

Kalidas Vs. K.P.Subbian

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SooperKanoon Citation : sooperkanoon.com/1167327

Court : Chennai

Decided On : Jul-25-2013

Judge : K.Ravichandrabaabu

Appellant : Kalidas

Respondent : K.P.Subbian

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

25. .07.2013 Coram The Hon'ble Mr. Justice K.RAVICHANDRABAABU
C.R.P.(NPD) No.1068 of 2009 and M.P.No.1 of 2013 Kalidas .. Petitioner Vs.

1. K.P. Subbian Proprietor Sri Lakshmi Jewellery 880, New NO.266 Brough Road
Erode 1.

2. G.K.Muthammal .. Respondents Civil Revision Petition filed against the
judgment and decree dated 29.10.2008 made in R.C.A No.8 of 2007 on the file of
the 1st Additional Subordinate Judge, Erode, against the order dated 11.7.2007
made in R.C.O.P.No.9 of 2005 on the file of the Principal District Munsif, Erode.
For Petitioners : Mr.R.Subramanian For Respondent : Mr.S.V.Jayaraman Senior
Counsel for Mr.K.S.Jeyaganeshan (R1) No appearance for R2

ORDER

The landlord is the revision petitioner. He is aggrieved against the judgment and decree passed by the Rent Control Appellate Authority, rejecting his application seeking for eviction of the first respondent/tenant, filed under Section 10 (3)(a)(iii) of Tamil Nadu Buildings (Lease & Rent Control) Act. For the sake of convenience, I refer the petitioner and first respondent, as landlord and tenant, respectively, hereafter.

2. The case of the landlord is as follows:- The petition mentioned property originally belonged to his mother, the second respondent herein. The first respondent became the tenant under the second respondent on 19.6.1992 for running a jewellery shop. In a partition suit filed between the family members of the landlord, a final decree came to be passed during December 2003 in which the petition mentioned property was allotted to the share of the landlord. The building, which consists of ground and first floors, was originally constructed for residential purpose. However, it was leased out to the first respondent for non-residential and residential purposes. The tenant permitted his staff members to stay in the first floor portion and also installed an air conditioner unit in the second floor covering the same with a temporary roofing. The landlord is residing in a rented building which is far away from the Erode Municipal limits. Therefore, he requires the first floor for his own use and occupation. His son, a dentist, is having his dental clinic at Coimbatore in a rented building. Besides, he is also working as a lecturer in J.K.K.Dental College at Komarapalayam near Erode. For discharging his duties as lecturer in the said College and also for shifting his dental clinic from Coimbatore to Erode, the ground floor of the petition premises is required for the occupation of his son.

3. The tenant resisted the said application. His case is as follows:- The eviction petition filed under Section 10(3)(a)(iii) of the said Act is not maintainable. The landlord cannot file a petition for eviction of a residential building under Section 10(3)(a)(iii) as he is admittedly seeking the first floor portion for his own personal use. Thus, a single petition for eviction of the premises both for residential and non-residential purpose is not maintainable. The building was originally was let out to another third party for running Kottakkal Arya Vydyasala and thereafter the same was let out to this tenant for non-residential purpose viz., for running a

jewellery shop. Therefore, the building is only a non-residential building. The landlord has got other residential and non-residential buildings within the town of Erode and the same are vacant. The landlord's son is not having his dental clinic in a rented building and is not working in J.K.K.Dental College at Komarapalayam. Therefore, the requirement of the landlord is not bonafide.

4. The landlord filed a reply to the said counter in which he has specifically denied the contention that he has got other residential and non-residential buildings at Erode. In respect of the other averments contained in the counter, the landlord made specific denial of the same.

5. The learned Rent Controller allowed the eviction petition by accepting the case of the landlord. The learned Rent Controller pointed out that it is not necessary to file two separate applications one under Section 10(3)(a)(i) and another under Section 10(3)(a)(iii) of the said Act, if there is a bonafide requirement for both purposes. He also found that the tenant has not disputed the requirement of the landlord of the first floor for his personal use and that the landlord is not owning any other building at Erode. In fact, the learned Rent Controller has pointed out that the tenant, while deposing as R.W.1, answered several questions as not knowing with regard to running of a dental clinic by the landlord's son at Coimbatore and his allegation against the landlord of owning of other buildings at Erode etc., 6. The tenant filed an appeal before the Rent Control Appellate Authority. The learned Appellate Authority reversed the findings of the learned Rent Controller and dismissed the eviction petition. The Appellate Authority found that the landlord has not proved by adducing any evidence that he is residing in a rented premises and that he has not marked any copy of the final decree proceedings showing that the petition mentioned property was allotted to his share. It is also found by the Appellate Authority that there was no evidence produced to show as to why and under what circumstances the son of the landlord wants to shift his clinic from Coimbatore to Erode. The Appellate Authority further found that the landlord has not marked any document to show that his son is employed in a Dental College at Kumarapalayam. He further observed that the landlord cannot file the eviction petition under Section 10(3)(a)(iii) alone both for residential and non-residential purposes. Based on those reasonings, the leaned

Appellate Authority allowed the appeal.

7. Mr.R.Subramanian, learned counsel appearing for the petitioner/landlord submitted as follows:- The building consists of ground and first floors. The tenant is in occupation of both floors by doing the jewellery business at the ground floor and using the first floor as residential accommodation for his employees. The landlord is residing in a rented premises and therefore requires first floor for his own occupation. The landlord's son who is having a dental clinic at Coimbatore wants to shift the same to Erode. He is also working in a Dental College at Komarapalayam. Therefore, for setting up the dental clinic, the landlord wants the ground floor. The first respondent tenant is having a site adjacent to the petition premises and had taken steps to put up a construction therein to run his jewellery shop. There is no necessity or need to file two separate applications one under Section 10(3)(a)(i) and another under Section 10(3)(a)(iii) of the Act, when the building as one unit was let out to the tenant. To decide about the nature of the building, the purpose for which it was let out is not material and on the other hand, only the structure of the building is essential to decide the character. Under Section 21 of the said Act, only the residential building cannot be converted as a non-residential building except with the permission of the Rent Controller. It is not vice versa. The admitted facts by the tenant were disputed by the Appellate Authority. The landlord has satisfied the mandatory requirements contemplated under Sections 10(3)(a)(iii) and he has also proved his bonafide. In support of his submissions, the learned counsel relied on the following decisions:- 1. M.Vedapuri Vs. O.M. Raj and Another (2008 (5) CTC404 2. Indira and Others Vs. Vinayagam Chettiar (1988 (2) LW454 3. K.Padmanabhan Vs. Municipal Commissioner (1997 (3) CTC400 4. The Manager, Deluxe Roadlines and another Vs. Jainullabudeen (1998 (1) L.W. 95) 5. Mangalambal Vs. Anjali Devi (1998 (1) CTC679 6. Shri Balaganesan Metals Vs. Shri M.N.ShanmughamChetty and Others (100 L.W. 1149) 7. Joginder Pal Vs. Naval Kishore Behal (2002 (5) SCC397 8. Per contra, Mr.S.V.Jayaraman, the learned Senior Counsel appearing for the first respondent / tenant submitted as follows:- The landlord cannot maintain the petition under Section 10(3)(a)(iii) as he wants to split the tenancy into two parts one for residential and another for non-residential. When the landlord himself admitted that it is a non-residential building, he cannot seek the first floor of the premises for

residential accommodation. He can seek for residential use, only if the premises is a residential one. As the landlord seeks only part of the building for non-residential purpose, his petition under Section 10(3)(a)(iii) for the entire premises is not maintainable. When the purpose of letting out is very clear, viz., for non-residential, the learned Rent Controller was wrong in deciding the nature of the construction. The building was let out for non-residential purpose even to the previous tenant. The landlord has not averred in his petition about the non-owning of any other building within the city which is a mandatory requirement under Section 10(3)(a)(iii). He has also not produced the final decree proceedings to prove his title to the property. There is no bonafide on the part of the landlord in seeking the ground floor portion for non-residential purpose. In support of his submissions, the learned Senior Counsel relied on the following decisions:- 1. K.R.Padmavathi Ammal (dead) and Others Vs. E.R.Manickam (94 L.W. 206) 2. C.R.I. Limited Vs. Murali Mani and others (2001 (1) CTC26 9. I have heard the learned counsel for the petitioner and the learned Senior Counsel for the first respondent and I have given a careful consideration to the pleadings and other materials placed before this Court by the respective parties. Based on the above pleadings and the submissions, the following questions arise for consideration in this Civil Revision Petition. (i) Whether eviction can be sought for on the ground of owner's occupation for the purpose of both residential and non-residential purpose in respect of a building let out for non-residential purpose only ?. (ii) Whether a single petition filed under Section 10(3)(a)(iii) is maintainable seeking eviction on the ground of owner's occupation both for residential and non-residential purposes ?. (iii) Whether the requirement of the landlord in this case, is bonafide ?.

10. Before considering these questions, it is useful to refer to the following provisions under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Section 2(2) defines the ".building". as follows:- 2 (2) ".building". means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes (a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut, (b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but does not include a room in a hotel or boarding house; 11. There is no specific definition is provided either

for 'residential building' or for 'non-residential building' under the Act. However, from the reading of the definition of 'building', it is seen that building means any building or hut or part of a building or hut let out for residential or non residential purposes. Thus, the definition of the 'building' makes it abundantly clear that a building may be let out either as a whole or in part either for residential or non-residential purpose. In other words it can be safely construed that the building may be a residential in one part and non-residential in another part. Therefore, the purpose of usage of the building or part of the same for which it was let out gives the colour, character and the nature of the building.

12. At this juncture, we may straight away refer to Section 21 of the said Act which reads as follows:

21. Conversion into non-residential buildings No residential building shall be converted into a non-residential building except with the permission in writing of the Controller .

13. From the reading of the above said provision, it is clear that a residential building shall not be converted into a non-residential building except with the permission in writing from the Controller. No such restriction is imposed in respect of a non-residential building. In other words, there is no requirement of seeking any permission to convert a non-residential building into a residential building. Thus, it is clear that even if a building was let out as a non-residential building, if the landlord wants to use the same as a residential one, he can seek eviction of the tenant for his residential purpose, without seeking permission to convert the same from non-residential to residential. A combined reading of Section 2(2) and Section 21 would show that a landlord is entitled to file a petition seeking for eviction of the tenant who is in occupation of a building consisting of several floors or portions as in this case, one for residential purpose and other for non-residential purpose. In this case, no doubt, the entire building was let out only for non-residential purpose viz., for running a jewellery shop. However, it is an admitted fact that the tenant is using the ground floor to run the jewellery shop and the first floor to accommodate his employees for their stay. Thus, it is crystal clear that though the entire building was let out originally for a non-residential purpose, the

usage of the floors factually one for residential and another for non-residential purpose is evident. When such being the position, the landlord can equally seek the building for his personal occupation as well as for non-residential purpose.

14. Under the Rent Control Act, the landlord can seek eviction of tenant under Section 10 on the grounds set out therein. If the landlord wants the premises for his own occupation, he can file a petition by invoking Section 10 (3)(a). If it is a residential building such application may be filed under sub-clause (i) of Section 10(3)(a). If it is a non-residential building such application may be filed under sub-clause (iii) of Section 10(3)(a). It is to be noted that only the word ".may". is used under Section 10(3)(a) whereas under Section 10(2), the word ".shall". is used. In other words, if the landlord seeks eviction of the tenant on the ground of wilful default and other reasons contemplated under sub-clause (ii) to (vii) of Section 10(2), he 'shall' apply to the Rent Controller under such provision for direction for eviction. On the other hand, Section 10(3)(a) only contemplates that the landlord 'may' apply to the Controller for an order directing the tenant to put the landlord in possession of the building. The object of filing a petition under Section 10(3)(a) is to get a direction to the tenant to put the landlord in possession of the building, whereas the object under Section 10(2) is for a direction to evict the tenant. After eviction of the tenant under Section 10(2), it is not necessary that the landlord should occupy or put into use of the building for his own use. Therefore, the object between Section 10(3)(a) and Section 10(2) is not the one and the same, even though the net result would be the eviction of the tenant. A perusal of Section 10(3) (e) further shows that the Controller should get himself satisfied that the claim of the landlord is bonafide, before making an order directing the tenant to put the landlord in possession. Such satisfaction of the Controller contemplated under sub-clause (e) is only in respect of the bonafide requirement of the landlord, who seeks the premises for his use and occupation. The first proviso to Section 10(3) further contemplates that if it is an application under Section 10(3)(c), then the Controller, apart from getting himself satisfied about the bonafide need of the landlord, has to consider the relative hardship between the parties also and if he is satisfied that the hardship which may be caused to the tenant will outweigh the advantage to the landlord, then he shall have to reject the application. Thus, a whole reading of Section 10(3) would only indicate that the one and only

consideration for the Court is to see as to whether the requirement of the landlord is bonafide, and if it is bonafide, the application has to be allowed. In the case of additional accommodation, one more aspect of relative hardship has to be taken into consideration before ordering the eviction.

15. Thus, from the above analysis of section 10(3)(a), it is abundantly clear that the landlord has to only prove his bonafide and also to show that the required condition precedent for making such application under Section 10(3) is fulfilled. Once it is proved to have been fulfilled, it is immaterial whether the application is filed under Section 10(3)(a)(i) or 10(3)(a)(iii). In other words, the nomenclature of the application or character and nature of the building does not play any vital role in deciding the relief prayed for. On the other hand, the pleadings as a whole should be read and taken into consideration to find out the real intention of the landlord in seeking the premises for his own occupation, be that it is for his personal or for business purpose. If the bonafide is made clear in the pleadings and proved by evidence, then showing only one provision of law in the petition will not defeat the purpose of the application for eviction.

16. It is well settled that when bonafide of the landlord is pleaded and proved, then such bonafide should outweigh all the restrictions imposed under Section 10(3)(a) as held by the Hon'ble Supreme Court in the case of Shri Balaganesan Metals Vs. Shri M.N.Shanmugham Chetty and Others (100 L.W. 1149), which I am discussing further in the later part of this order.

17. Further, in this case, it is to be seen that though the building was originally let out for non-residential purpose, as claimed by both sides, the fact remains, as admitted by both sides, that the building is being used for both purposes by the tenant and such usage is also accepted by the landlord without any demur. Therefore, it is obvious that the original intention of letting out the building for non-residential purpose got diluted by the conduct of both parties. When that being the factual position, the tenant cannot be permitted to harp upon the original purpose of letting out alone to contend that the present application is not maintainable. At any event, even assuming that the building, which was let out for non-residential purpose remains to be a non-residential building all through, still the landlord is not

prevented from using the same for his residential purpose. He does not require any permission from the Controller for converting the same into a residential building. The only embargo put under Section 21 is in respect of a residential building being converted as a non-residential building without the permission of the Rent Controller. Considering from this angle also, I find that there is no substance in the contentions of the respondent.

18. At this juncture it is useful to refer to the relevant provision under Sections 10(3)(a)(i) and 10(3)(a) (iii), which are extracted hereunder:- 10. Eviction of tenants:- (3)(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building (i) in case it is residential building, if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned; (iii) in case it is any other non-residential building, if the landlord or any member of his family is not occupying for purposes of a business which he or any member of his family is carrying on, a non-residential building in the city, town or village concerned which is own:".

19. A perusal of the above provision shows that for seeking eviction of the tenant under Section 10(3)(a)(i), the requirement is of two fold. First being that the landlord should seek the premises for his own occupation or for the occupation of any members of his family, and second being that he or his members of the family should not occupy a residential building of his own in the city, town or village concerned. Whereas under Section 10(3)(a)(iii), the only requirement is that the landlord should show and establish that he is not occupying, for the purpose of business which he is carrying on, a non-residential building in the city , town or village. When Section 10(3)(a)(i) imposes that there must be a requirement to use the premises for the own occupation of the landlord, no such similar requirement to use the premises for business purpose or non-residential purpose is imposed under Section 10(3)(a)(iii). On the other hand, the landlord is only required to show and establish that he is not owning any other non-residential building of his own. Thus, in my considered view, it can be construed that if a non-residential building is sought for by the landlord, he need not necessarily or strictly use it for non-

residential purpose alone and on the other hand he can use it for residential purpose also. I am expressing this view also by taking note of the restriction imposed under Section 21, the scope of which I have discussed supra.

20. Thus, a combined reading of Section 10(3)(a)(iii) and Section 21 would show that a landlord who is seeking eviction of the tenant in occupation of a non-residential building is not required to use it necessarily for non-residential purpose alone. On the other hand, he can use it for residential purpose as well.

21. It is also argued that the landlord has not satisfied the mandatory requirement under Section 10(3)(a) by not pleading in his original petition specifically that he is not owning any other building. No doubt, the landlord has not pleaded so in the original petition. However, when he filed a reply to the counter filed by the tenant, he has specifically denied of having any other buildings of his own. Such reply filed by the landlord undoubtedly to be read along with his pleadings. Needless to say that the pleadings in its entirety including the reply has to be read as a whole to find out as to whether the mandatory requirements have been pleaded and such pleadings disclose the bonafide of the landlord. Moreover, the parties in this case were put to know of their respective cases through their respective pleadings before they go to trial. When the entire pleadings are available before them and the trial was conducted based on those pleadings, not making a specific averment in the original pleading about the non-owning of any other building will not be a fatal to defeat the application especially under the circumstances, such original pleading has been further annexed or added with the reply to the counter. Thus, this contention is also not maintainable. At this juncture, it is to be noted that though the tenant claimed as though the landlord owns some other buildings of his own, he has not proved such claim by adducing any evidence.

22. Next, let me consider the case laws relied on by both sides. The learned counsel for the petitioner relied on the following decisions of this Court.

23. In M.Vedapuri Vs. O.M. Raj and Another (2008 (5) CTC404 the learned Judge of this Court at paragraph 14 has held as follows:- ".14. Merely because the landlords are having some other building, their bonafide requirement cannot be disputed on that ground. It is a settled proposition of law that the landlord on

bonafide reason can seek a non-residential building for residential use. The Court has to consider whether the reason, as stated by the landlord is bonafide or not."

24. In *Indira and Others Vs. Vinayagam Chettiar* (1988 (2) LW454 this Court has observed at paragraph 11 as follows:- ". The condition under which a landlord can ask for the kind of non-residential building referred to in Sub-clause (iii) are identical to those in Sub-clause (ii). On a reading of these sub clauses it is important to notice that the building which is the subject matter of those clauses is referred to either as residential building or non-residential building. The clauses do not refer to a building used for non-residential purpose or residential purpose. The use of the adjective, 'residential or non-residential' qualifying the word, 'building' therefore, clearly indicates that what is important is the nature, of the building and not the use to which it is put to. This construction is supported by the provisions in Section 21 of the Act ".

25. It is further observed in the above case that if a residential building was used for non-residential purpose it cannot be said to be a non-residential building within the meaning of sub-clause (iii) and a building which by its very nature is non-residential in character will not become residential merely because it is used for residential purpose unless it has been so converted as to facilitate its use for residential purpose. Thus, it is held therein that only the structural characteristics of the building would decide the nature of the building as to whether it is residential or non-residential.

26. Likewise in *K.Padmanabhan Vs. Municipal Commissioner* (1997 (3) CTC400 a learned single Judge of this Court has held that the usage or purpose test is not at all a criterion to find out whether a building is residential or non-residential but one must go by structural and physical features of the building to find out whether it is a residential or non-residential building. The learned Judge in support of his conclusion relied on a decision of the Apex Court reported in *Busching Scimitz Private Limited Vs. P.T.Menghani* (1977 (2) SCC835.

27. In another decision of this court reported in *The Manager, Deluxe Roadlines and another Vs. Jainullabudeen* (1998 (1) L.W. 95) , it was observed that the nature of construction is also a relevant factor for consideration , though the user

was given predominance.

28. In Mangalambal Vs. Anjali Devi (1998 (1) CTC679, a case more or less similar to that in hand, it is observed by the learned Judge of this Court at paragraphs 6 to 13 as follows:- ".6. Tenant preferred RCA No.5 of 1996. Appellate Authority was of the view that if a building is let out for non-residential purpose, the landlord can demand eviction only if he requires the demised premises for non-residential purpose. In this case, since the landlady demands eviction only for the purpose of residential purpose, the claim cannot be sustained. It also came to the conclusion that the evidence regarding bona fides is also not sufficient to order eviction. It also came to the conclusion that the hardship of the tenant will outweigh the advantage of the landlady. The findings of the Appellate Authority are challenged in this revision. 7. Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 reads thus:- ". A landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in Clause (a), apply to the Controller 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 residential purposes or for purposes of a business which he is carrying on, as the case may be.". On a reading of this Section, I do not think that the finding of the Appellate Authority could be accepted. 8. The Appellate Authority has held that the landlady is not entitled to get eviction on that portion of the building, since it has been let out for non-residential purpose. Impliedly the Authority has held that because the letting is for non-residential purpose, the building occupied by the tenant must be taken as a non-residential building. This, according to me, is not the correct approach. In such cases, what is a 'residential building' and what is 'non-residential building' has to be considered taking into account the nature of construction. The structure should be given the predominance and not the user. The user of the building is not the conclusive test to decide the nature of the building. 9. I had occasion to consider a similar question in The Manager, Deluxe Roadlines, etc. v. Jainullabudeen, 1998 (1) LW95 wherein the entire case law on the point has been considered.

10. In *Indira v. Vinayagam Chettiar*, 1988 (2) L.W. 454 which is a case under the Pondicherry Buildings (Lease and Rent Control) Act, it was held thus:- "... Whether a building is non-residential building or not will have to be determined on the structural characteristics of the building and the purpose for which it has been constructed. ... A building which has a bathroom and kitchen and other amenities which are characteristics of a residential building can therefore be treated as a residential building notwithstanding its for non-residential purpose."

11. In *Shelat Brothers v. Lodd Narendradas*, 1988 (2) L.W. 8 (Short Notes), Ratnam, J., as he then was, has held thus:- ".The mere user of a room in a residential building for non-residential purposes will not make the building as a whole a non-residential building as to bar the landlords from availing the benefits of S. 10(3)(c)(iii) of the Act. This has been laid down in *R. Rangaswami Iyengar v. Postmen's Co-op. Credit Society through its President and another*, 91 LW403 12. In *Kovilpillai Nadar v. Tiresha Ammal*, 1997 (1) LW585 it was held thus:- "... If the structure of a building indicates that it is a residential purpose, and it is used for non-residential purpose, a petition for eviction filed against a tenant who is carrying on business in that place, is maintainable by the landlord, who wants it for residential purpose."

13. In view of this settled legal position, the finding of the Appellate Authority that because it was let out for non-residential purpose, the petitioner cannot apply for residential purpose, cannot hold good. That finding is, therefore, set aside."

29. Further, in a decision reported in *Shri Balaganesan Metals Vs. Shri M.N. Shanmugham Chetty and Others* (100 L.W. 1149) the Hon'ble Supreme Court has observed at paragraph 19 as follows:- ".19. To sum up, the requirement of additional accommodation pertains to the need of the landlord and the manner of user of the portion of the building already in his occupation and consequently the bona fides of his requirement will outweigh all the restrictions imposed by Section 10(3)(a) i.e. Nature of the building. nature of user of the leased portion by the tenant etc. Even so, the Legislature has taken care to safeguard the interests of the tenant by means of the provisos to the sub-clause. The first proviso enjoins the Controller to balance the interests of the landlord and the tenant and to refuse

eviction if the hardship caused to the tenant will out weigh the advantage to the landlord by reason of the eviction. The second proviso empowers the Controller to grant adequate time to the tenant upto a maximum of three months to vacate the building and secure accommodation elsewhere. It, therefore follows that once a landlord is able to satisfy the Controller that he is bona fide in need of additional accommodation for residential or non-residential purposes and that the advantage derived by him by an order of eviction will outweigh the hardship caused to the tenant, then he is entitled to an order of eviction irrespective of any other consideration."

30. From the said decision, it could be seen that once the landlord is able to satisfy the Controller that he is bonafidely in need of additional accommodation for residential or non-residential purposes, then such bonafide requirement will outweigh all the restrictions imposed by S.10(3)(a) like nature of the building, nature of user of the leased portion by the tenant etc. From the above decision, what emerges is that what is required is only the bonafide need of the landlord and when once such bonafide is proved, the other technicalities should not stand in the way of ordering eviction.

31. Per contra, the learned Senior Counsel appearing for the respondent / tenant relied on the decision of this Court reported in K.R.Padmavathi Ammal (dead) and Others Vs. E.R.Manickam (94 L.W. 206) wherein it is held at paragraphs 23 and 26 as follows:- 23. In this case, even at the inception the premises was let out only for non-residential purposes, and all these years, to the full knowledge of the landlady a laundry was being conducted and having let out the property for non-residential purposes, it will not be open to the landlady to claim that before the premises was let out it was residential premises. As far as the landlady and tenant are concerned, it is only the jural relationship between the parties which has to be looked into and not of what was the manner in which the premises was being used prior to the letting out. 26 The evidence discloses that this is not a case where the tenant took it for residential purpose, and later on converted it. He was put into the premises by the landlady for using it for non-residential purpose. Such being the case, it is only the land-lady who will be liable for prosecution. As held in Muralidhar Agarwal Vs. State of U.P. (1975 (1) S.C.J178 and Sankariah

V.Jagadishwar Rao (AIR1980A.P. 181), the contravention, if any, would not take away the right of the tenant to claim the benefits under the Act as a tenant. Therefore, the tenant has a right to resist the petition by stating that having rented out the building for non- residential purposes, it will not be open to the landlord to ask for residential purposes."

32. A perusal of the facts of the said case would show that they are different and distinguishable. In that case, the landlady contended that the tenant had converted the premises from residential to non-residential . But it was found therein that the landlady had only let out the said building for non-residential purpose and therefore, the it will not be open for her to ask for residential purpose. Here in this case, though the building was let out and taken only for non-residential purpose, it is also proved that portion of the building is used as non-residential and other portion is used as residential by the tenant without any objection from the landlord. Therefore, these facts stand on different footing and consequently the said decision cannot be relied in support of the tenant.

33. The learned Senior Counsel further relied on the decision of this Court reported in C.R.I. Limited Vs. Murali Mani and others (2001 (1) CTC26 wherein the learned Judge has observed at paragraphs 16 as follows:- 16. It is also relevant to point out that the demised premises has been leased out for non-residential purposes and the landlady has sought for eviction of the revision petitioner for residential purposes. The law is well settled that eviction can be sought against the tenant by the landlord of a non-residential premises for non-residential purposes alone and not for residential purposes, subject to Section 21 of the Act."

34. In my considered view, the facts and circumstances of the present case are totally different and distinguishable with the facts and circumstances of the above cited case. As I have found that the intention of the parties with regard to the usage of the building having been diluted by their own conduct, then filing the petition under Section 10(3)(a)(iii) will not defeat the bonafide requirement. Therefore, in my considered view, the above decision also will not help the tenant in any manner.

35. There is no dispute that the relevant legislation is a beneficial legislation to the tenants. But at the same time, the Court cannot lean always in favour of the tenant under the guise of extending the benefit of such legislation on him at the cost of the bonafide requirement of the landlord. At this juncture, it is useful to refer to the decision of the Apex Court reported in *Joginder Pal Vs. Naval Kishore Behal* (2002 (5) SCC397, wherein it is held at paragraph 8 and 9 as follows:- ".8. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC222 the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by the Courts while interpreting the laws. But it is being uncharitable to Legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants and to the landlords both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlord too are weak and feeble and feel humble.

36. Considering all the facts and circumstances and by also by considering the various case laws cited on both sides, I am of the view that the order passed by the appellate authority is unsustainable and liable to be interfered with by exercising the jurisdiction under Section 25 of the Tamil Nadu Buildings Lease Rent Control Act. Accordingly, by answering all the three questions raised in this

Civil Revision Petition in affirmative, the order of the Appellate Authority is set aside and consequently the order of the learned Rent Controller is restored. The tenant is given three months time to vacate and hand over vacant possession of the petition premises to the landlord. The Civil Revision Petition is allowed. Consequently, the connected M.P is closed. No costs. krr To 1. 1st Additional Subordinate Judge, Erode, 2. The Principal District Munsif Erode

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