

(1977) 04 MAD CK 0023
In the Madras High Court
Case No : C.R.P. No. 188 of 1977

S.S. Khader Mohammed Rowther and Co.	APPELLANT
Vs	
G.S. Sundaram and Brothers	RESPONDENT

Date of Decision : 29-04-1977

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 10(3), 23(3)

Citation : AIR 1978 Mad 147 : (1978) 91 LW 122 : (1977) 90 LW 122 : (1978) 1 MLJ 79

Hon'ble Judges : Balasubrahmanyam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Balasubrahmanyam, J.—This revision is u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It is brought by the tenant

of a non-residential, build-ing in Madras City, What he is up against is an order of eviction passed by the Rent Controller on a petition filed by the

landlord for personal occupation of the premises. The Rent Controller passed the order ex parte. And it was confirmed in appeal.

2. The validity of the ex parte eviction order is questioned in this revision, Mr. Govind Swaminathan appears for the tenant. He argues that the order is a nullity.

3. The nullity argument, as elaborated by the learned counsel, was not so much on the ex parte nature of the order as on the terms of the order

itself. Mr. Govind Swaminathan did not, for instance, say that under the Act all ex parte orders must be held to be nullities. Nor did he claim that

this particular proceeding setting his client ex parte was not warranted by the circumstances. This latter ground could not, in any case, have been

advanced in the present proceedings pursued by the tenant for getting the ex parte order set aside, his plea of "sufficient cause" failed to carry conviction with the Rent Controller as well as the higher tribunals.

4. This revision, then, has been argued accepting the position that the Rent Controller acted aright and within the law when he set the tenant ex parte and proceeded to dispose of the eviction petition in his absence. Even so, according to the argument, the order of eviction is a nullity.

5. Mr. Govind Swaminathan invited me to read the order first, before he addressed his criticism on it. The order, as it happens, is a short one. It is reproduced below, verbatim:

Respondent absent. No representation, Set ex parte. P. W. 1 examined. Eviction ordered with costs"".

Learned counsel, if I remember right, said something unflattering about the brevity of the order. But that could only have been an aside. He did not

mean to say that because the order was short, the law must, on that account, regard it as nasty and brutish. I myself could hardly abide the order's

staccato prose. And I think I said that judicial writing has no business to be telegraphic. But Mr. Govind Swaminathan did not adopt this line in

argument either. His client, evidently, had no mind, at the moment, to indulge on literary criticism. His grievance was much more substantial. Here

was a case, learned counsel said, where the Rent Controller's jurisdiction was invoked to evict a tenant with a view to accommodating the

landlord in the premises. The jurisdiction in such cases and the manner of its exercise are clearly drawn in the Act by Section 10(3)(e). Eviction of

a tenant, under this provision can be ordered only if the Rent Controller were "satisfied" that the landlord's claim in that regard is "bona fide". The

section, according to Mr. Govind Swaminathan, makes the Rent Controller's satisfaction a necessary pre-condition on the foot of which, and on

the foot of which alone, an order for eviction can properly follow. Now, what is the position in the present case ? asked learned counsel, turning to

the order in question. All we gain from it, he said, is the knowledge that the Rent Controller set the tenant ex parte for non-appearance and went

on to record such evidence as P. W. 1 gave in the witness box. Beyond these, the order says nothing--nothing except to announce, abruptly, that

the tenant is ordered to be evicted. It does not say that eviction was being

ordered because the Rent Controller was satisfied that the landlord's claim was bona fide. The result, according to Mr. Govind Swaminathan, is that his client was evicted contrary to the provisions of Section 10(3)(e) of the Act. He was evicted in the absence of the statutory condition, the presence of which alone could have given validity to the order. In this sense, learned counsel said, the order was a nullity.

6. Mr. Kesava Iyengar, appearing for the landlord, supported the order. He said that the order was as valid as valid can be. In judging its validity, he cautioned, one must not forget that it had been rendered in an ex parte proceeding. In a proceeding of this kind, he said, one starts from the position that the court has to get on with the case before it in the absence of the party against whom relief is claimed. In such a situation, the evidence let in by the only party in attendance before the court not only goes uncontradicted, but constitutes the only evidence in the case.

Necessarily, therefore, it is that evidence to which one must attribute the court's decision, for there is nothing else on record on which the court could have addressed itself. Learned counsel urged me to adopt this approach as the right one for judging the validity of the present order of the

Rent Controller. He added that it is no defect at all that the order contains little or no discussion about the evidence in the case. This omission,

according to him, can be made good by a reference to the transcript of evidence, which is there on record for all to see. Learned counsel pointed

out that this was precisely the course which the appellate authority had adopted while hearing the appeal against the order. It went through the

papers, on its own, to find out if the order of the Rent Controller was according with the evidence which he had recorded from PW 1. Learned

counsel invited me to do likewise. He cited the example of a Privy Council case in *Amriteswari Debt V. Secy. of State*, (1897) 24 Cal 504, to

show that the evidence on record may be referred to for construing a decree.

7. I do not, however, feel impelled to go into the evidence of P W 1 for deciding the question before me, which is, whether the order as passed by

the Rent Controller is a valid order or a nullity. The Privy Council case, it may be observed, had to do with the construction of a decree whose

validity, as far as I can see from the reports, was not in question. The problem that arose in that case was rather one of trying to understand the

precise scope of a term in the decree. It was in that context that the Privy Council permitted itself a peep into the evidence on record. The problem

before me in this case, however, is quite different and is more fundamental. What falls for my decision is, the very validity of the order itself. The

line of inquiry, is not what the order means, but whether it is an order at all, within the contemplation of the law? To that inquiry I shall address

myself immediately.

8. Section 10(3)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960, makes provision for eviction of tenants in cases where the

landlord requires the building for his own occupation. Sub-clauses (i) to (iii) lay down the particular circumstances under which a landlord can ask

for eviction of the tenant. Sub-clause (i) deals with residential buildings; Sub-clause (ii) deals with non-residential buildings which are meant, or

actually used, for stationing vehicles; Sub-clause (iii) deals with other non-residential buildings. It is the last sub-clause which has relevance to the

present discussion. For it is under this sub-clause that the eviction petition in the present case had been filed by the landlord against the tenant.

There is no dispute as to what the requirements of this provision are for maintaining an eviction petition before the Rent Controller. It may be that

the language of this sub-clause, as compared with Sub-clauses (i) and (ii) is susceptible of a narrow, literal, interpretation, but it is the common

acceptation of lawyers and courts that this provision, like the two other fellow provisions in the same sub-section, lays down two indispensable

conditions for an eviction petition. The landlord must be in need of the premises under the tenant's occupation for the purpose of his own business

or that of a member of his family. This is the first requisite. The other is that the landlord has no other non-residential building of his own elsewhere

in the same city, town or village concerned.

9. The Legislature having laid down what the requisites are of an eviction petition, proceeds further and lays down how, and in what manner, the

Rent Controller should deal with the landlord's claim and give it a proper disposal. This latter provision is enacted in Section 10(3)(e) of the Act

and is in the following terms:--

The Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession

of the building on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application"".

My reading of the provisions of Section 10(3)(a)(iii) and 10(3)(e) is this. When a landlord files a petition to evict the tenant of a non-residential

building, naturally the Rent Controller will first examine whether the petition satisfies the two initial requirements, one, that the landlord is badly in

need of the buildings for carrying on his business, and two, that he has no other building which he can call his own elsewhere in the same city. If

these requirements are not fulfilled, the petition for eviction fails then and there at the initial stage. But the jurisdiction of the Rent Controller is not

cut out by the terms of Section 10(3)(a)(iii) alone. For we also have in the enactment Section 10(3)(e), and it is in that provision that we find the

real crux of the Rent Controller's jurisdiction. The language in which this jurisdiction is defined by the Legislature is too elaborate to need further

elucidation. The Legislature has made it quite clear that the Rent Controller has to act only according to the dictates of this clause. He cannot act in

any other way. No latitude of discretion is permitted to him. He certainly has jurisdiction to allow the eviction petition and direct the tenant to put

the landlord in possession of the premises. But this he can do only on one condition, namely, that he is satisfied that the landlord's claim for relief is

bona fide. Not other-wise. If in the case before him, the Rent Controller is not satisfied that the landlord's claim is bona fide, then this clause in the

section insists that he shall reject the eviction petition. The real foundation for the Rent Controller's order, then, is the foundation of his satisfaction,

one way or the other, on the question of the landlord's bona fides. He cannot either allow or reject the eviction petition without forming this

satisfaction.

9A. In my view the order in the present case fails to live upto the strict requirements of Section 10(3)(e) because the order does not show that

eviction had been ordered on the basis of the Rent Controller's satisfaction that the landlord's claim is bona fide.

10. I do not accept Mr. Kesava Iyen-gar's argument that the Rent Controller's satisfaction is implicit in his order. On the written text of the order,

which I have earlier reproduced verbatim, I do not think it is possible to read any

such implication into it. The Rent Controller merely says

Evidence of PW 1 recorded. Eviction ordered." What does he mean by this? Putting two and two together, we may possibly imply that the Rent

Controller accepted the evidence of PW. 1. We may, perhaps, go a little further too and say that according to the Rent Controller P. W. 1's

evidence made out the grounds which had been set out in the eviction petition. But even this liberal construction would fall short of what the section

expects and requires the Rent Controller to find. Giving to the order the most charitable interpretation one can give and reading into it every

implication that its language reasonably bears, we would still be left with the position that the order does not show what the Rent Controller

thought about the landlord's bona fides or, what is worse, whether he thought about them at all.

11. Mr. Kesava Iyengar said there is no magic in the words "satisfied", "bona fides" etc., and these words can be easily played up in legal

discussion and be given a significance far greater than what the Legislature had intended to impose on them. I agree that we must guard against

statutory expressions being debased and reduced to claptrap. But that is not the case here. The expressions which are the subject of the present

discussion are terms whose precise legal attributes no lawyer can miss. That is the very reason why the legislative draftsmen have used them in the

section. Take the term "satisfied". For a court or tribunal to be satisfied about something it is essential that it should have applied its mind to that

subject. In this sense, satisfaction is a mental thing. But it is implicit in our court system that the court's satisfaction, in order to be recognisable as

such, must always and ever find verbal expression. Otherwise, how on earth is one to know whether there has been any satisfaction at all and if so

what was in the mind of the court?

12. The significance of the other statutory expression "bona fides" cannot also be missed. It has a distinct connotation in legal writings. In the

context of Section 10(3)(e) dealing with the jurisdiction of the Rent Controller the phrase has a special significance. The provision demands that the

landlord's claim must be held to be one made in good faith. His prayer before the Rent Controller is statedly for an order directing the tenant to put

him in possession and it is statedly addressed for a particular purpose, to wit, his

pressing need for accommodating his own business in those very premises. In this context the question of bona fides lies in this: that the landlord does not desire the removal of the tenant as an end in itself, but only as a means to an end. It is on this aspect on which the Act requires the Rent Controller to dwell and form his own satisfaction.

13. All this shows that a Rent Controller cannot sustain an eviction order on the basis, merely, of what the landlord or his business manager says from the witness box. Apart from testing the veracity of the witness, the Rent Controller must also see whether the landlord's move is not just a device to kick the tenant out. He must see whether the landlord really means business and wants it to be set up in, or shifted to the premises in question. In the very nature of the inquiry, therefore, these impressions have got to be put down in writing by the Rent Controller himself, while passing the order. They are not things which can be filled in according to the fertility of the reader's imagination.

14. Mr. Kesava Iyengar pleaded that this would be too high and meticulous a standard from which to test an ex parte order. But we are not here examining the Rent Controller's order as a piece of judicial writing. What we are doing, and have to do, is to see whether the order is a valid one u/s 10(3)(e), I search in vain this provision to find whether it has made any reservations for ex parte orders. It has not. It follows therefore that ex parte order or no ex parte order, the Rent Controller must enter in it what kind of satisfaction he has formed on the question of the landlord's bona fides. If the order lacks this finding, then it is no order at all u/s 10(3)(e). This direction of our present inquiry is not one of review in which all we do is to go into correctness of the order. Our present question is to see whether what the Rent Controller has written is an order at all within the contemplation of Section 10(3)(e). There can be no two answers to this question. It is plain to me, at any rate, that the Rent Controller has not given a moment's thought to the considerations bearing on the exercise of his jurisdiction. He seems to have acted under some kind of conditioned reflex which is not an uncommon experience to lawyers familiar with ex parte proceedings. The order, as it reads, is a fine example of what may be called automatic writing of the writer's mind not entering what he writes about. I have therefore, no hesitation in holding that his order is no order at

all, and is a nullity.

15. Mr. Kesava Iyengar in the course of his argument drew my attention to the relevant statutory rules bearing on the subject. I have studied them.

There is nothing I can find in those provisions which militates against the conclusion which I have reached in this case. The rules merely lay down

the stage by stage procedure which the Rent Controller has to adopt in proceedings that come before him. They do not lay down what the Rent

Controller should say and what he may leave unsaid in his orders. These things, as I have earlier shown are dealt with by the sections in the Act.

And what the sections lay down cannot, obviously, be whittled down by any subordinate rules. Indeed, on my reading, they make no such attempt.

They rather tend to underline my view that every order which the Rent Controller passes must come forth as a speaking order, giving expression to

what the statute requires him to be satisfied about, in the particular proceeding before him. The rules cited by Mr. Kesava Iyengar no doubt,

provide for ex parte decision making, as well as the procedure for setting it aside. But even these provisions do not -- as, indeed, they cannot --

water down the statutory imperative that the Rent Controller shall not evict a tenant without first entering his satisfaction, formed on the materials

before him, that requisite grounds exist in the case of warranting the eviction.

16. Mr. Kesava Iyengar then submitted that no appellate or revisional authority can ever be at a loss to find out if the appropriate statutory grounds

existed for the making of any given order of eviction. He said this would be the position even in a case where the order of the Rent Controller does

not speak out his mind. Learned counsel instanced cases of eviction proceedings which at one stage or another end in compromise. The parties in

such cases would ordinarily reduce the terms of their settlement in writing, file their joint memorandum in court and invite the Rent Controller to

pass orders in terms thereof where, under those terms, the tenant agrees to vacate the premises, the Rent Controller simply records the

compromise and orders eviction. Necessarily, in such cases, the Rent Controller would not be found taking the trouble of recording his own

individual judgment as to the existence of the statutory precondition for the tenant's eviction; Mr. Kesava Iyengar said that the latest trend of cases

reported in the books is to uphold the validity of such compromise eviction

orders, despite their not being "speaking orders" in any proper sense of the term. He cited two recent decisions of the Supreme Court as instances in point. One is reported in *K.K. Chari Vs. R.M. Seshadri*, , and the other *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, . He drew from these two decisions a broad principle which he formulated in the following terms: If at the time of passing the order, there was some material before the Rent Controller on the basis of which he could be satisfied, *Prima facie*, about the existence of a statutory ground for eviction, then a court of review must presume that the Rent Controller was, in fact, so satisfied.

17. It may be observed that in each of the Supreme Court decisions relied on by Mr. Kesava Iyengar what was under examination was an order of eviction passed on the basis of a compromise between the landlord and the tenant. Neither decision had to do with an *ex parte* order of eviction of the kind we have to contend with in the present case. The court had accordingly, no occasion to express itself on the relevant legal position. But Mr. Kesava Iyengar urged that the rule laid down in those decisions must unquestionably apply even for testing the validity of an *ex parte* order which does not, *ex facie*, manifest the Rent Controller's satisfaction as to the existence of the statutory requisites for the tenant's eviction from the premises.

18. Learned counsel's argument involves a consideration of what the Supreme Court has laid down in those two cases. But before proceeding to do so, I may briefly touch on the earlier trend of authority, or rather, on how it was commonly understood. To begin with, it may be observed that all the cases which ultimately found their way to the High Court and the Supreme Court had one thing in common. They called for the interpretation and application of special legislation meant for regulating the letting of residential and non-residential buildings in urban, and other areas and the prevention of unreasonable eviction of tenants therefrom. Jurisdiction in such cases was vested by the Legislature in special tribunals or was subjected to special conditions and restrictions even where it was allowed to continue with the common law courts. The terms of building tenancies were taken out of the realm both of contracts and of the Transfer of Property Act. It was also a common provision to be found in the class of

legislation that the eviction of tenants could be ordered only where the tribunal or the court, as the case may be, was satisfied about the existence of grounds to justify the eviction -- the grounds being clearly drawn and defined in the statute itself. What is more, to ensure that the special Tribunals exercised their jurisdiction in this regard, the concerned legislation also usually provided for a revision or other proceeding for review by a superior court. Cases thus arose often before the High Courts in the country under one or other of the rent control statutes, and learned Judges were asked to examine the validity or propriety of individual eviction orders. The trend of decisions, as might be expected, of the superior courts was to insist on the Rent Control tribunals passing orders of eviction in terms of the relevant statute and on nothing else. Orders were clearly examined by learned Judges to see to what extent the Tribunals below had recorded their findings as to the existence of the statutory grounds for eviction in the disputes that came up for decision before them. In this situation, it came to pass that the higher courts were invited to go into a particular kind of orders which, though not unfamiliar to lawyers and courts, yet raised peculiar problems concerning their validity in the context of the special provisions of rent control enactments. I refer to proceedings where the landlord and tenant, either before or after a contest, preferred to compromise their dispute, but insisted nevertheless on getting the imprimatur of an order from the tribunal concerned. In such cases, where the tenant agreed, under the compromise, to vacate the premises, the tribunal seldom refused the invitation to pass an order of eviction, without further ado, on the basis of the compromise. One view of such orders was that they were perfectly valid even under the special statute. The other view was that they were not. Surprising as it may now seem, the broad trend of certain early decisions of the Supreme Court was to the effect that an order of eviction which is based solely on a settlement or compromise between landlord and tenant cannot be regarded as one passed in terms of the statute. That, at any rate, was the impression they gave. The earliest of the cases was Bahadur Singh and Another Vs. Muni Subrat Dass and Another, . That case was concerned with a dispute between the tenants of a building and the landlord's son, which was ultimately referred to arbitration. The arbitrator entered on the arbitration and gave his award in due time. The award provided that the tenants should remove the

machinery which they had installed in the premises, and give vacant possession to the landlord on a certain date. The award was filed before the court and decree was passed in terms of the award. The decree-holder then applied for execution. The tenants objected on the ground that the decree passed by the court was a nullity. They raised the objection that it contravened Section 13(1) of the Delhi and Ajmer Rent Control Act 1952. That section prohibited the court from passing a decree or order for recovery of possession of any premises in favour of the landlord against a tenant except in any suit or proceeding instituted by the landlord against the tenant for recovery of possession on one of the grounds stated in the Act, and unless the court was satisfied that a ground for eviction existed. The Supreme Court held that the decree in that case was a nullity. For two reasons -- one, that the decree was passed in a proceeding to which the landlord was not a party, and two, that the court had passed the decree without satisfying itself that a ground for eviction existed, The Supreme Court held that on the plain wording of Section 19(1) of the Delhi and Ajmer Rent Control Act 1952, the court was forbidden to pass a decree otherwise. In the course of their judgment, the learned Judges derived support from a decision of the English Court of Appeal in *Peachey Property Corporation v. Robinson*, (1966) 2 All ER 981. That was a case where the landlords of a flat had issued a writ to recover possession from the concerned tenants for nonpayment of rent. The tenants did not enter appearance in the case and the court gave judgment in favour of the landlords in default of the tenants' appearance. The court of appeal had to consider whether the judgment was in accordance with the Rent and Mortgage Interest Restrictions (Amendment) Act 1933 as applied to the Rent Act, 1965. Section 3(1) of the former Act provided that "no order or judgment for the recovery of possession of any dwelling house to which the principal Acts apply or for the ejection of a tenant therefrom shall be made or given unless the court considers it reasonable to make such an order or give such a judgment....." The court of Appeal held that the judgment given by the court of first instance in default of appearance of the tenants was a nullity. The reason for this view finds expression in the judgment of Winn L J who spoke for the Court of appeal:--

It is perfectly plain from what I have said that before the judgment in default of appearance was entered, no court had determined whether it was

reasonable to make such an order or give such a judgment. In my view, therefore, by express force of that section the judgment in default of

appearance here was a nullity. It was, according to its terms, a judgment for recovery of these premises, and that is something which the section

prohibits unless there has been a prior determination by the court that it was reasonable to give such a judgment.

The above passage was quoted with approval by the Supreme Court in the decision Bahadur Singh and Another Vs. Muni Subrat Dass and

Another, . It may be observed that while in the case before the English Courts of Appeal, the order of eviction was an ex parte order passed in

default of appearance by the tenants, the Supreme Court was concerned with a decree passed by a court on the basis of an arbitration award

without the court itself going into the grounds of eviction. In both the cases, the court of first instance was found not to have exercised its mind to

form its own satisfaction about the precise ground on which alone eviction could have been ordered under the relevant statutory provisions.

19. The Supreme Court took the same view in two later decisions. Ferozi Lal Jain Vs. Man Mal and Another, and Kaushalya Devi and Others Vs.

Shri K.L. Bansal, , Hegde J. speaking for the court in the latter case observed thus -- (at P. 796).

From the facts mentioned earlier, it is seen that at no stage, the court was called upon to apply its mind to the question whether the alleged

subletting is true or not. Order made by it does not show that it was satisfied that the subletting complained of has taken place, nor is there any

other material on record to show that it was so satisfied. It is clear from the record that the court had proceeded solely on the basis of the

compromise arrived at between the parties. That being so, there can be hardly any doubt that the court was not competent to pass the impugned

decree. Hence the decree under execution must be held to be a nullity"".

20. It might have been noticed that Hegde J. in the above said decision had not said that all orders of eviction passed in terms of compromises

arrived at between the parties, must be regarded as nullities. There might be cases where either within the four corners of the memorandum of

compromise or elsewhere from the record it might be possible to deduce the existence of the statutory grounds for eviction. Hegde J. does not

seem to have regarded as invalid orders passed by the tribunals on the basis of compromise terms in such cases. Yet a general impression appears

to have gained ground among lawyers that orders of eviction passed by a Tribunal on the basis of agreement between the parties must be held to

be invalid on the score that the very presence of an agreement between the parties, must per se, rule out the existence of satisfaction which the

statute requires the Tribunal to form as pre-condition for eviction.

21. The opportunity for clarifying the position of compromise eviction orders under the scheme of the Rent Control statutes soon presented itself

before the Supreme Court in K.K. Chari Vs. R.M. Seshadri, . In that case, the landlord of a residential building in Madras City moved the Rent

Controller for evicting the tenant. The petition was filed under the Madras Buildings (Lease and Rent Control) Act 1960. The tenant in that case

was a retired I. C. S. Officer" and a practising advocate. The ground for eviction put forward by the landlord was that he had no other building in

the city and he required the building for his personal occupation. The petition was resisted by the tenant. The parties having joined issues, the

landlord let in evidence, both documentary and oral, in support of his petition. The tenant, however, did not choose to cross-examine the

petitioner's witnesses. Subsequently, the parties entered into a settlement, and filed a memorandum of compromise before the Rent Controller

under the terms of which the tenant withdrew all his defences to the petition and submitted to a decree for eviction. The Rent Controller passed an

order in terms of the compromise. The question before the Supreme Court was whether this order of eviction, passed as it was on the terms of a

compromise, should be held to be a nullity on the basis of the ruling of the Supreme Court in Bahadur Singh and Another Vs. Muni Subrat Dass

and Another, and the two later decisions following it. Both the learned Judges, Vaidialingam J. and Alagiriswami J. who heard this case, gave

separate but concurring judgments. Vaidialingam J. referred in his judgment to the averments in the eviction petition, the salient points made out in

the evidence on the side of the landlord, the terms of the compromise memo and the course of proceedings as a whole. Having done so, he

observed that it cannot be held in the particular circumstances of that case that the eviction order had been passed solely on the basis of the

compromise entered into between the parties. According to the learned Judge, it was "clear from the various matters referred to, that the court was

satisfied about the bona fide requirement of the landlord. Therefore, the decree for eviction is neither void nor inexecutable"

22. Having decided the case before the Court on the basis of its attendant circumstances, Vaidialingam, J. proceeded to lay down the position,

somewhat generally, thus: If the tribunal had expressed its satisfaction in the order itself, that will conclude the matter. That the tribunal was so

satisfied can also be considered from the point of view whether a stage had been reached in the proceedings for the tribunal to apply its mind to the

relevant question. Other materials on record can also be taken into account to find out if the tribunal was so satisfied.

23. The other learned Judge, Alagiri-swami, J. began by giving a brief rendering of the reasonings of his learned colleague. He did so in the

following passage--

He (Vaidialingam, J.) has also pointed out that the true position appears to be that an order of eviction based on consent of the parties is not

necessarily void if the jurisdictional fact, viz, the existence of one or more of the conditions mentioned in Section 10 were shown to have existed

when the court made the order, that the satisfaction of the court, which is no doubt a pre-requisite for the order of eviction, need not be by the

manifestation borne out by a judicial finding; and that if at some stage the court was called upon to apply its mind to the question and there was

sufficient material before it before the parties invited it to pass an order in terms of their agreement it is possible to postulate that the court was

satisfied about the grounds on which the order of eviction was based. He has further pointed out that if the tenant in fact admits that the landlord is

entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an

order for possession in favour of the landlord without further enquiry. It is on these grounds that he has come to the conclusion that the facts in this

case satisfied these tests.

24. Having traced the various steps in Vaidialingam J.'s reasoning in the manner aforesaid, Alagiriswami J. wholly agreed with his learned

colleague's conclusion, observing that "in so far as it is necessary for the

purposes of this case, this is a satisfactory conclusion". It, however, seemed that Alagiriswami J. very much wished to re-state the position in a more general way and for a wider application since, according to him, the law on the subject has got into a labyrinth and the time had come for taking a hard look at it. He also seemed to have gone some way in the direction of a re-statement of the whole law on the subject of compromise eviction orders. Quoting at some length a passage from a decision of the Punjab High Court reported as Baburam Sharma v. Balsingh (1959) 61 P. L. R. 33, the learned Judge seemed inclined to take the view that an eviction order based on a compromise would be a valid order, if in the concerned eviction petition the landlord had asked for possession on any one of the grounds on the basis of which he could have asked for possession under the statute. The learned Judge, however, did not offer any final views of his own on the matter, observing -- "This would, however; have to be considered when a proper occasion arises".

25. That occasion, apparently, arose before the Supreme Court very soon in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others,

. Sarkaria J. who gave the decision of the court, seemed to have discovered a general thread of principle running right through in the earlier cases.

He observed:--

From a conspectus of the cases cited at the Bar, the principle that emerges is: that if at the time of the passing of the decree, there was some

material before the court, on the basis of which, the court could be prima facie satisfied about the existence of a statutory ground for eviction, it will

be presumed that the court was so satisfied.

It is the above passage from the judgment of Sarkaria J., which Mr. Kesava Iyengar has heavily relied on. He said that the rule laid down by the

learned Judge must apply to every case of eviction order passed by a Rent Controller which does not ex facie manifest the tribunal's satisfaction as

to the existence of the statutory ground for eviction. The order in question may have been passed on the basis of a settlement between the parties.

Or, it may have been passed ex parte in the absence of the tenant and after recording the evidence of the landlord. In every case, according to Mr.

Kesava Iyengar, the question would be one of finding out whether there was some material or other on record to which the Tribunal's decision

could reasonably be attributed and which could be held to have made out one or other of the grounds set out in the Act as a lawful ground for

eviction. This, according to the learned counsel, is what Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, , has laid down in

unmistakable terms:

26. I do not agree with Mr. Kesava Iyengar's understanding of the ruling in the above case. In my view, Sarkaria J. in the passage relied on by

learned counsel, was minded only to summarise what he considered to be the conspectus of the earlier rulings of the Supreme Court. It will be

remembered that all those rulings dealt with only one class of cases, namely, cases of compromise, in which the Tribunal or court, as the case may

be, was found issuing eviction orders without recording its own finding as to the existence of the relevant statutory grounds for eviction. Not one of

those earlier decisions had to deal with an ex parte eviction order suffering from a similar shortcoming. The case in Nagindas Ramdas Vs.

Dalpatram Ichharam alias Brijram and Others, , itself was yet another, instance of a compromise order of eviction. It seems to me, therefore,

reasonable to understand the law stated by Sarkaria J. to be limited in its application to compromise orders of eviction. There are clear indications

in the very judgment of the learned Judge to indicate that what he had in mind was only consent orders. The learned Judge made it perfectly clear

in his judgment that there must be materials on record on the basis of which alone the Tribunal, in any given case, might be held to have been

satisfied about the existence of the statutory grounds for eviction. In the absence of such materials, it cannot be so held. And, advertent to the

question as to what kind of materials might possibly lead to such an inference, the learned Judge cited the compromise memo itself as one such

material. Compromise, he said, must be based on an implied admission, and, so treated, can be accepted as the best evidence of the facts

admitted. It was in this sense that the learned Judge upheld the compromise order in that case as having been validly made.

27. The position in the present case is wholly different. The grounds set out by the landlord in its eviction petition are by no means admitted

anywhere by the tenants. On the contrary, they are seriously controverted. It may be mentioned at this stage, that although the Rent Controller set

the tenant ex parte, it was not before the tenant had entered appearance and filed his affidavit in opposition in the Court. A reference to this affidavit

shows not only a denial of the landlord's averments, but also a positive assertion by the tenant that the claim made in the petition was not bona

fide. I cannot, therefore, bring myself to construe the eviction order in this case as based on any statutory grounds of eviction, merely on the score

that the petition quotes the statute. On the contrary, as pointed out by Mr. Govind Swaminathan, there is a clear indication in the record itself to

show that before ordering eviction the Rent Controller did not even advert to the pleadings of the landlord, let alone evaluate the evidence of PW.

1. The petition was avowedly made u/s 10(3)(a)(iii) of the Act. This means that the landlord, in order to claim relief, had to plead, inter alia, that it

had no other building in the city or town concerned. The non-residential building in question in the case is situate in Madras City. But, curiously

enough, the landlord sought to maintain its petition not on the ground that it had no other non-residential building in the city, but on the ground that it

had no other similar building in Malayaperumal Street -- which is the street in which the building under tenancy is situate. Mr. Govind Swaminathan

observed that this is a fatal shortcoming in the landlord's petition. This woeful inadequacy in the pleading, he said, could have caught even the eye

of a man running. The Rent Controller after going through the motions of an ex parte hearing, had passed the eviction order in the face of this state

of the pleading is positive proof, according to learned counsel, that he was wholly oblivious to everything on record --pleadings materials and what

not. I am inclined to agree with him. I have earlier explained in some detail my reasons for holding this order to be null and void. As may be seen, 3

have derived my conclusion by reference to the mandatory provisions of Section 10(3)(e) and by looking at the mere aspect of the order, without

more. What Mr. Govind Swaminathan has now submitted provides an additional grist to the mill as it were, from a source external to the order

itself. That the order finds no support in the landlord's own pleadings only underlines the conclusion that it is a nullity.

28. Mr. Kesava Iyengar lastly urged that the order under revision cannot be regarded as a nullity in the true sense of that expression. He said that

only where an order is passed in total absence of jurisdiction, or in excess of jurisdiction, would the law regard it as a nullity. Learned counsel

reminded me that in this case the Rent Controller was admittedly seized of the matter, and had undoubted jurisdiction to issue the order. There

was, therefore, no scope for considering it, in terms of its being a nullity.

29. I do not agree with the above submission. Early conceptions of nullity amongst lawyers were based on the jurisdictional aspect of the

proceedings or orders in question. Recent advances in Jurisprudence, however, (sic) that even where the Tribunal or court has undoubted

jurisdiction to pass orders, they can yet be challenged as nullities for quite other reasons. Some of them are set out in a recent decision of the

House of Lords, in *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 A. C. 147. The following passage from the judgment of Lord

Reid represents the current thinking on the subject:--

But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of

the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had

no power, to make. It may have failed in the course of inquiry to comply with the requirements of natural justice. It may in perfect good faith have

misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not

remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on

such matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive"".

Lord Pearce in the same case made the following further observations:--

Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the

Tribunal having any jurisdiction to embark on an enquiry. Or the Tribunal may at the end make an order that it had no jurisdiction to make. Or in

the intervening stage, while engaged in a proper inquiry, the Tribunal may depart from the rules of natural justice or it may ask itself the wrong

questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would

turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause

its purported decisions to be a nullity.

30. Mr. Kesava Iyengar submitted that it would be a misuse of the expression to dub as nullity an order passed by a Tribunal having jurisdiction,

merely because it had passed a wrong order. He added that a tribunal or court having jurisdiction has a right to pass right orders as well as wrong

orders, and if the orders are wrong, they can be corrected in appeal or other appropriate proceedings, but by no means can they be regarded as a

nullity.

31. Lord Reid, in his judgment above cited, adverted to this aspect in the *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 A. C.

147. He referred to an earlier decision of the House of Lords, and clarified the position thus--

I understand that some confusion has been caused by my having said in *Reg. v. Governor of Brikton Prison; ex parte Armah* 1968 A. C. 192,

234, that if a Tribunal has jurisdiction to go right it has jurisdiction to go wrong. So it has, if one uses "jurisdiction" in the narrow original sense. If it

is entitled to enter on the enquiry and does not do any of those things which I have mentioned in the course of the proceedings then its decision is

equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct an error of law.

32. I have therefore, no doubt in my mind, that this order of the Rent Controller is, by all standards, a nullity. I approach this question as a court

sitting in revision u/s 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act of 1960. Under that section, this court may on the application

of any person aggrieved by an order of the appellate authority, call for and examine the record of the appellate authority, to satisfy itself as to the

regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if, in any case, it appears to this

court that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly. It

seems to me that under the wide sweep of this revisional jurisdiction this court has a dual role to fulfil: One as a court of review, examining the

decisions of the appellate authority and the Rent Controller on merits; the other, as that of a superior court exercising supervisory jurisdiction over

the appellate authority and the Rent Controller. In the former role, the

correctness and the legality of the Rent Controller's order are properly reviewable by this court. But I conceive the other, supervisory jurisdiction to be the more salutary one from the point of view of maintaining the tone of the subordinate courts and tribunals. I believe that the powers have been specifically conferred on this court under the section only to ensure that the tribunals, at all lower levels, bring to bear a proper judicial bearing and outlook in the discharge of their functions under the Act. It is in this context, apart from anything else, that I feel interference is called for in this case. As I said earlier, the responsibility of the Rent Controller is a special one, and it has to be discharged strictly in accordance with the statute. Besides, any order that he passes has serious consequences for the parties before him. There can, therefore, be no question for his doing less than what he is capable of doing and less than what the statute expects him to do. This means and implies that he cannot be adopting any labour-saving devices in composing his orders. He cannot shirk mental work. Nor can he skip his findings, driving the litigants and the superior courts alike to probe the unknown recesses of his mind and blunder their way into assigning some meaning, or any meaning, to his orders. I like to imagine that had the Rent Controller's orders contained some discussion, be it ever so little, the course of further proceedings in this case might have been different. As it happens, the order has to be declared a nullity, but regrettably enough, only after avoidable expenditure in time, effort and costs.

33. The appellate authority in this case had gone into the evidence itself and sought to support the eviction order on its own perception and evaluation of the evidence. But, as I had explained earlier, when the order is a nullity, there can be no question of supporting its conclusion by reference to the evidence in the case. I must, therefore, regard the appellate order as equally futile.

34. In the result, the civil revision petition is allowed. The order of the appellate authority is set aside and the ex parte order of eviction passed by the Rent Controller is declared to be a nullity and set aside. In the circumstances, I make no order as to costs.