

**A. Gurusami Vs. Dr. (Mrs.) A. Jacob (Died) and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/828716](http://sooperkanoon.com/828716)

**Court :** Chennai

**Decided On :** Feb-23-1998

**Reported in :** (1998)2MLJ544

**Appellant :** A. Gurusami

**Respondent :** Dr. (Mrs.) A. Jacob (Died) and ors.

**Judgement :**

ORDER

**R. Balasubramanian, J.**

1. The revision petitioner is the tenant in R.C.O.P.No. 8 of 1989 on the file of the Rent Controller, Arani and the appellant in R.C.A.No. 9 of 1991 on the file of the appellate authority (Sub Court), Arani. The respondent is the petitioner before the Rent Controller and the respondent before the appellate authority. She is the landlady, though eviction was sought for on three grounds namely, wilful default in the payment of rent; putting the building to a different user and committing an act of waste, yet the order of eviction came to be passed only on two grounds namely different user and act of waste. The order of the Rent Controller was sustained by the appellate authority of both the grounds. Hence the present revision.

2. I heard Mr. M. N. Padmanabhan, learned senior counsel, appearing for the revision petitioner and Mr. S. Francis Ashok, learned Counsel appearing for the respondents. According to the learned senior counsel, the order of eviction passes

in this case suffers from illegalities and therefore it cannot be sustained. The learned senior counsel would also argue that the purpose of tenancy is for non-residential purposes and no material whatsoever has to be placed before the courts below by the landlady, to fix that the building was taken for running a lottery shop only. Under these circumstances, in the absence of a contract evidencing tenancy for such a purpose only, the use of the building for any business which the tenant decides to have would not amount to a different user. According to the learned senior counsel, so long as the business carried on by the tenant is legal and so long the change of business, assuming it to be so, had not resulted in any mischief of detriment to the demised premises, it cannot give a cause of action for the landlady to seek eviction of the tenant on that ground. Assuming for a moment without admitting that there was a change in user, the learned senior counsel would state that the change alleged by the landlady is very trivial and therefore it cannot be taken note of to grant relief in favour of the landlady. As far as the act of waste is concerned, the learned senior counsel would argue that making an opening in the wall; fixing a door therein and dividing the premises into two halves by erecting a plywood partition would not amount to committing an act of waste in the eye of law and as understood from the various judgments on this issue. Opposing these arguments, Mr. S. Francis Ashok, learned Counsel would argue that it is established in this case that at the inception of tenancy, it was the mind of both the parties that the tenant should use the building only for selling the lottery tickets and not for any other business. Admittedly in this case, the tenant is found to use a portion of the building for a purpose not connected with the selling of the lottery tickets and therefore it must be held that the tenant has put the building to a different user. According to the learned Counsel Mr. S. Francis Ashok, the tenant did not at any point of time state, till his evidence before court, that he is using a portion of the building for his Hotel business, as well and therefore, his evidence before court on those lines will have to be necessarily rejected. As far as the act of waste is concerned, the learned Counsel for the respondent would state that the tenant has no right to make an opening in the wall belonging to the landlady and he having done so, cannot be allowed to say that he had not committed any act of waste. Making an opening in the wall, according to the learned Counsel is definitely an act of waste, which would impair the utility of the building. On those

lines, the erection of the plywood partition was also attacked. The learned Counsel for the respondent also would state that the vacant site behind the tenanted premises is not the subject matter of the tenancy and the tenant by using that site as a cattle shed has thereby caused the value of the building to come down.

3. In the light of the arguments advanced by the learned Counsel on either side, I perused the records as well as the evidence. There is no written instrument in this case evidencing the specific purpose for which the contract of tenancy was entered into between the parties. The fact remains that the building was let out for non-residential purpose. In this context, it may be noticed that the tenanted portion bears No. 122, School Road, Arani, Premises No. 123, which adjoins the tenanted premises immediately on the east, was also owned by the landlady originally. Premises Nos. 122 and 123 are divided by a dividing wall. The landlady had sold premises No. 123 to the tenant and therefore he is in occupation of the premises No. 123 as his own. In premises No. 123, the tenant is running his business—namely, Hotel business.

4. Ex.A-3 is the notice dated 24.7.1989 issued on behalf of the landlady to the tenant. From a perusal of this notice, it appears that at the time when the tenant took the building on lease, he told the landlady about his desire to run a lottery business. There-fore, it is only his desire and not the terms of the agreement between the landlady and the tenant. From the mere fact that the tenant had expressed his desire to use the non-residential portion for lottery business, would not, in my opinion necessarily pin him down to that business only and not any other business. There is neither pleading nor evidence on behalf of the landlady that prior to letting the tenant into possession of the premises, negotiations took place between them and then the terms of the tenancy was arrived at. As already found by me, there is no written instrument evidencing the terms of the tenancy, which is admittedly for non-residential purpose. As held by this Court in a judgment reported in T.M. Ramaswamy Gounder v. Ranganayaki 1990 T.L.N.J. 122, when the tenant denies that he has to necessarily carry on only one business in the demised premises, then the onus on the landlord is very heavy, it is he who must prove the purpose for which the premises was let out. In this case, as already found by me, except the oral evidence of P.W.1, who is the son of the

landlady before the court. There is no other documentary evidence in favour of the landlady that the tenant was permitted to carry on only the business of selling lottery tickets. Even assuming it to be so, such a change of user should necessarily result in some mischief or detriment to the premises let out. That is the view of the Honourable Supreme Court of India in its judgment reported in Mohanlal v. Jai Bhagwan : [1988]3SCR345 , wherein it has been held as follows:

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973), Section 13(2)(ii)(b) - Change of user - Commercial purposes - Tenant switching over to another business than one for which tenancy was created - No possibility of any mischief of detriment of demised premises - Tenant not liable to be evicted under Section 13(2)(ii) (b).

In another judgment of the Honourable Supreme Court of India reported in Gurdial Batra v. Raj Kumar : [1989]3SCR423 , it has been held as follows:

East Punjab Urban Rent Restriction Act (3 of 1949), Section 13(2)(ii)(b) - Change of user - Premises let out for running of cycle/rickshaw repair shop - Sale of television also afterward carried on temporarily in premises along with repair business - It is not change of user - Small change of user not actionable when interest of landlord not prejudiced.

In this case there is no evidence on record to establish what is detriment which the landlady has suffered on account of the, change so user, assuming it exists. Under these circumstances, I am not in a position to agree with the finding of the Rent Controller and the appellate authority on the change of user given in favour of the landlady.

5. Coming to the act of waste, it is no doubt true that in the dividing wall between the tenanted premises and the premises owned by the tenant, an opening had been made in the north-south wall. The tenanted premises is also divided by a plywood partition. The case of the tenant is that the north-south wall is his wall and he made a hold on it. The Rent Controller found this as a fact. The landlady having sold the premises No. 123 to the tenant earlier, could have easily produced the said sale deed to establish what was conveyed to the tenant and whether it

included the north-south wall dividing the tenanted premises and premises No. 123. In any event, making an opening in the said wall by fixing a door and erecting a plywood partition in the tenanted premises does not appear to have brought any material change to the condition of the building, there is no evidence to show that such an act has impaired the value and utility of the building. In fact, a learned single Judge of this Court (Justice S.S. Subramani) in his judgment reported in *A. Duraiswamy v. A. Arumugham* (1997) 2 L.W. 346 had referred to all the judgments on this point and held as follows:

With regard to the plea of the landlord seeking eviction on the ground of tenant committing acts of waste, taking into consideration the wordings in the statute, it is clear that unless the landlord establishes that the placing of a new door has impaired the value and utility of the building, he will not have any cause of action. The landlord has not even stated in his deposition that the building has been damaged materially. Excepting that a door had been placed, no other evidence has been let in this case. The finding of the Authorities below that for placing the door, portions of the wall will have to be demolished and, therefore, diminution of value and utility can be presumed, cannot be accepted.

6. In *Arunachalam G. (deceased), through legal representatives v. Thondor Periyambadi and Anr.* A.I.R. 1992 S.C. 978, it was held that in the absence of evidence on the impact of the alteration made to the building, the act of the tenant fixing rolling shutters in the place of front door made of wood would not amount to structural alterations impairing the value of the building. In another judgment of this Court reported in *Tajudeen v. C.J. Veerabhadra Chettiar and Anr.* 1996 T.N.L.J. 99, it was held that mere removal of partition wall will not automatically attract the provisions of the section. The real test should be whether the adjustment or alteration, involving some demolition here and there is harmful to the main structure (sic.). A learned single Judge of this Court in a judgment reported in *Duraisamy v. Arumugham* (1997) 2 L.W. 346, held that the placing of a new door will not impair the value and utility of the building and therefore does not furnish a cause of action for eviction on the ground of act of Waste.

7. In this case also there is absolutely no evidence on the side of the landlady about the utility value of the tenanted building having been brought down by any such act. Curiously, the Rent Controller and the appellate authority proceeded to order eviction on the ground of committing an act of waste, which act of waste was related to exploiting the vacant land behind the tenanted premises by using it as a cattle shed. The case of the landlady is that the vacant site is not the subject matter of the tenancy at all. If that is so, how could it be a ground for eviction with reference to the demised building. I am unable to understand. Under these circumstances, I am of the opinion that the finding rendered by the Rent Controller and affirmed by the appellate authority on the ground of act of waste in favour of the landlady cannot also be sustained. Under these circumstances, the order of eviction, passed by the Rent Controller against the tenant on both the grounds referred to above and affirmed by the appellate authority have to be necessarily set aside. It is accordingly set aside. The C.R.P. is allowed and there will be no order as to costs.

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