunt intelligenda, ut res magis valeat

quam pereat - The words of an instrument are to be so understood, that the subject-matter may rather be of force than perish rather be preserved than destroyed; or in other words, that the instrument may have effect, if possible.

21. The letter of the law should be taken into account and whenever there is any difficulty in understanding the same, the object of the Act should be considered. As such, if it is viewed, it is clear, the Rent Control Act is a beneficial legislation and accordingly, if eviction is ordered on technical grounds that would run against the object of the Act. As such, I would like to observe that in addition to proving that the tenant put the demised premises into a different user there should also be evidence that there is substantial change or shift from the earlier business which he was carrying on to a different business.

22. The learned Counsel for the landlord would submit that from the available evidence it could be inferred that the tenant already given a go-by to his business in selling xerox machines and servicing the same. However the learned Counsel for the tenant would challenge the said version forthcoming from the side of the landlord and contend that absolutely there is no shard or shred, miniscule or jot, molecular or iota evidence to point out that there is substantial change in the earlier business which the tenant was carrying on.

23. As such, I am of the considered view that further evidence in this regard also is required and the appellate authority was not justified in simply passing the order without applying the correct provision of law. Accordingly, point No. (ii) is decided to the effect that the appellate authority has to reconsider the issue.

24. Point No. (iii) Concerning the provisions of Section 10(3)(c) and (e) of the Act are concerned, I would like to hark back to the following decisions:

(i) S.R. Babu Vs. T.K. Vasudevan and Others, . certain excerpt from it would run thus:

10. Sub-section (8) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) reads thus:

11.(8) A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the

whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use.

11. A perusal of Sub-section (8) makes it clear that to invoke this sub-section the landlord must show that (i) he is occupying only a part of the building; (ii) the tenant is occupying the whole or a portion of the remaining part; and (iii) the landlord requires the additional accommodation for his personal use.

12. The following is the distinction between Sub-section (3) and Sub-section (8) of Section 11 of the Act. The former provision applies when the building is wholly occupied by the tenant and the landlord bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him provided he does not have any building of his own in his possession in the same city, town or village whereas the latter provision applies when a landlord is already in occupation of a portion of the building and needs additional accommodation which the tenant is occupying, for his personal occupation.

13. In the instant case, admittedly, the first respondent is in occupation of a part of a building and the appellant is occupying another part of the building which the first respondent requires as additional accommodation for his personal use. Therefore, this case falls under Sub-section (8) of Section 11 and not under Sub-section (3) of Section 11 of the Act.

14. In our view, once it is held that the landlord requires additional accommodation for his personal use, he is entitled to utilise it to best suit his requirement. The condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant. The first respondent may use it as it exists or he may use it after necessary repairs, additions or alterations to suit his requirements. The appellant has no say in such matters.

(ii) Rasi Silks and K. Arunachalam Vs. T.A. Venkatachalam and Others, , an excerpt from it would run thus:

12. ...Holding that the crucial aspect is a special instance in matters arising u/s 1-(3)(c) of the Act and that there should be a categorical finding by the statutory authorities on hardship that may be caused to the Tenant by granting it, will outweigh the advantage to the landlords in K.A.

Loganatha Naicker Vs. S.R. Balasundaram Mudaliar, , it was held thus:

It is imperative for the authorities in cases arising u/s 10(3)(c) of the Tamil Nadu Act (XVIII of 1960), to give specific finding whether the hardship

the tenant is likely to suffer would outweigh the advantage to the landlord or vice versa. Unless this aspect is noticed and adjudged upon by the

statutory authorities, there is no complete enquiry as contemplated in respect of the petitions arising u/s 10(3)(c) of the Act.

21. Contention of Tenant is that the landlords can expand the hotel business on the open space available, which is abutting the premises. In his

evidence, P.W.1 has stated the open space cannot be utilised for running the hotel. It is well settled that the landlord can choose the portion

required and it is not for the tenant to dictate terms. In Mookkan Vs. A. Abdul Rasheeth (deceased) and Others, , this Court has held that the

landlord can choose the portion required and it is not for the tenant to dictate terms. It is not the object of the provision to weigh the hardship of

the Tenant as against the test of the landlord on a delicate scale, giving the benefit of the slight tilt in favour of the tenant.

25. The learned Counsel for the revision petitioner/landlord cited the following precedents:

(i) B. Kandasamy Reddiar Vs. O. Gomathi Ammal, ;

(ii) 1990 MLJR 316 - Parameswari Brick Works v. P.S. Sivaraman;

26. The learned Counsel for the tenant would cite the following judgments:

(i) CDJ 2009 Ker HC 184 - J.C.R. Trading Pvt.Ltd. and Ors. v. A.J. Varghese;

(ii) CDJ 2004 MHC 718 - B. Madasamy v. S. Sivakami Ammal;

(iii) B. Kandasamy Reddiar Vs. O. Gomathi Ammal, ;

27. As such, a mere reading of those decisions would amply make the point clear that Courts are enjoined to see that the ingredients as

contemplated under those provisions are satisfied depending upon the case concerned before ordering eviction and there could be no quarrel over

such a proposition.

28. Here, the Rent Controller ordered eviction by invoking Section 10(3)(c) of the Act and in such a case, the Court is enjoined to look into the

first proviso appended to Section 10(3)(e) of the Act, so to say, the "bona fide requirement" of the landlord and the "relative hardship" of the

tenant and the corresponding benefit of the landlord.

29. Nowhere in the first proviso appended to Clause (e) of Section 10(3) of the Act, the hardship of the landlord is contemplated. What is

contemplated in the said proviso is the hardship that would be caused to the tenant in the event of ordering eviction and the court has to see

whether that hardship will outweigh the benefit, which the landlord as such would be getting on evicting the tenant. On the one hand, the for a

concerned under the Act should consider the hardship on the side of the tenant, if eviction is ordered; on the other hand, the courts are not bound

to consider the hardship on the side of the landlords. But what the court should consider is the benefit or advantage that the landlord would be

getting by evicting the tenant. Ultimately it should be assessed as to which of the two would weigh more and accordingly a decision has to be

rendered.

30. If the benefit/advantage would outweigh the hardship, then eviction could be ordered. In other words, if the tenant's hardship outweighs the

advantage of the landlord then no eviction should be ordered and this should be the proper approach. It may appear at first blush, the distinction

sought to be made by me is one between tweedledum and tweedledee; between rock and a hard place; between six of the one and half a dozen of

the other but in my opinion, the distinction is one between chalk and cheese. From the available evidence, the court should consider what probable

benefit that the landlord would be getting by evicting the tenant and it has to be seen what are all the probable hardship to which the tenant would

be put into, if he is evicted from the demised premises. As such, hardship of the tenant, vis-a-vis, the benefit/advantage of the landlord should

weigh in the mind of the authorities under the Rent Control Act.

31. A plain reading of the above decisions would unambiguously and unequivocally highlight and spotlight the scenario to the effect that a landlord

initially is duty bound to establish objectively his bona fide requirement for his additional accommodation and whereupon it is the duty of the

authority under the Act to see whether the hardship of the tenant outweighs the benefit which the landlord would reap out of such eviction. As

such, the relative hardship must be considered. But in this case, curiously enough the Rent Controller did not take into account at all the said

aspects.

32. At this juncture, the learned Counsel for the revision petitioner/landlord would submit that this Court being the revisinal Court, while exercising powers u/s 25 of the Act, which is admittedly wider than the revisional powers contemplated under Article 227 of the Constitution of India as well as Section 115 of CPC., consider the pro et contra and dispose of the matter finally.

33. Whereas, the learned Counsel for the tenant, by citing the decision of the Full Bench of the Kerala High Court reported in CDJ 2009 KER HC

184 - J.C.R. Trading Pvt. Ltd., and Ors. v. A.J. Varghese, certain excerpts from it, would run thus:

8. The next question which arises for consideration is whether the present R.C.P. wherein the landlord has invoked the ground of eviction u/s 11(3)

and u/s 11(8) simultaneously is maintainable. The above question is no longer res integra. It is now settled by judgment of the Supreme Court in

S.R. Babu Vs. T.K. Vasudevan and Others, and by judgment of Division Bench of this Court in cases such as Indian Saree House Vs.

Radhalakshmy, and K.T. Thomas v. P. Sreedhara Varma 2007(4) KLT SC 58 (C. No. 64) : 2008(1) KU 125 that the ingredients of the eviction

grounds under Sub-sections (3) and (8) of Section 11 of Kerala Act 2 of 1965 are distinct and different and they are mutually exclusive. We

notice that all the statutory pre-requisites for maintaining a petition for eviction u/s 11(8) in contra-distinction from a petition for eviction u/s 11(3)

do exist in this case. This is a case where the landlord is occupying a part of a building and the tenant is occupying another part of the same

building. The requirement claimed by the landlord in this case is the requirement of the part under the occupation of the tenant for additional

accommodation for personal use, i.e. the use of expanding the landlord's ongoing business. We are sure that in the fact situation obtaining in the

present case the landlord can aspired for order of eviction u/s 11(8) only and not u/s 11(3). We therefore hold that the Rent Control Petition filed

by the landlord to the extent it seeks eviction on the ground u/s 11(3) is not maintainable in law.

....

....

14. We have already found that the Rent Control Petition can be maintained only under Sub-section (8) of Section 11 and not under Sub-section

(3). It is trite that in all cases where the Rent Control Court comes to a conclusion that the requirement of additional accommodation for personal

use is a bona fide one, it is further necessary that the court considers the comparative advantages which the landlord may gain out of order of

eviction and the hardship which the tenant may have to suffer because of order of eviction. (See judgment of Supreme Court in S.R. Babu Vs.

T.K. Vasudevan and Others, . This is the mandate of the first proviso to Sub-section 10. We find that the authorities below did not examine the

question of comparative advantage/hardship in view of their conclusion that the bona fides is not established. In the event of the bona fides of the

requirement u/s 11(8) becoming established a finding will have to be entered regarding the first proviso to Section 11(10) also. If we are to

relegate decision on these essential issues to the rent Control Appellate Authority, that will be depriving the aggrieved party of the statutory right of

appeal conferred u/s 18 of the Act. Therefore we are of the view notwithstanding the delay which may result, the Rent Control Court itself should

decide whether the requirement of additional accommodation is bona fide and also whether the advantage to the landlord will outweigh the

hardship which may be caused to the tenant by the order of eviction which may be passed.

would develop his argument that the High Court cannot consider for the first time the relative hardship as contemplated in Clause (e) of Section

10(3) of the Act and the matter has to be necessarily remitted back to the Rent Controller for considering the same.

34. The learned Counsel for the tenant would also place reliance on the decision of the Honourable Apex Court reported in M/s. Atul Castings

Ltd. Vs. Bawa Gurvachan Singh,

35. As far as the powers of this Court u/s 25 of the Act is concerned, I would like to fumigate my mind with the following two decisions of the

Honourable Apex Court cited on the side of the landlord.

(i) JT 2000 (Supp) 3 SC 83 - D. Radhakrishnan and Anr. v. M. Loorduswamy and Ors. certain excerpts from it would run thus:

5. The requirement of Section 14(1)(b) of the Act for the purpose of demolition

and reconstruction has been considered and dealt with elaborately by a constitution Bench of this Court in the case of Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, . The only question that arises for our consideration is, whether the findings arrived at by the Rent Controller and affirmed by the appellate authority, could have been interfered with by the High Court in exercise of revisional jurisdiction u/s 25 of the Act. Though the power of revision of the High Court u/s 25 cannot be held to be similar to the power of civil court u/s 115 C.P.C., but at the same time, the same cannot be held to be conferring appellate power on the High Court. The High Court is only required to examine and satisfy, whether the procedure followed by the forum below is regular or not and whether there has been any illegality or impropriety of the decisions arrived at.

6. ...While exercising revisional jurisdiction, to find out illegality with the findings or illegality of any procedure, it was not open to reappraise the evidence, in the light of the object of the Act. In that view of the matter, we set aside the impugned order of the High Court and affirm the decision of the Rent Controller as affirmed by the appellate authority. Respondent No. 1 is granted six months' time to deliver the vacant possession of the premises to the landlord subject to the usual undertaking being filed in this Court within four weeks from today. The appeals stand disposed of accordingly.

(ii) 2001(2) CTC 95 - Vallampati Kalavathi v. Vaji Ismai, certain excerpts from it would run thus:

11. ...The finding recorded by the High Court in the revisional proceedings amounts to taking a view different from those recorded by the Forums below on the evidence available on the record. Was this permissible within the purview of the revisional power vested in the High Court u/s 22 of the Act? The said section reads as follows:

22. Revision: (1) The High Court may, at any time, on the application of any aggrieved party, call for and examine the records relating to any order passed or proceeding taken under this Act by the Controller in execution u/s 15 or by the appellate authority on appeal u/s 20, for the purpose of satisfying itself as to the legality, regularity or of propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

2) The costs of and incident to all proceedings, before the High Court under Sub-

section (1), shall be in its discretion.

12. As the language of the section suggests, the revisional power vested in the High Court is to be used for the purpose of satisfying itself as to the

legality, regularity or propriety of such order or proceeding, and if satisfied that the order/orders suffer any such vice the High Court may pass such

order in reference to the proceeding as it thinks fit. The expression "legality", "regularity" or "propriety" are undoubtedly wider than mere

correction of jurisdictional error. But even such regional power cannot be exercised to upset the concurrent findings of fact recorded by the

Forums below merely on the ground that the High Court is inclined to take a different view on the materials on record in the case. We should not

be understood to be saying that the concurrent findings of fact can in no case be interfered with in revision. For such interference it has to be shown

that the findings recorded by the Forums below suffer from any inherent defect or are based on inadmissible or irrelevant materials or are so

perverse that no reasonable person will come to such conclusion on the material.

36. A mere poring over and perusal of the above excerpts, including the whole judgments would amply make the point clear that even though this

Court, while exercising its jurisdiction u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act is having more revisional powers than

exercising its revisional powers under Article 227 of the Constitution of India or u/s 115 of the C.P.C. yet it cannot assume the role of an appellate

Court, which is the last Court of facts. Unless there is perversity or gross illegality, the question of interfering in revision u/s 25 of the Act would not

arise.

37. Normally there should be pleadings in support of any plea. At this juncture, I recollect and call up the following maxim:

Judicis est judicare secundum allegata et probata" - It is the duty of a judge to decide according to facts alleged and proved.

38. The said maxim is not, with all rigour, applicable to the proceedings under the Rent Control Act, even though it is applicable to ordinary civil

proceedings.

39. There is a peculiar situation which has arisen in this case. There are pleadings attracting the ingredients of Section 10(3)(c) of the Act.

However, there is limited pleading relating to Clause (e) of Section 10(3) of the

Act. In my considered opinion for attracting Clause (e) of Section 10(3) of the Act there need not be any elaborate pleadings. However, the law enjoins the authorities under the Act to consider the evidence adduced in respect of clause 10(3)(c) and find out the relative hardship etc.

40. The learned Counsel for the landlord would be correct in his arguments that from the available evidence the authorities can look into the relative hardship and the Court need not insist upon specific pleadings.

41. The core question arises as to who should consider.

42. It is quite obvious from the discussion supra that the High Court cannot for the first time consider the ingredients of Clause (e) of Section 10(3) of the Act and in the mean time I am of the view that remitting the matter back to the Rent Controller would further amounting to protracting the proceedings and as such the matter has to be remitted back to the appellate authority to consider the same.

43. The learned Counsel for the tenant would submit that if the matter is remitted back to the Rent Controller and the Rent Controller decides against the tenant, then the tenant will have the right of appeal and on the other hand if the matter is remitted back to the appellate authority, he would lose one right of appeal.

44. This matter should not be viewed from that angle at all. Already the Rent Controller decided the lis without considering the relative hardship and the appellate authority also raised his accusative finger as against the Rent Controller on the aspect. In such a case, the appellate authority being the last Court of facts could have very well considered the relative hardship etc. from the available evidence. In fact, in the Honourable Apex Court in *B. Kandasamy Reddiar Vs. O. Gomathi Ammal*, , at the first instance remitted the matter to the appellate authority only and in such a case, I am of the considered view that the matter need not necessarily be sent to the Rent Controller on the ground that the tenant might lose one right of appeal and such an approach would be anathema to justice and fair play and also against justitia piepoudrous-in the interest of speedy justice and accordingly point No. (iii) is decided to the effect that the appellate authority should reconsider the matter.

45. In view of the discussion supra, I am of the considered view that the appellate authority fell into error in deciding all the three grounds, namely,

(i) Sub-letting, (ii) change of user and (iii) additional accommodation, warranting interference by this Court in revision. Accordingly, the order dated

30.4.2009 passed by the Principal Subordinate Judge, (Rent Control Appellate Authority), Chengalpattu, in R.C.A. No. 16 of 2008 is set aside

and the matter is remitted back to the appellate authority for reconsidering the same, after giving due opportunity for adducing additional evidence

by both the landlord and the tenant and the matter shall be disposed of within a period of three months from the date of receipt of copy of this

order.

The civil revision petition is ordered accordingly. No cost. Consequently, connected miscellaneous petition is closed.