

S.M. Subbiah Vs. S. Nandappan and Others

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Court : Chennai

Decided On : Apr-30-1999

Reported in : 1999(3)CTC512

Judge : R. Balasubramanian, J.

Acts : Tamil Nadu Building (Lease and Rent Control) Act, 1960 -- Sections 10(2) (3); Pondicherry Buildings (Lease and Rent Control) Act, 1969; Andhra Pradesh Rent Control Act; Bombay Rents, Hotel and Lodging House Rates Control Act -- Sections 13(1) (2); Mysore Rent Control Act, 1961 -- Sections 21(4)

Appeal No. : C.R.P.Nos.806 and 807 of 1995

Appellant : S.M. Subbiah

Respondent : S. Nandappan and Others

Advocate for Def. : Mr. G. Masilamani, Senior Counsel Adv.

Advocate for Pet/Ap. : Mr. AR.L. Sundaresan, Adv.

Judgement :

ORDER

1. These two revisions arise under the following circumstances:

The revision petitioner is the tenant and the respondents are the landlords. In this order hereafterwards, the parties to the two revisions will be referred to as the

landlords and the tenant. The landlords filed R.C.O.P. No. 105 of 1989 seeking eviction of the tenant on the ground of wilful default in the payment of rent. The landlords also filed R.C.O.P. No. 106 of 1989 seeking eviction of the tenant on the ground of additional accommodation. Both the cases are governed under the provisions of the Pondicherry Buildings (Lease and Rent Control) Act. The Rent Controller ordered eviction in both the cases on merits. The tenant filed Miscellaneous Appeals Nos. 7 of 1991 and 9 of 1991 before the Appellate Authority, Pondicherry. The Appellate Authority also dismissed the appeals on merits. C.R.P. No. 806 of 1995 is directed against the order of eviction in R.C.O.P. No. 105 of 1989 and C.R.P. No. 807 of 1995 is directed against the order in R.C.O.P.No. 106 of 1989.

2. Heard Mr.AR.L. Sundaresan, learned counsel appearing for the petitioner in both the revisions and Mr.G. Masilamani, learned senior counsel appearing for the respondent in both the revisions. As far as the order of eviction granted on the ground of wilful default in the payment of rent is concerned, the learned counsel for the tenant argued that the materials placed before the authorities below do not disclose any conduct on the part of the tenant from which it could be inferred that the tenant is guilty of wilful default in the payment of rent. Assuming that the tenant was in default, yet the rent for the default period having been paid even before the filing of the Rent Control Petition itself, there is no cause of action for the landlords to proceed further. For this proposition, the learned counsel for the tenant relied upon three judgments of the Honourable Supreme Court of India and the same would be referred to in the latter portion of the judgment. As far as the order of eviction on the ground of additional accommodation is concerned, the learned counsel for the tenant would primarily and in the foremost contend that the order must be set aside on the following grounds:

- (a) there is no pleading by the landlords or by the tenant on relative hardship.
- (b) there is no oral evidence on the side of the landlords or on the side of the tenant on the question of relative hardship; and
- (c) on the question of relative hardship, there is no discussion and consequently, there is no finding at all on that issue rendered by the Authorities below.

On the grounds stated above, the eviction on the ground of additional accommodation cannot be sustained. Even otherwise, according to the learned counsel for the tenant, the materials placed on record do not make out a case to grant the relief of eviction on the ground of additional accommodation. However Mr.G. Masilamani, learned senior counsel appearing for the landlords, would contend that the materials placed before the court by the landlords clinchingly establish that the tenant is guilty of wilful default in the payment of rent. It may be true that the landlords had issued a notice dated 28.4.1989 marked as Ex.A.I in this case, to the tenant. However that notice is not a notice demanding payment of rent. Only in such an event, the notice can be construed as a notice issued under the Rent Control Act and therefore any payment stated to have been made by the tenant in response to such notice only can be taken into account to decide whether the default is wilful or not. In as much as in the case on hand Ex.A.I does not satisfy the requirements of a notice contemplated under the Rent Control Act, any payment made by the tenant subsequent to the receipt of the notice will not absolve him of the disqualification he had already suffered on account of non payment of rent in time, Even otherwise the learned senior counsel would contend that the payment of rent in this case is not established and even assuming for a moment without admitting that the said payment is established, still the tenant must be held to be guilty of wilful default in the payment of rent. On the requirement of additional accommodation the learned senior counsel would contend as follows:

The materials available on records establish beyond doubt the requirement of the landlords. On the question of failure to plead on relative hardship and the absence of discussion and any finding in regard thereto, the learned senior counsel would contend that the question of relative hardship to be taken into account as provided for in the first proviso to clause (e) of Section 10 of the Pondicherry Rent Control Act, is a matter purely within the knowledge of the tenant. In other words, according to the learned senior counsel, the landlords need not plead at all on the relative hardship initially. On a proper construction of the proviso referred to above, a duty is cast upon the tenant only to plead the hardships and prove the same and only in that even, the onus shifts to the landlords. The learned senior counsel would elaborate the same by stating that the landlords may not be in a

position to plead what hardships the tenant would suffer if he is asked to vacate and therefore those facts being purely within the knowledge of the tenant, it is he who would must plead and prove the same initially before the landlords are called upon to rebut the same. In as much as in the case on hand the tenant had neither pleaded relative hardship nor let in any evidence, the absence of pleading and evidence in regard thereto on the side of the landlords will not affect his case if he is otherwise entitled to the relief. The learned senior counsel also contended that since the authorities below have concurrently found against the tenant on both the grounds, this Court hearing the revision may not be in a position to interfere with such a concurrent finding of fact.

3. In the light of the argument advanced by the learned counsel on either side, I perused the pleadings, the judgments and the records. There is no dispute that the rent payable per month is Rs. 250.00. The allegation in the rent control petition is that the tenant failed to pay the rent for the months of May and June, 1989 and the same was paid only in July 1989 after repeated demands. The tenant had not paid the rent for months of July, 1989 August 1989 and September 1989 and therefore he is guilty of wilful default in the payment of rent. The Rent Control Petition, as could be seen from the seal of the office of the Rent Controller, Pondicherry, was presented on 20.10.1989. The tenant had denied in his counter statement that he is in default much less wilful default. The tenant would add that he had always regular in the payment of rent. It is his further case that in the Rent Control Petition, September 1989 rent is also claimed and the same being payable in October, 1989, cannot form the basis of eviction in the Rent Control Petition filed. The tenant would further state that there was no notice from the landlords claiming arrears of rent. In any event, according to the tenant, the entire rent upto the date of the counter, had been paid. It is no doubt true that the landlords had sent a notice dated 28.4.1989, marked as Ex.A.1 in this case. In this notice, the tenant was told that the landlords required the premises for their additional accommodation. There is no whisper at all about the tenant being in arrears of rent. Under these circumstances, the reply notice dated 16.5.1989, sent on behalf of the tenant and marked as Ex.A.2 in this case, also does not deal with the issue of the tenant being in default of rent or not. However in the reply notice, the tenant had denied the requirement of the landlords of the premises for additional

accommodation as not bona fide. The first of the landlords had given evidence as P.W.1. His evidence was recorded on 12.11.1990. In his Chief examination, he would state that tenant had always used to pay the rent by cheques and that for the months of July, August and September 1989, the tenant had not paid the rent and the deliberately kept it as arrears. In his cross examination, this witness would categorically admit that even before the filing of the Rent Control Petition itself, the tenant had paid the entire arrears of rent even the rent for the month preceding the month in which he gave evidence, was also paid by him. The tenant examined his power agent as R.W. 1. His evidence in chief would show that July to September, 1989 rents had been paid by cheque. He would deny the suggestion in the cross examination that the tenant had not paid me rent. The authorities below, on going through these materials, found that the tenant had not established the payment of the rent for the period mentioned in the Rent Control Petition. In so doing, the authorities below had failed to take note of the vital admission made by P.W.1 while he was cross examined. I have already noticed that P.W.1 in his evidence in cross categorically admitted that even before the Rent Control Petition was filed, the tenant had paid the entire rent. This failure to advert to the important and vital admission on behalf of the landlord had definitely affected the judgment of the authorities below. In this context, the learned counsel for the tenant relied upon the following judgments:

(i) In *S. Sundaram v. V.R. Pattabhiraman*, : [1985]2SCR643 , the Hon-ourable Supreme Court had occasion to consider what is meant by wilful default as occurring in the Tamil Nadu Rent Control Act. In that case, it has been held as follows: 'A consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom. Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Tamil Nadu Act or other State Acts which are in pari materia.

In that case, the landlord had sent a notice dated 17.9.1979 demanding the tenant to clear up the dues giving him two month time. On receipt of the notice, the tenant had paid the entire arrears on 3.10.1979 within the stipulated period of two months. It was contended on behalf of the landlord that despite the payment, the past conduct of the tenant in not paying the rent on time would go against him. In that context, it was held that as the entire rent had been paid up in pursuance of the notice dated 17.9.1979, even prior to the filing of the suit, it is manifest that on the date of the filing of the suit, no cause of action in praesenti having arisen, the suit could have been dismissed on this short ground alone as being not maintainable. It was also held therein that it was not open to the landlord, after having received the entire amount of arrears before filing of the suit, to have filed a suit for past conduct of the tenant. However the notice referred in the judgment of the Honourable Supreme Court of India was found to be a notice strictly in accordance with the requirement of the Tamil Nadu Buildings (Lease and Rent Control) Act intimating the tenant that he is in arrears of rent and asking him to clear it. As contended by Mr.G. Masilamani, learned senior counsel for the landlords, there is no such notice in the case on hand. Therefore I am of the respectful opinion that the case referred to above may not strictly apply to the case on hand.

(ii) The next judgment relied upon by the learned counsel for the tenant is the one of the Supreme Court reported in *Dakaya @ Dakaian v. Anjani*, 1996 (1) L.W. 25. That case was decided with reference to the Andhra Pradesh Rent Control Act. The provisions of the Andhra Pradesh Rent Control Act and the Tamil Nadu Rent Control Act are in pari materia. The period of default in that decided case was from September 1988 to November. 1988. In that case also, a notice was given on behalf of the landlady to the tenant on 6.12.1988 claiming the rents for the months referred to above. The tenant initially sent a portion of the rent on 7.12.1988, which was received by the landlady and accepted by her. The balance of the rent amount Was paid on 12.12.1988 by way of demand draft and the draft was received by the landlady before filing the suit for eviction. But however the draft was not encashed and the same was deposited before the Rent Controller in the eviction proceedings. The eviction petition came to be filed on 19.12.1998. Relying upon the judgment of the Supreme Court in *S. Sundarca Pillai v. V.R. Pattabhi-*

raman, : [1985]2SCR643 the Honourable Judges have held that the tenant was not guilty of wilful default in the payment of rent. Here also, on facts, it is seen that there was a notice from the landlady claiming the arrears of rent and the rent was paid within the stipulated time before the filing of the eviction petition. Therefore on facts this case also may not be of any use for the tenant.

(iii) However there appears to be another judgment of the Honourable Supreme Court of India in K.A. Ramesh & others v. Susheela Bai, : [1998]1SCR892 , which appears to be in favour of the tenant. This case also arose under the Andhra Pradesh Rent Control Act and that was also a case of wilful default in the payment of rent. It appears in that case that the tenant sent a telegram on 17.12.1988 to the landlords asking for the receipts for the rents already paid. The landlords responded by giving a reply dated 19.12.1988 stating that the rent was not paid and it was not correct to say that the receipts were not issued despite payment of rent for the relevant months. Under these circumstances, the tenant sent a bank draft for the entire arrears on 2.2.1989. Presumably having knowledge that the bank draft was being sent to them, the landlords filed an eviction petition on 6.2.1989 and it appears that on the next day, the bank draft reached them. The draft was encashed. Thereafter the eviction petition was prosecuted. In those facts, the Honourable Judges held as follows:

'.....sending a bank draft on 2.2.1989 when there was no litigation between the parties; full payment of arrears was tendered. That was accepted and realised pending the eviction proceedings. This clearly shows that there was no default at all much less wilful default on the part of the tenants in paying the rent for the months from July 1988 to December, 1988. Consequently, the eviction proceedings were not required to be proceeded any further.....'

In holding so, the Honourable Judges relied upon the proviso to sub-Section (2) of section 10 of the Andhra Pradesh Rent Control Act. The Tamil Nadu Rent Control Act as well as the Pondicherry Rent Control has a similar proviso. In the case on hand, P.W.1 had categorically admitted that even before the filing of the Rent Control Petition, the tenant had paid the entire arrears of rent. The facts available in the case on hand are more or less similar to the facts available in the judgment

of the Honourable Supreme Court of India in K.A. Ramesh v. Susheela Bai : [1998]1SCR892 . Under these circumstances, I am of the opinion that the authorities below, by failing to advert to the admission of the landlord regarding the payment of rent by the tenant before the filing of the Rent Control Petition itself, had allowed the judgment to be vitiated by a material irregularity. Accordingly the order of eviction passed in R.C.O.P. No. 105 of 1989. as affirmed by the Appellate Authority, is liable to be set aside and it is accordingly set aside.

4. The learned senior counsel for the landlords, to support the orders of eviction passed by the authorities below, relied upon the following judgments of this court.

(i). Murugan v. Arunagiri, 1999 (I) M.L.J. 154; and (ii) Nilgiris Co-op. Marketing Society v. Uthandi, 1998 (II) M.L.J. 745

In Nilgiris Co-op Marketing Society v. Uthandi, 1998 (II) M.L.J. 745 this court held that mere payment of rent after the filing of the case before the first hearing, would not by itself relieve the tenant from the disqualification he has suffered on account of the non-payment of rent in the absence of any explanation for non-payment of the same when the rent became due. This was followed by a learned single Judge of this Court in the judgment reported in Murugan v. Arunagiri, 1999 (I) M.L.J. 154. However in view of the decision of the Supreme Court in K.A. Ramesh v. Susheela Bai, : [1998]1SCR892 I am of the opinion that the judgments referred to above by the learned senior counsel to sustain the order of eviction on the ground of wilful default in payment of rent may not be applicable to the case on hand.

5. Going to the order of eviction passed by the authorities below concurrently on the ground of additional accommodation, I applied my mind very carefully to the arguments advanced on either side as well as perused the pleadings, the evidence and the judgment. Definitely there is no pleading either in the Rent Control Petition filed by the landlords or in the counter filed by tenant on relative hardship. It is also definite that neither the Rent Controller nor the Appellate Authority had discussed on the materials available on the question of relative hardship and there is also no finding either way. The first proviso at the end of sub-Section (e) of Sub-section (3) of Section 10 of the Pondicherry Rent Control Act reads as follows:

'Provided that in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord.'

Sub-Section (c) relates to the requirement of the landlord on the ground of additional accommodation. In *Hiralal Moolchand Doshi v. Barot Roman Lal Ranchhoddas*, : AIR 1993 SC1449 , brought to the notice of this Court by Mr.G. Masilamani, learned senior counsel for the landlords, the Bombay Rents, Hotel and Lodging House Rates Control Act, was under consideration. The relevant provision that was analysed under that Act was Section 13(1)(g) and Section 13(2) of that Act. It is better I extract the said Sections as extracted in the judgment referred to above.

'13. When landlord may recover possession. (1) Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the Court is satisfied..

(a) to (f)...

(g) - that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee or public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) to (k)...

'13(2)- No decree for eviction shall be passed on the ground specified in clause (g) of sub-section (1) if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.'

The facts in that case are that the landlord sought for eviction of the tenant on three grounds including the ground under Section 13 (1)(g) of the Act. An order of eviction came to be passed by consent. As the tenant had not delivered possession, the landlord filed execution proceedings. It was resisted by the tenant that the decree was a nullity as there was nothing on record to show that the ground of eviction alleged against the tenant was available on records. The execution petition was ordered holding that the decree was not a nullity and it was executable. It was affirmed by the Appellate Court as well. However the High Court accepted the tenant's case and held that the decree was not executable as it was a nullity. In doing so, the High Court noticed, among other things, the following ground as noticed by the Supreme Court.

'Another reason given by the High Court for holding the decree to be nullity on the ground of bona fide personal requirement 13 (1) (g) is that it was for the landlord to prove that the greater hardship could be caused to him rather than to the tenant before he can get decree for possession on the ground of bona fide personal requirement. The High Court further took the view that the landlord had not pleaded in the plaint to that effect.

In dealing with this factual situation, the Honourable Judges held as follows:

'25. The High Court was also in error in assuming that the landlord in a suit for eviction on the ground of bona fide personal requirement is supposed to have pleaded his own comparative hardship in the plaint itself. Section 13(2) comes into play at the stage when the court is satisfied that the ground contained in clause (g) of sub-section (1) of Section 13 of the Act has been made out. It is at that stage that the court has to examine the question of comparative hardship. It was thus not necessary to plead in the plaint itself. Often the parties at the stage of recording of evidence of bona fide personal requirement also lead evidence as to the comparative hardship of the landlord or the tenant. But such averments are not required to be pleaded in the plaint itself to give cause of action to the landlord to enable him to file a suit for eviction of the tenant on the ground of his bona fide personal requirement.

In the light of the judgment of the Honourable Supreme Court of India referred to above as to the requirement of the pleadings on the construction of the Bombay Rent Act, let me consider the judgments brought to my notice by the learned counsel for the tenant as well as the other judgments brought to my notice by the learned senior counsel for the landlords. In *Loganatha Naicker v. S.R. Balasundaram Mudaliar* 1974 (II) M.L.J. 256, a learned single Judge of this Court has held as follows:

'3... The crucial aspect, therefore, which according to me could be characterised as a special incident in matters arising under section 10(3)(c), is that there should be a categorical finding by the statutory authorities that the hardship which may be caused to the tenant by granting it will outweigh the advantage to the landlord. The special prescription is not to be considered as otiose or as an irrelevant appendage in the statute. It has been specially provided for so as to avoid unnecessary hardship to the tenant, as in the case under consideration the landlord is only seeking additional accommodation in the same premises, whether for residential or non-residential purposes. Therefore, it becomes absolutely imperative for the authorities, in cases arising under sub-section (3) (c) of the Act, to give a specific finding whether the hardship which the tenant is likely to suffer would outweigh the advantage to the landlord or vice versa. Unless this aspect is noticed and adjudged upon by the statutory authorities, there is not complete enquiry as the statute contemplates in regard to the petitions arising under section 10(3)(c).'

'4. Such an enquiry has not been undertaken in this case and the result is that no specific finding has been given by the appellate authority or the Rent Controller on this matter. There has not been, therefore, a proper disposal of the application under section 10(3)(c) as contemplated by the statute.'

The above case did not deal with the situation about the requirement of the pleading and the effect of the absence of the pleading. However it is clear from the judgment that application of mind to the requirement based on relative hardship and a finding in regard thereto was held to be a mandatory requirement. In *Radhakrishnan v. seethalakshmi*, 1988 (I) L.W 67, the argument advanced on

behalf of the tenant was that there was no pleading by the landlord on relative hardship. The learned Judge found that the Appellate Authority had applied its mind to that aspect and held that there will be no hardship to the tenant if he was evicted. Therefore it appears that even if there is no pleading, if the Authorities under the Act apply their mind to that issue and give a decision one way or the other, it is held to be sufficient. In *Nagavairavasundaram S.V.M. v. S. Bageerathan & another*, 1993 (1) L.W. 331 arising under the Pondicherry Rent Control Act, the learned Judge after adverting to all the judgments, held as follows:

'12. What follows from the authoritative pronouncements of the Supreme Court on principles that the competent authority and the Courts should follow in cases of examination of the question of bona fide requirement of the landlord and the comparative hardship are: (1) It is necessary to see that there must be an element of need before the landlord can be said to require the premises for his own use and occupation and not a desire to use and occupy the premises: and (2) the landlord must show by reliable evidence that the premises are reasonably and bona fide required by him and it would be wrong to say that the onus thereafter will shift upon the tenant to show that he would suffer greater hardship if he were to be evicted than the hardship which the landlord would suffer if additional accommodation is not made available...'

However it is not clear from the judgment whether there was any pleading or no pleading at all on relative hardship. The learned Judge in that judgment referred to an earlier judgment of the Honourable Supreme Court of India in a reported decision in *Phiroze Bemanji Desai v. Chandrakani M. Pate*, : [1974]3SCR267 . The relevant portion in the judgment above referred to was extracted by the learned single Judge in *Nagavairavasundaram S.V.M. v. S. Bageerathan & Another*, 1993 (1) L.W. 331 and it is as hereunder:

'9. So far as the finding on the question of greater hardship is concerned, the District Judge decided against the respondents on the view that as soon as the landlord establishes that he reasonably and bona fide requires the premises for his own use and occupation, the burden of proving that greater hardship would be caused by passing a decree for eviction than by refusing to pass it is on the tenant

and if the tenant fails to discharge this burden by producing proper evidence; a decree for eviction must go against him. This view in regard to the burden of proof, no doubt, prevailed at one time in various High Courts on the basis of the decision of the Court of Appeal in England in *Kelly v. Goodwin*, 1947 (1) All. ER. 810 but it can no longer be regarded as correct after the decision of this Court in *M/s. Central Tobacco Co v. Chandra Prakash* Civil Appeal No. 1175 of 1969 dated 23.4.1969 (reported in A.I.R. 1969 NSC 88. This Court speaking through Miner, J., pointed out in that case, while discussing S. 21(4) of the Mysore Rent Control Act, 1961, and what was said there must apply equally in relation to S. 13(2) of the Bombay Rent Act, which is in identical terms:

'We do not find ourselves able to accept the broad proposition that as soon as the landlord establishes his need for additional accommodation he is relieved of all further obligation under S. 21 sub-S (4) and that once the landlord's need is accepted by the court all further evidence must be adduced by the tenant if he claims protection under the Act. Each party must adduce evidence to show what hardship would be caused to him by the granting or refusal of the decree and it will be for the Court to determine whether, the suffering of the tenant, in case a decree was made, would be more than that of the landlord by its refusal.

The whole object of the Act, is to provide for the control of rents and evictions, for the leasing of buildings etc., and S.21 specifically enumerates the grounds which alone will entitle a landlord to evict his tenant. Cl. (h) of S. 21 contains one of such grounds, namely, that the premises are reasonably and bona fide required by the landlord for occupation by himself. The onus of proof of this is certainly on the landlord. We see no sufficient reason for holding that once that onus is discharged by the landlord it shifts to the tenant making it obligatory on him to show that greater hardship would be caused to him by passing the decree than by refusing to pass it. In our opinion both sides must adduce all relevant evidence before the Court; the landlord must show that other reasonable accommodation was not available to him and the tenant must also adduce evidence to that effect. It is only after sifting such evidence that the Court must form its conclusion on consideration of all the circumstances of the case as to whether greater hardship would be caused by passing the decree than by refusing to pass it.

Hereagain in the judgment of this Court referred to above as well as in the judgment of the Supreme Court referred to therein, the question of the requirement of the pleading on relative hardship does not appear to have been in issue and the judgments have proceeded on the basis of the burden of proof. But one thing is clear from the judgment of this Court referred to above as well as the judgment of the Supreme Court referred to therein that both sides must adduce evidence on the relative hardship. In *R. Krishnaswamy v. N. Arumugam*, 1993 (I) M.L.J. 122, it has been held by this court that in a petition failing under Section 10(3)(c) of the Tamil Nadu Rent Control Act, which is in pari materia with the Pondicherry Rent Control Act, the absence of pleading on relative hardship in the Rent Control Petition is held to be fatal. For this, the learned Judge relied on two earlier judgments of this Court in *Radhakrishnan v. Seethalakshmi*, 1988 (I) L.W. 67 and *Annakili Amma v. Hussain and Hassan*, 97 L.W. 116 : 1984 (I) M.L.J. 340. In *Radhakrishnan v. Seethalakshmi*, 1988 (I) L.W. 67 a learned single Judge had held that in the petition falling under Section 10(3)(e) of the Tamil Nadu Rent Control Act, the landlord should fail because he has not at all pleaded in the eviction petition about the relative hardship that would be caused to the parties nor proved that fact during the trial. In *Annakili Amma v. Hussain and Hassan*, 97 L.W. 116 : (1984)1MLJ340 , it was held as follows:

'.....In order to enable the Rent Controller to give effect to the proviso to Section 10(3) that the hardship that may be caused to the tenant by an order of eviction will outweigh the advantage to the landlord, it would be necessary for the parties to plead so and place necessary materials in support thereof. In this case, I find that no such pleading is found in the eviction petition nor is there any evidence on this aspect. Though the learned counsel for the petitioner offers to let in evidence on this aspect, I feel that it cannot be allowed at this stage. On this ground alone, the eviction petition should be dismissed.'

In *T.S. Sethuraman v. Nagalakshmi*, : (1998)IIMLJ547 , a learned Judge of this Court held that for maintaining a petition under Section 10(3)(c) of the Tamil Nadu Rent Control Act, relative hardship should be pleaded and established and relative hardship can be decided only on the basis of facts available in pleading and evidence. It was also held therein that there should be categorical finding by the

authorities on that issue. In as much as there was no pleading regarding relative hardship and no evidence available on record and consequently there being no finding, the learned Judge held that there cannot be an order of eviction.

6. Mr.G. Masilamani, learned senior counsel, relied upon the following judgments in support of his case on the question of the requirement of the pleading on relative hardship. In the Nilgais Co-operative Marketing Society v. Uthandi, : (1998)2MLJ745 the requirement of the necessity to plead on relative hardship came up for consideration. In that judgment the earlier judgments of this Court in Radhakrishnan v. Scethalakshmi, : (1984)1MLJ340 , had been taken into account. In that judgment, it was found on facts that though there was no pleading on the side of the landlord on relative hardship, yet the tenant has chosen to plead on that aspect in detail and evidence was available on both sides on that issue. It was also found that the Courts below have considered the materials referred to above and came to the conclusion one way or the other. Under those circumstances, it was held that the absence of the pleading on the part of the landlord on relative hardship did not affect his case and in any event, no prejudice was caused to the tenant on account of that. Therefore the judgment of this Court on the necessity to plead on relative hardship, appears to be that the lack of pleading on the part of the landlord by itself would not be fatal if there is pleading on the other side and evidence available on record on which the Courts have applied their mind.

7. The stage of applying the mind to the first proviso to clause (e) of sub-Section (3) of Section 10 of the Act would arise only after the Rent Controller decides to grant the relief on the ground alleged. In other words, the Rent Controller must first decide that the landlord has made out a case of an order of eviction under clause (c) of sub-Section (3) of Section 10 of the Act and only at that stage, the Act calls upon him to consider the question of relative hardship. What the Rent Controller at that stage has to decide is the advantages which the landlord will get if an order of eviction is passed and the hardships to which the tenant may be exposed to in such an event. If, on a consideration of the materials, the Rent Controller finds that the hardships of the tenant will outweigh the advantages to the landlord, then he shall reject the application. The stage for considering relative hardship, as already stated, will arise only after the Court finds that the landlord had made out a case

for an order of eviction. That is what the Honourable Supreme Court of India also said in *Hiralal moolchand Doshi v. Barot Roman Lal Ranchhoddas*, : AIR 1993 SC1449 . In that case, the Supreme Court was of the opinion that the landlord need not plead hardships in the petition itself and it is open to him to adduce evidence in regard thereto during trial. The tenant was also likewise entitled to. Hardship is a common factor in the provision of the Bombay Rent Act referred to above as well as in the Pondicherry Rent Act and the power of the Court to pass or not to pass an order is made dependent upon the hardship that is likely to be caused in the event of an order being passed or not being passed. Both under the Tamil Nadu Rent Act as well as under the Pondicherry Rent Act, which are in pari materia, the Court has to consider of the landlord. If an order of eviction for additional accommodation has to be passed and compare those aspects to take a decision to reject the application or not. Therefore even though a landlord might have succeeded in establishing his requirement for additional accommodation, yet relying upon the proviso referred to above, the Court has the power to reject the application. In the Pondicherry Rent Act, the hardship of the tenant is pitted against the advantages of the landlord. In other words, the advantages, which the landlord may get by securing an order of eviction, will be purely within his knowledge and therefore it is he who has to establish the same. Only when such advantages are established, the tenant would be in a position to put forward the hardships which he is likely to face if an order of eviction is passed and require the Court to consider his hardships and the advantages of the landlord to arrive at a decision. Therefore initially the burden, according to me, is on the landlord to establish the advantages on his side to secure an order of eviction. Likewise the tenant has to on his side establish the hardships. In view of the judgment of the Honourable Supreme Court of India in *Haralal Moolchand Doshi v. Barot Roman Lal Ranchhoddas*, : AIR 1993 SC1449 even though there is no pleading on the relative hardship, either in the Rent Control Petition filed by the landlord or in the objections filed by the tenant, yet it is open to both the parties to establish the same in their respective oral evidence.

8. In the light of my discussion aboveresferred to, I perused the evidence of P.W.1 and R.W.1. I have already noticed that neither the landlords nor the tenant had pleaded or relative hardship. Equally the authorities below also have not recorded

any finding on that aspect. Any finding on relative hardship should be based on the materials on record. In this context, it may be noticed that the judgment of the Honourable Supreme Court of India in Hiralal Moolchand Doshi case, : AIR 1993 SC1449 had already held that the landlord need not necessarily plead hardships and yet it is open to him to adduce oral evidence in regard thereto. Though the landlords would give evidence to establish that their requirement for additional accommodation is bona fide. Yet I find no materials at all in the oral evidence of P.W.1 about the advantages which the landlords are likely to gain if an order of eviction is passed and the hardships which they are likely to suffer if the order of eviction is not passed. It is not as though the landlords are in any rented building but they are in the occupation of a portion of a building of their own, the remaining part being in the occupation of the tenant. Therefore apart from establishing their bona fides, the landlords should go one step further and also establish about their advantages in securing an order of eviction. I find on a careful perusal of the evidence of P.W. 1 that he had not made any attempt at all to establish that fact. P.W.1 in his evidence would admit that he is a Government servant and his place of work is in the third floor of the building. The application requiring the building for additional accommodation came to be filed stating that since P.W.1 is a heart patient, the doctor had advised him not to climb stairs and therefore he wants to utilise the petition premises in the ground floor as his bedroom. The tenant in his evidence would state that the place of work of P.W.1 is in the third floor of the building in Pondicherry and there was a bedroom in the ground floor in the possession of the landlords. He had also not let in any evidence, according to me, on the hardships which he would suffer if an order of eviction is passed against him. In as much as there is absolutely no oral evidence on record on advantages and hardship, I am of the opinion that neither the Authorities under the Act nor this Court would be in a position to analyse that aspect and give a finding one way or the other in regard thereto. A learned single Judge of this court in T.S. Sethuraman v. Nagalakshmi, 1993 (III) CTC 339 arising under the petition filed for additional accommodation falling under the Tamil Nadu Rent Control Act, held as follows:

'11. Admittedly, in this case, no finding has been given by the Appellate Authority or the Rent Controller in this regard. Therefore the orders of the authorities below

cannot be sustained and they have to be set aside. In the normal course, I should have remanded the matter to the authorities below for reconsideration. But, in this case, there is no pleading or evidence available on record for such reconsideration. Hence the order of eviction is set aside and this C.R.P. No. 563 of 1997 is allowed.

I am inclined to follow the above judgment. I hold that since there is neither pleading nor evidence nor any finding on relative hardship, I am left with no other alternative except to set aside the order of eviction passed in R.C.O.P. No. 106 of 1989.

9. In the light of my discussions above on the requirement of the landlord seeking eviction on the ground of wilful default in the payment of rent and additional accommodation and my finding recorded thereunder, I have no other go except to allow both the Civil Revision Petitions. Accordingly both the Civil Revision Petitions are allowed. No costs. Consequently C.M.P. Nos. 4426 and 4427 of 1995 are dismissed.