

BashruddIn Vs. P. Somasundaram

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Court : Chennai

Decided On : Dec-17-1999

Reported in : 2000(1)CTC723

Judge : K. Sampath, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 -- Sections 10 (3), 25; Delhi and Ajmir Rent Control Act, 1952 -- Sections 35;

Appeal No. : C.R.P.No. 962 of 1997

Appellant : Bashruddin

Respondent : P. Somasundaram

Advocate for Def. : Mr. J.R.K. Bhavanandam, Adv.

Advocate for Pet/Ap. : Mr. B.T. Seshadri, Adv.

Judgement :

ORDER

1. The landlord is the revision petitioner. He sought the eviction of the respondent/tenant on the grounds of wilful default and own occupation. The ground of wilful default has been found against the landlord by both the authorities and the learned counsel for the revision petitioner submitted that the landlord is not pressing the same. We are therefore to note the facts necessary for own

occupation only.

The respondent became a tenant under the petitioner in respect of his house and ground bearing door No.4/25-A, Church Road, Pallavaram, Cantonment, Madras-43 on a monthly rent of Rs.500. The petitioner is having a automobile repair shop at Pallavaram. He has also got a transport service there. He owns some buses plying from Madras to various places in south. The office of this bus service is also at Pallavaram. At the time of filing the petition he was residing in Madras City about 25 kilometres away from the workshop and in a rented house and his landlord also called upon him to vacate the premises. Even otherwise, the petitioner is finding difficulty to commute from Royapuram to Pallavaram the distance to and fro being 50 kilometres. He is also obliged to work till late hours every night and has also to come to the workshop very early in the morning. He is forced to travel at, all odd hours to attend to his business. He wants to settle down in Pallavaram in his own place. He therefore requires the premises in the occupation of the respondent for his own occupation and his requirement is bona fide. The respondent is liable to be evicted under Section-10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control)' Act (hereinafter referred to as the Act). It should be mentioned here itself that the nature of the tenancy is mentioned as residential in the petition.

2. The respondent resisted the application raising the following contentions: He became a tenant under the petitioner's brother one Tajudeen in the year 1977 to stay and to run a photo studio called Lakshmi Studio. This Studio was opened as early as 11.7.1977 under the presidentship of one Parameswaran. Petitioner's brother also attended the grand function organised in this connection. Eversince, 1977 the respondent had been paying all the taxes like professional tax, electricity charges, etc.. In fact, the tax receipts were issued by the authorities concerned in the name of the respondent as Proprietor of Lakshmi Photo Studio. He had also got a telephone installed with the permission of the landlord in the name of the Photo Studio. At the time of occupying the property he paid a sum of Rs.600 as advance to Tajudeen. In the front portion respondent is runninghis Photo Studio and in the rear portion from the year 1977 onwards the respondent is using the property and residing in a portion. Tajuddin himself is quite aware of the said

tenancy. In December, 1977 Tajuddin informed the respondent that the petition property had been allotted in the name of the petitioner and therefore he should pay his rent to the petitioner. Since December 1977 the respondent has been paying the rent to the petitioner. The requirement by the petitioner is not a bona fide one. He has no idea at all to shift the family to occupy the premises. A major portion of the building is used for non-residential purposes and the dominant user of the building is only for non-residential purposes. The building itself was let out originally mainly for non-residential purpose and the petitioner cannot maintain the application for requirement for residential purpose. In fact, the rear portion was let out only for non-residential purpose in the year 1977. The petitioner owns a number of other premises also and the petition has been filed only to harass the respondent.

3. Before the learned Rent Controller the petitioner examined himself as PW1 and marked Exs.P1 and P2., On the side of the respondent, he examined himself as RW1 and marked documents R1 to R25. The learned Rent Controller on the basis of the oral and the documentary evidence and the materials on record accepted the case of the revision petitioner, that the petition property is a house property that the respondent was living in a portion of the property' and was using another portion for his business purpose, that the petitioner did not have a residential building of his own, that he required the premises bona fide for his own occupation for the purpose of attending to his business in the area, that the hardship caused to the respondent would not outweigh the advantage to the petitioner and order eviction. However, on appeal in R.C.A.No.43 of 1994 the Appellate Authority by order dated'13.12.1996 accepting the case of the respondent allowed the appeal and dismissed the eviction petition. In the course of his order he found that the premises had not been let out only for residential purposes and that it had been let out both for residential and non-residential purposes, that the petitioner had not established that the respondent had been living in petition premises. Ultimately, he held that the petition premises had been proved to be a non-residential one and that the landlord had not proved that the petition premises could be required for the purpose of residence.

4. Aggrieved, the landlord has filed the revision petition.

5. Mr. B. T. Seshadri, learned counsel for the petitioner referred to the pleadings, the notices exchanged and particularly the reply notice Ex.P2 dated 25.6.1990 and also the oral evidence and submitted that the Appellate Authority had clearly overlooked the vital admissions made by the respondent. As regards the purpose for which the property was let out, the learned counsel referred to the oral evidence of the respondent wherein he admitted that the main door is a single door having a verandha and that the staircase is inside over the verandha and these things would clearly indicate that the building is essentially residential one. Apart from that the respondent had obtained ration card, gas connection at the petition property and this would clearly show that the respondent had been living in the property. Even otherwise the learned counsel submitted that merely because the premises was being used for non-residential purpose also, it would not disentitle the landlord from seeking eviction for residential purpose. The learned counsel referred to a number of decisions in support of his contention that the landlord is entitled to an order of eviction in his favour in respect of the property for his own personal use.

6. Per contra Mr. J. R. K. Bhavanandam learned counsel for the respondent submitted that the landlord had come with a false case that the property was let out for residential purpose when actually it had been used for non-residential purpose and therefore he could not ask for residential purpose. The learned counsel further submitted that the decisions relied on by the learned counsel for the petitioner would not apply to the facts of the present case. Even otherwise the decision by the Appellate Authority having been arrived at on an appreciation of oral and documentary evidence, this Court is powerless under Section 25 of the Act. He also relied on a number of judgments in support of his contention. In particular, the learned counsel submitted that the landlord had not let in any evidence as to the character of the building.

7. Since the learned counsel for the respondent has raised a point regarding the scope of Section 25 of the Rent Control Act, it would be necessary to refer to some decided cases on the point, (i) In Hari Shankar And Others v. Rao Girdhari Lat Chowdhury AIR 1963 SC 698 : 1962 Supp (1) SCR 933 dealing with Section 35 of the Delhi and Ajmir Rent Control, Act. 1952 the Supreme Court set out the

scope of the Revisional Powers of the High Court as under;:

'The section is thus framed to confer larger powers than the power to correct error of jurisdiction to which Section 115 is limited. But it must not be overlooked that the section in spite of its apparent width of language where it confers a power on the High Court to pass such order as the High Court might think fit, -- is -controlled by the opening words, where it says that the High Court may send for the record of the case to satisfy itself that the decision is 'according to law' .It stands to reason that if it was considered necessary that there should be a rehearing, a right of appeal would be a more appropriate remedy, but the Act says that there is to be no further appeal.'

(ii) In *Malini Ayyappa Naicker (dead) By His Legal Representatives Etc., v. Seth Manghraj Udhavdas Firm By Managing Partner And Others* : [1969]3SCR698 the Supreme Court while dealing with a similarly worded proviso in Section-75(1) of the Provincial Insolvency Act, 1920 catalogued some of the instances in which a High Court may interfere under the said proviso,'they are cases in which the Court which made the order had no jurisdiction or in which the Court has based its decision on evidence which should not have been admitted or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere.'

(iii) In *Rukmani v. Deivasigamani* 1973 TNLJ 172 it was held by this Court that'though the power conferred on the revisional court under Section-25 is wider than the power conferred on the High Court under Section-115 CPC, the revisional court acting under Section-25 of the Act will not be justified inre-appreciating the oral evidence. It may be open to the revisional court to reverse the finding of fact on oral evidence, if, there was no material whatever on which the appellate court would have arrived at the finding or on the ground that the finding was perverse'.

(iv) In *Dattopant Gopalrao v. Vithalrao Maruthirao*, : AIR 1975 SC1111 dealing with Section-50 of the Mysore Rent Control Act the Supreme Court observed as follows:'Though the power conferred on the High court under Section-50 is not as

narrow as the revisional power of the High Court under Section 115 of the 'CPC it was not wide enough to make the High Court the second court or First appeal.' Where the findings of fact recorded by the Appellate Court were not found to be such by the High Court as to justify the exercise of its revisional power under Section 50, it was held by the Supreme Court that 'there were no such pressing grounds which would justify the Supreme Court upsetting the views of the High Court confirming those of the lower appellate court.'

(v) In. *A. Ganesan v. Amaravathiammal* : (1983)2MLJ505 a learned Single Judge of this Court after referring to the observations of the Supreme Court in *Sri Rajalakshmi Dyeing Works v. Rangaswamy* : AIR 1980 SC1253 held that 'wherever two views are possible on the same set of facts it will not be correct for the High Court sitting in revision to reverse the view of the appellate authority passed on the same set of facts under section-25 of the Tamil Nadu Act XVIII of 1960'.

(vi) In *Sri Balaganesan Metals v. M.N. Shanmugam Chetty and Others*, : [1987]2SCR1173 the Supreme Court dealing with the scope of Section-25 of the Act observed as follows;

'Wherever the Appellate Authority had applied wrong tests and had also failed to give effect to unchallenged findings of the Rent Controller, the order of the Appellate Authority suffered from manifest errors in the exercise of its jurisdiction and the High Court was therefore entitled to interfere in revision.'

(vii) In *P. Kesavan (dead) Through Lrs Ammukutty Amma and others*, : [1988]2SCR81 the Supreme Court examined the facts found by the courts below to find out if there was any infirmity in their findings.

(viii) In *Hiralal Kapur v. Prabhu Choudhury*, 1998 (2) SCC 172 dealing with the scope of Section-25(B)(8) of the Delhi Rent Control Act, 1958 Supreme Court held that 'even in mixed question of fact and law the High Court was not justified in reversing findings of the fact of the Rent Controller.'

(ix) In N.I. Adinarayanan v. B. Krishnamurthy, 1990 (2) MLJ 34 Nainar Sun-daram, J. as the learned judge then was observed that merely because there is a possibility of saying that the question is a mixed question of fact of law, it is not sufficient, to warrant the exercise and revisional powers.

(x) In Arumugha Chettiar v. Jayaraman : (1995)2MLJ282 on the scope of Section-25 of the Rent Control Act S.S. Subramani, J. stated the law on the subject as follows:

'It empowers the High Court to interfere in the orders of the appellate authority in case the said order is irregular, illegal or improper. When the appellate authority has not taken into consideration the binding precedents of this Court and has also not taken into consideration the evidence that is let in, it can be - said that the order of the appellate authority is improper. The appellate authority has also not entered findings on many points which have been considered by the Rent Controller. The procedure adopted by the appellate authority can be said to be irregular. For all these reasons it must be held that the finding of the appellate authority is illegal, improper and irregular and this court is entitled to revise the order. This court is not re-appreciating the evidence. It is only bringing to the notice of the parties that such an evidence has been let in, and on the basis of the evidence and binding precedents only such a conclusion could be arrived at.'

(xi) In Sherwood Educational Society v. Abid Namazie and two others : (1997)1MLJ445 the learned Judge has reiterated the same principles.

(xii) In Sarala Ahuja v. United India Insurance Company Ltd., : AIR 1999 SC100 the Supreme Court pointed out the distinction between revisional power and appellate power. Whereas the power of revision is supervisory in nature and is intended to ensure that Rent Controller conforms to law when he passes order and the High Court while perusing records of Rent Controller must confine itself to see whether the order has been passed according to law. It is not permissible for the High Court while exercising revisional jurisdiction to enter a different finding on fact unless finding arrived at by the Rent Controller is so unreasonable that no Rent Controller could have reached such finding on the materials available. The revisional power is ordinarily power of supervision keeping Subordinate tribunals

within bounds of law. Expansion or construction of such revisional power would depend on how statute has couched such power. Reappreciation of evidence afresh to reach different conclusion when such reappraisal was- not for the limited purpose to see whether finding of fact was wholly unreasonable amounts to overstepping revisional jurisdiction.

(XIII) S. S. Subramani, J. again in T.S. Subramani Aiyer v. P.K.Srinivasan By Power Agent B.Ramu : (1999)3MLJ391 after referring to several decisions of the Supreme Court has observed as follows:

'Eventhough this court is entitled to look into the evidence, that can only be for the purpose of considering whether the Authorities below, and in this case, the Appellate Authority, has exercised the discretion properly, and whether the reasoning of the Appellate authority in the circumstances of the case, is reasonable. Merely because this Court, on a reappriciation of evidence can come to a different conclusion, it cannot be held that the judgment of the Appellate Authority is not correct.'

8. Let us therefore examine whether the Appellate Authority in the instant case on the oral and documentary evidence arrived at the proper conclusion. It would be necessary to advert to the pleadings in the instant case. The case in the petition is that the property was let out for residential purpose. In the counter the respondent has stated that he became a tenant in the year 1977 to stay and to run a Photo Studio. He has further stated that he is running the Photo Studio in the front portion and using the property in the rear portion for his residence. He has further stated that the building itself was let out mainly for non-residential purpose. In Ex.P2 dated 26.5.1990 the respondent has stated that he took the property in 1977 to stay and to run a Photo Studio. He has further stated in that notice that he has been paying the rent regularly without any fail for the premises both for residential and non-residential purposes and therefore the allegation that he is converting the premises into non-residential purpose instead of residential use does not arise at all. As late as 1990 the respondent has admitted that he was using the property both for residential and non-residential purposes

However, he has chosen to give a go-bye to this in his cross-examination.'

However, in the course of further cross-examination, he had tried to whittle down the admission by saying that he used the property for residential purpose only for 2 years till 1977. He has also made further admissions that the front portion of the building is tiled, that there is only one entrance for the whole building, that there is a veranda that in the ration card his residential address is given as the petition mentioned property, that till the date of his examination in court the same address continued in the ration card, that in his son's school record the address given is the petition mentioned property, that there are 6 or 7 names mentioned in the ration card, that there were only 4 persons in his family. The landlord has denied the suggestion that the respondent had been living in Pozhichalur for several years. He has infact stated that after the filing of the eviction petition, the respondent's family had been shifted to some other area.

9. In the tight of the above evidence, it has to be seen, whether the petitioner landlord can seek to evict the respondent for the purpose of occupying the property for his own residential use.

10. In T.Dakshinamoorthy v. Thulja Bai and Another : AIR1952 Mad413 it has been held by a Full Bench of this Court that if the letting is equally for residential and non-residential purposes and not mainly for the one or the other kind of purpose, the application of the landlord will stand whether filed under Section-7(3)(a)(i) or 7(3)(a)(ii) of the Act. It has to be noted here itself that S.S.Subramani, J. in The Manager, Deluxe Roadlines, Etc., v. Jainnulabudeen. 1998 (1) LW 9 has observed that in view of the subsequent decisions of the Supreme Court and also by this Court, the Full Bench decision is no longer good law. We will refer to this aspect a little later.

11. In N.C.Kuppuswami Ayyangar, 1957 (1) MLJ 344 a learned Single Judge of this Court has stated the law as follows:

'If the tenancy does not expressly provide for use of the house for the particular purpose of carrying on business, it cannot be assumed without evidence of a new contract or a variation of the existing contract or without its being made out by the circumstance of the letting a specific agreement with the landlord should be shown. Acceptance of the rent by the landlord after the knowledge of user by the

tenant will not convert a dwelling house into a non-residential premises. The premises will not be treated as non-residential building if they are substantially unsuitable for use as business premises. The mere fact that residential premises are also used for carrying on business in a part will not convert it into a non-residential building. Whether a building is residential or non-residential is a question of fact having regard to certain considerations laid down by courts in deciding the question.

12. In *Moinuddin Khan Sahib v. Rukmani Ammal*, : AIR1972 Mad263 the Full Bench decision was followed.

13. In *Busching Schmitz Private Ltd. v. P.T. Menghani and another*, : [1977]3SCR312 in a case arising under the Delhi Rent Control Act, the eviction proceeding was resisted on the ground that premises were let out for residential-cum-commercial purpose to a joint sector company and therefore the premises would not be said to be residential accommodation belonging to the landlord. In that case, it was not in dispute that the building was let out for commercial purposes also and for a long time it was used as an office of the tenant's business and the Manager was also residing in a part thereof. The questions that were posed before the Supreme Court in that case were; 'Is the purpose of the lease decisive of the character of the accommodation? Does user clinch the issue?' The main use to which the building was put at the time of the eviction proceedings was as residence of the manager. The land was granted to the government servant by the Delhi Development Authority for construction of a residential building although he later let it out for non-residential use 'apparently for getting larger rents, silencing his compunction about the basis on which he secured the allotment of the land at low cost. But can the court conclude from the object of the land assignment whether the building later put up, is residential or not? Marginal relevance there may be in these diverse factors, tell in value they do not possess. Law, being pragmatic, responds to the purpose for which it is made, cognises the current capabilities of technology and life-style of the community and flexibility fulfils the normative role, taking the conspectus of circumstances in the given case and the nature of the problem to solve which the statute was made. Legislative futility is to be ruled out so long as interpretative possibility permits. Residentiality

depends for its sense on the context and purpose of the statute and the project promoted'. "Guided by this project-oriented approach, we reject the rival extreme positions urged before us by Shri Nariman and Shri Jain. Residential premises are not only those which are let out for residential purposes as the appellant would have it. Nor do they cover all kinds of structures where humans may manage to dwell. If a beautiful bungalow were let out to a business man to run a show-room or to a mediation group or music society for meditational or musical uses, it remains none-the-less a residential accommodation. Otherwise, premises may one day be residential, another day commercial and on yet a later day, religious. Use or purpose of the letting is no conclusive test. Likewise, the fact that many poor persons may sleep under bridges or live in large hume pipes or crawl into verandahs of shops and bazars cannot make them residential premises. That is a case of reduction ad absurdum. Engineering skills and architectural designing have advanced far enough to make multi-purpose edifices and, by, minor adaptations, make a building serve a residential, commercial or other use. The art of building is no longer rigid and the character of a house is not an 'either or. It can be both, as needs demand. It is so common to see a rich home turned into a business house, a dormitory into a factory. Many small- scale industries are run in former living quarters. To petrify engineering concepts is to betray the law's purpose. Whatever is suitable or adaptable for residential uses, even bymaking some changes, can be designated 'residential premises'. And once it is 'residential' in the liberal sense, Section-14A stands-attracted. Dictionary meaning, common sense understanding and architectural engineering concur in the correctness of this construction. What falls outside the ambit of 'residential purpose' may be limited but not non-existent. A shop in Connaught Place, a factory in an area prescribe by any municipal regulation for residential, use or any structure too patently non- residential such a hothouse for botanical purposes or a bath and toilette or tea shop by the road margin are obvious instances. We may visualize other cases but that is not our purpose here. The house we are considering was built on land given for constructing a residence, is being used even now for residence, is suitable otherwise for residence and is being credibly demanded for the respondent's residence. Residential suitability being the basic consideration, this building fills the bill. Nothing said in the affidavit-in-opposition puts it out of the

pale of residential accommodation. A building which reasonably accommodates a residential user is a residential accommodation ---- nothing less, nothing else. The circumstances of the landlord are not altogether out of place in reaching a right judgment. The 'purpose test' will enable officers who own houses to defeat the government by pleading that they do not own 'residential premises, because the lease is for commercial use, built though it was and suitable though it is, for residence. Similarly, the 'possibility test' may make nonsense of the provision. The contrast in the phraseology between Section-14(1)(e) and Section-14A strengthens our inference. The legislature has, in the former provision, used the expression 'premises let for residential purposes', thus, investing the purpose of the lease with special significance. The deliberate omission of such words in section 14 A and, instead, the use of the flexible but potentially more comprehensive, though cryptic, expression 'residential accommodation' cannot be dismissed as accidental.'

14. In *V.Balakrishna Menon v. M.A.K.Govindan*, 1979 (92) LW 56 : 1978 TLNJ 364 as Ismail, J. as the learned Judge this was followed the Full Bench decision and observed follows:

'Whether the purpose for which the building was let out was residential or non-residential, the dominant purpose has to be determined, and if the dominant purpose was residential, the fact that a part of the premises was put to non-residential use will not change the character of the original purpose and vice versa.'

15. In *S.Jaswant Singh v. A. R. Ramanathan* : (1979)2MLJ187 P.Venugopal, J. followed the decision *V.Balakrishna Menon v. M.A.K.Govindan* : (1979)1MLJ237 case and held that 'when a building is let out for residential as, well as non-residential purposes, an application by the landlord to obtain possession for his own residential purpose is clearly maintainable'.

16. In *T. N. Lakshmanan v. M/s S. P. Hajee Alavudeen Saheb Sons* : (1980)1MLJ9 the tenant contended that the building was a non-residential one and therefore the landlord could not get it for residential purpose. The learned Judge referred to the oral evidence in the case and inter alia referred to the fact that 'the

premises were rented out only for non-residential purpose, that the tenant was doing business ever since he became a tenant, that there were no residential houses in the street in which the petition mentioned premises were situated and that there was no well, kitchen or bath-room in the petition mentioned premises. 'In the absence of any definite evidence with reference to the nature of the building that has been let out, we can only turn to the user of the premises and taking into consideration the user and the acquiescence on the part of the landlord, I have no hesitation in coming to the conclusion that the premises in question is a non-residential building.' The learned Judge took into account the user of the building because of the absence of other circumstances such as the well, kitchen or bath-room which are the normal characteristics of a residential building.

17. In *K.R.Padmavathy Ammal (died) and others v. E.R. Manickam* : (1981)1MLJ359 the evidence on record showed that the premises though structurally a residential one had been utilised for laundry purposes and the landlord himself had addressed the authorities for grant of licence to the tenant to secure three phase current for his laundry business. It was held that the premises was non-residential.

18. In *B.K.Shankar v. L.M.Rajalakshmi and others*, 1984 (97) LW 162 : 1984 TLNJ 293 Ratnam, J. as the learned Judge then was observed as follows:

'Whether a particular building is residential or non-residential one has to be decided with reference to the purpose of letting.'

In that case the building was let out for residential purpose but used for non-residential purpose. It was held that application under Section-10(3)(a) (iii) was maintainable, that if letting is equally for both respects then the application for eviction under Section-10(3)(a)(i) or under Section-10(3)(a)(iii) are both maintainable.

19. In *Indira and others v. Vinayagam Chettiar* : (1989)1MLJ186 M.N.Chandurkar, C.J made extensive reference to the decision of the Supreme -Court in *Busching Schmitz Private Limited*, : [1977]3SCR312 held that 'whether a building is non-residential building or not will, therefore, have to be determined on the structural

characteristics of the building and the purpose for which it is constructed. There is a statutory bar against converse of a residential building into a non-residential one. A building which has a bathroom or kitchen and other amenities which are characteristics of a residential building must therefore be treated as a residential building notwithstanding its use for a non-residential purpose'.

20. In *P.Kesavan (dead) Through Lrs . v. Ammukutty Amma and others*, : [1988]2SCR81 it has been held that a conversion of building denotes alteration physical features and not mere change in mode of occupation of the building. Putting to a different purpose the user of the, building is not, conversion of the building as such. Where building was used for non-residential purpose but the building was sought for the purpose of residence and the building as it was, could be put to residential use without any structural change, the Supreme Court held that there was no conversion of the building but only a change in user of the building. The Supreme Court was dealing with a case arising under the Kerala Act.

21. In *Thomas George Kuriyan v. S.A.Kharche Proprietor, S.A.Kharche and Associates* : (1994)2MLJ569 K.A.Thanikkachalam, J. as the learned Judge then was observed as follows:

' The words that the premises should be used equally means, equally used for residential and non-residential purposes. It does not mean that the premises should be used mathematically, if the building is let out both for residential and non-residential purposes then applications for eviction under Section-10(3)(a)(i) or Section-10(3)(a)(iii) of the Act are maintainable.'

22. In *Kovilpillai Nadar v. Tiresha Ammal*, 1997 (1) LW 585 T.N.Vallinayagam, J. referred to a number of decisions and held that 'if the structure of the building indicates that it could be used for residential purpose and actually 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'. The criterion is the structure of the building. In that case, a Commissioner was appointed to inspect the premises and he reported that the structure of the portion in the occupation of the tenant indicated that it could be put to domestic use.

23. In *The Manager, Delux Roadlines Etc., v. Jainullabudeen*, 1998 (1) LW 95 S.S.Subramani, J. has after referring to a number of decisions held that the structure has to be given predominance and not its user, that the user of the building is not a conclusive test to decide the nature of the building. While dealing with the question relating to whether the structure or the user was the decisive test, the learned Judge observed that the Full Bench decision reported in *T.Dakshinamoorthy v. Thulja Bai and another*, : AIR1952 Mad413 cannot be good law any longer. However, the learned Judge observed that the Full Bench did not rule that the nature of the structure was irrelevant. What they had held was that it was also relevant factor for consideration, though the user was given predominance. Only to that extent the decision of the Full Bench in view of the decision of the Supreme Court in *P.Kesavan (dead) Through Lrs. v. Ammukutty Amma and others*, : [1988]2SCR81 cannot be said to be good law.

24. In *Shelat Brothers v. Lodd Narendradas* 1988 (2) LW 8 Ratnam, J. as the learned Judge then has held as follows:

'The mere using of a room in a residential building for non-residential purpose will not make the building as a home in a non-residential building as to barring the landlord from availing the benefits of Section-10(3)(a)(iii) of the Act.'

25. Having regard to the position that the structure of the building is the deciding factor, we have to see whether the Appellate Authority had examined the position from this angle. In my view, he has completely overlooked the vital admissions made by the tenant that there was only one entrance to the property, that there was a veranda as soon as one entered the property. May be, a Commissioner had not been appointed. But the fact remains, and it can be easily inferred that the structure of the building clearly showed that it was essentially a residential building. Merely because, the leasing out originally had been both for residential and non-residential purpose and possibly because at a particular stage and which is spoken to by the landlord that the respondent/tenant had shifted to Pozhichalur for residence after the filing of the eviction petition, would not mean that the property had ceased to be a residential building. We have already noticed that in all records the property had been shown as the residential address of the

respondent and his family members including his school studying son, that the ration card also showed the member of his family as residing in the petition property. We have therefore to conclude that the property is residential in structure and if the necessary conditions are satisfied the landlord is entitled to seek eviction for residential purpose. There is vital admission or- the part of the respondent that it had been let out for both residential and non-residential purposes, that in the course of evidence he attempted, 'to give a go-bye and falsely alleged that he did not reside in the property at any point of time and used only for non-residential purpose. The authorities already referred to are clear that if the building had been let out equally for residential and non- residential purposes, the cannot be a mathematical calculation in this regard as, the extent of the residential purpose and the extent of the non-residential purpose. Equally means, equally for residential and non-residential purposes. On the vital admissions of the respondent alone the landlord has to succeed. It is also to be noted that the respondent talks about the petitioner/landlord owning 10 shops in the locality. He has not let in any evidence as to whether owns any residential property in the locality. The landlord has also spoken to the enormous inconvenience he is suffering for commuting to and fro Madras for attending his various businesses in the 'area where the petition property is situated The relative hardship that may caused to the respondent cannot outweigh the advantage that might accrue to the landlord if the tenant is made to vacate the premises.

26. The above discussion would amply demonstrate that the Appellate Authority has not approached the question from a proper angle. It has not taken into consideration the various precedents on the point . I am not re-appreciating the evidence. I am only holding that on the materials placed before the authorities and the various precedents on the point a conclusion in favour of the landlord alone is possible and the provisions of Section-25 are not thrown overboard. Consequently, the order of the-Appellate Authority is set aside and the order of the Rent Controller granting eviction in favour of the revision petitioner as against the respondent is restored. The respondent is granted six months time to quit and deliver vacant possession of the property, subject to his filing an affidavit of undertaking with the usual default clause within a period of two weeks. The C.R.P. is allowed. No costs.

