The Commissioner, Bangalore Mahanagara Palike (Bangalore City Corporation) and ors. Vs. Sri H.M. Chandiramani S/O Late M.N. Chandiramani,

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Court : Karnataka

Decided On : Sep-28-2006

Reported in : 2007(2)KLJ497; 2006(6)AIRKarR584(DB);

Judge : V. Gopala Gowda and ;Ashok B. Hinchigiri, JJ.

Acts : Karnataka Rent Control Act, 1961 - Sections 21(1) and 21(2); Karnataka Municipal Corporations Act, 1976 - Sections 322, 322(2), 444, 462, 462(2), 470 and 482; Contempt of Courts Act; Kerala Buildings (Lease and Rent Control) Act; Code of Civil Procedure (CPC) - Sections 151 - Order 2, Rule 2 - Order 33, Rule 1 - Order 39, Rule 1

Appeal No. : R.F.A. Nos. 15 and 88 of 2004 and 1247 of 2005

Appellant : The Commissioner, Bangalore Mahanagara Palike (Bangalore City Corporation) and ors.;abdul Khuddus S/

Respondent : Sri H.M. Chandiramani S/O Late M.N. Chandiramani, ;The Chief Secretary, Government of Karnataka and

Advocate for Def. : Party-in-person, R1, ;N. Vasudevan, Adv. for R3 in R.F.A. No. 15 of 2004, ;Party-in-person in RFA No. 88 of 2004 and ;N. Vasudevan, Adv. in RFA No. 1247 of 2005

Advocate for Pet/Ap. : Ashok Hernahalli, Adv. in 15 of 2004, ;N. Vasudevan, Adv. for A-1 and ;Ashok Harenahalli, Adv. A-2 in RFA No. 88 of 2004, ;Party-in-person in RFA No. 1247 of 2005

Disposition : Petition allowed

Judgement :

1. Aggrieved by the Judgment and Decree dated 6/10/2003 passed by the Court of 26th Additional City Civil & Sessions Judge, Mayo Hall, Bangalore, in O.S.No. 16443/1999, two appeals are fifed - RFA No. 15/2004 by the Commissioner, Bangalore Mahanagara Palike ('BMP' for short) and its officials and RFA.88/2004 by Abdul Khuddus. To avoid confusion, the parties herein are being described with reference to their ranks in the Trial Court.

2. The brief facts of the case are that the plaintiff fifed the suit for the recovery of damages to the extent of Rs. 16 lakhs and for a sum of Rs. 15,000/- per month from the date of dispossession (9-1-1995) till the plaintiff is put back in possession of the suit schedule premises.

3. The plaintiff was allotted the suit schedule premises by the House Rent Controller, Civil Station, Bangalore for non-residential purpose on a monthly rent of Rs. 450/-. The plaintiff was doing his garment business in the suit schedule premises. It is his further case that he had to pay a sum of Rs. 6,000/- towards security deposit to the landlord, Sri K.V. Panduranga Shetty and that the monthly rent being paid at the material point of his

dispossession was raised and fixed at to Rs. 600/- p.m. As the plaintiff resisted the landlord's further monetary demands, the landlord tried to throw him out forcibly. As a result of this, he was constrained to file a suit for permanent injunction in O.S.No. 1057/91 and obtained an order of temporary injunction during pendency of the original suit. The landlord filed HRC No. 1230/92 but withdrew it, as them was no chance of has succeeding in the eviction petition. The landlord sold the suit schedule premises to defendant No. 7 by sale deed, dated 19/1/1994, which is described fey the plaintiff as a sham and bogus document. Reeling under the threat of forcible dispossession, plaintiff filed another O.S No. 2501/1994 and obtained an order of status-quo.

4. The defendant No. 7 filed an eviction petition under Section 21(1)(j) of the Karnataka Rent Control Act, 1961 now repealed (hereinafter called as 'KRC Act' for short) for demolition and re-construction of the suit schedule premises. That petition was got dismissed as withdrawn on 6/02/1995.

5. Thereafter defendant No. 7, in collusion with defendant Nos. 1 to 6 got issued the show notice under Section 322 of Karnataka Municipal Corporations Act, 1976 (hereinafter called as KMC Act' in short). The same was challenged by the plaintiff in W.P No. 20400/1994, which was disposed off by this Court by its order 8/2/1994 directing the BMP to pass final orders after considering the objections of the plaintiff to the show-cause notice and hearing him within four weeks and to serve a copy of the same on the plaintiff. Further this Court in the above order reserved the liberty to the plaintiff to take steps against the final order, as per law.

6. The Notice/order dt.5/1/1996 was served on the plaintiff at 16:20 hours on 6/1/1995. It directed him to demolish the suit schedule premises within three days from the date of service of said order. Even without waiting for the expiry of three days time granted, the defendants swooped on the suit schedule premises on 7/1/1995 in the morning itself and demolished the suit schedule promisee and in that process they destroyed stock-in-trade, raw materials, finished goods, fixture, furniture, interior decoration, machinery, etc. By doing this illegal act, the defendants ruined the plaintiff's business and deprived the source of livelihood far himself and his family members.

7. The plaintiff issued notice to the defendants holding that they are liable to pay a sum of Ra. 16,00,000/- (lakhs) towards loss and destruction of his moveable properties and Rs. l5,000/-p.m., towards loss of business, from the date of his dispossession till the date of restoration of the suit schedule premises to the plaintiff.

8. Defendant No. 1 had remained ex-parte though suit summons were served upon him. Defendants No. 2 to 6 appeared and filed written statement denying the plaint averments and taking untenable pleas. They specifically denied the allegation of collusion between defendants 2 to 6 on one side and defendant No. 7 on the other side. It was the stand of defendants 2 to 6 that the notice/order was in accordance with the directions of this Court issued in the above Writ Petition and provisions of the KMC Act, 1976. AS the suit schedule premises was not fit for human habitation and the collapse of dilapidated premises could have taken place any moment, they had to demolish the same. They stated that on receipt of the Notice/order dt.5/1/1995, the plaintiff had shifted all his materials from the suit schedule premises and had kept it vacant. Having vacated the suit schedule premises by the plaintiff, he is not justified in filing the suit claiming damages. The BMP and its officials-defendants 2 to 6 alleged blackmailing, etc. by the plaintiff. They also complained of lack of bonafides on the part of the plaintiff in instituting the original suit against them.

9. Defendant No. 7 averred in the written statement that the suit is false, frivolous and vexatious and therefore he had prayed for dismissal as the same not maintainable both on foots and law. He contended that since the adjoining portions of the suit schedule premises were purchased by his two brothers, they also should haw been made parties to the suit. A specific pleading was made by him in the written statement that plaintiffs wife was present on the spot at the time of demolition. She requested the BMP authorities to permit her to take a few things like plywood, chairs, old table, tube-light etc. from the suit schedule premises. She took them in a small tempo. As she had taken away the articles from the suit schedule promises, the plaintiff did not give any complaint to the police about the damages to his movables and other items as described in the plaint. It is the specific cue of the defendant No. 7 that the demolition work on the suit schedule premises

was begun only after plaintiffs wife took away the articles and handed over the vacant possession of the suit schedule premises to him. Therefore, the plaintiff has no right, title or interest over the suit schedule premises and also not entitled to the reliefs, as prayed in the suit. The plaintiff is a rich man and to harassing the defendant No. 7 in different ways. It was averred in his written statement that the suit is barred by Order 2 Rule 2 CPC. As the plaintiff harassed the previous landlord and continued his harassment to the new and the present landlord, ie., the defendant No. 7, he is liable to be prosecuted under the Contempt of Courts Act.

10. Based on the rival pleadings, the court below has formulated eight issues and one additional issue for its consideration and determination. They read as follows:

1. Whether plaintiff proves that he became the tenant of First floor of premises No. 50, Ibrahim Saheb Street, Bangalore, by virtue of allotment order No. HRC-ACC-75/1974 dt.7/5/74 on a monthly rental of Rs. 450/-?

2. Whether the plaintiff proves that Deft-7 in collusion with other delta., without providing him an opportunity, demolished the premises causing loss of Rs. 1,30,000/- towards the value of raw-materials, Rs. 2,50,000/- towards the value of fittings, fixtures, furniture, electrical fittings and interior decoration, etc., and Rs. 12,00,000/-towards the value of stock-in-trade, row materials and finished goods?

3. Whether the plaintiff proves that he is entitled to damages at the rate of Rs. 15,000/- p.m from 9/1/1995 till restoration of possession of the premises allotted to him?

4. Whether Deft. 7 proves that the suit of the plaintiff., is bad for non-impleading of Syed Hyder, Shaik Mohamood and Md. Nazer Ahmed?

5. Whether Deft.7 proves that the premises No. 50 purchased by him and his brothers on 18-3-94, 18.3.94 and 9.12.94 was with due notice to the plaintiff?

6. Whether the Plaintiff proves that the act of demolition of the premises was in utter violation of order passed by the Hon'ble High Court in W.P No. 20400/94?

7. Whether the Plaintiff is entitled to the reliefs sought for?

8. What Decree or order?

Addl. Issue Dtd.29.6.2002:

Whether the payment of Court Fee is insufficient?

11. the original suit went for Trial, the plaintiff got himself examined as PW-1 and marked the documents at Exs.P1 to P45 in justification of his claim. On behalf of Defendant Nos. 2 to 6 the Assistant Executive Engineer of the BMP was examined as DW-1. Defendant No. 7 got himself examined as DW-2 and got marked documents At Exs. D1 to D263 in support of his case.

12. The Trial Court, on considering the rival pleadings, the documentary and oral evidence placed on record and the arguments advanced on behalf of the parties, had decreed the suit in part holding that the plaintiff is entitled to recover a sum of Rs. 75,000/- as damages towards the loss and destruction of machinery, furniture, fittings, etc. and also a sum of Rs. 50,000/-towards the stock-in-trade, namely both raw materials and finished goods, from defendants 2 to 7. Further, the trial court has held that plaintiff is entitled to recover a sum of Rs. 10,000/- per month towards loss of business from defendants 2 to 7 from the date of illegal demolition of the suit schedule premises (9/1/1995) till the restoration of possession, but subject to final decision of the suit in O.S No. 10082/1995.

13. It is this judgment and decree, which are being assailed before us by the defendant No. 7. Sri N. Vasudevan, learned Counsel for defendant No. 7 vehemently argues that there was no basis in the suit for awarding damages; the suit is filed by the plaintiff only to make an unlawful gain by harassing the

landlord/defendant No. 7. It is his submission that the Trial Court has not considered the material evidence placed on its record in support of the case of the defendant No. 7, viz., the order passed by this Court in W.P.No. 20400/1994, and the report of the Commissioner appointed in the said Writ Proceedings have not received any consideration at the hands of the Trial Court, when it has answered the contentious issue that the trial Court has not understood the case of defendant No. 7 whom the plaintiff has been harassing, even after demolition of the suit schedule premises. It is the case of the defendant No. 7 that the BMP officials have handed over its possession to the defendant No. 7 alter its demolition on 9.1.1995; on its demolition the defendant No. 7 and his two brothers who are owners of adjoining portion of suit schedule premises have constructed a big building; that in the building so constructed the contours of the demolished suit schedule premises cannot be made out.

14. The learned Counsel, Sri Vasudevan, placing his reliance upon EXS.D.12 to 46, which are crucial documents in the case, submitted that the learned Trial Judge has not properly appreciated those documents white answering the contentious issue Nos. 2, 3 & 6 in the impugned judgment. Therefore, he had urged that the findings recorded on the aforesaid contentious issues are erroneous in law and liable to be set aside. The finding recorded on the contentious issues is without appreciating the documentary and oral evidence adduced on behalf of the defendants 2 to 7, wherein the 7th defendant has examined himself as DW-2, marking the documents Ex.D.1 to D.263, in Justification of his defence to show that the suit far damages is not maintainable in law, the same have not been considered by the learned Trial Judge. Hence, ho had contended that the findings are liable to be set aside. The learned Counsel, Sri Vasudevan farther submits that the original suit No. 10083/05 filed for bare permanent injunction against the 7th defendant herein in respect of the suit schedule premises is dismissed by the trial Court on merits holding that the plaintiff is not in a position to use the suit schedule premises and subsequent event of construction of the new building and leasing out the same to the tenants. In that view of the matter, the operative portion of the judgment awarding damages of Rs. 1,25,000/- imposing the liability upon defendants 2 to 7 and further fixing the liability at Rs. 10,000/- per month towards the toss of business to the plaintiff payable by the aforesaid defendants from the date of illegal demolition of the premises ie., from 9/1/1995 till its restoration to the plaintiff, but subject to the final decision of the suit, is not legal and valid. Since the said suit is dismissed, that portion of the judgment and decree is not enforceable in law unless, the Judgment and decree passed in the aforesaid suit is set aside in the Appeal filed by the plaintiff.

15. The learned Counsel further placing reliance upon the documents produced by the 2nd defendant-BMP, before this Court vide memo dt 26/6/2006, the letter stated to have been signed by the wife and the daughter of the plaintiff at page-12 to show that they have removed the raw material, goods, machinery, etc. mentioned in the said letter from the suit schedule premises in a vehicle bearing No. CAS 337. This important aspect of the matter has not been taken into consideration by the learned Trial Judge at the time of answering the contentious issues. No doubt, the said document was not produced before the Trial Court. The same, made available as per the direction of this Court, would clearly disclose the fact that the plaintiff has vacated by removing his goods and therefore, he is not entitled to the relief of permanent injunction in O.S. No. 10082/1995 and also not entitled to the damages as awarded at Rs. 1,25,000/- by the Trial Court towards the cost of machinery installed in the suit schedule premises and also not entitled to the monthly damages for the reasons; stated supra. Therefore the impugned judgment and decree are liable to be set aside.

16. The findings recorded on the contentious issues in the impugned judgment by the learned Trial Judge without appreciating the documentary evidence, namely, Ex.D.74, dt.27/1/1995, wherein the plaintiff has given complaint to the police and Ex.D.79, wherein the suit filed by the plaintiff as an indigent person claiming damages, is only an afterthought after removing the raw material, garments, machinery, fixtures, etc. from the suit schedule premises. This important legal evidence placed on record by the defendant No. 7 has not been property appreciated by the learned Trial Judge. Therefore, the findings rendered on the issues are erroneous in law, as the learned Trial Judge has not assigned any reasons for not accepting the above documentary evidence. Further as per Ex. 142, that the plaintiff has refused to take possession of the

premises offered to him by the defendant No. 7 would clearly go to show that he is not agreeing to take possession despite sincere efforts made pursuant to the direction passed by the Court. That would clearly go to show that he was not interested in taking possession of the premises offered by the defendant No. 7 to the plaintiff. Therefore, the impugned judgment and decree ate liable to be set aside. The learned Counsel placing strong reliance upon a decision of the Hon'ble Supreme Court in the case of Vinnattankandi Ibkayi Kushabulla Hajee reported in 2000(S) SCC 555, wherein the Hon'ble Supreme Court with reference to the definition of the premises under the Kerala Buildings (Lease and Rent Control) Act, has clearly held that if the building is demolished or if it collapses on account of natural calamity possession of the premises will not be with the plaintiff-tenant. In the instant case, the local Government, namely, 2nd defendant after following the procedure contemplated Under Section 322 of the KMC Act and after affording opportunity to the plaintiff, pursuant to the direction issued by this Court in the writ petition referred upon has passed the order, as the demolition of the suit schedule premises on account of its dilapidatedness was an imminent necessity as it was dangerous to the passersby or occupiers of the neighbouring structures. Therefore the order under Section 322 r/w Section 462 of the KMC Act was passed, which was served upon the plaintiff, calling upon him to vacate and deliver vacant possession of the suit schedule premises to facilitate the 2nd defendant and its personnel to demolish the building to avoid the damage that may be caused to the passers by or neighbouring persons. This important aspect of the matter has not been taken into consideration toy the learned trial Judge, as it is not the th defendant who has demolished the building and taken possession of the suit schedule premises, it is the BMP after having taken note of the fact that the suit schedule premises has become dilapidated, it is the statutory obligation on ha part to demolish the building urgently. Therefore it has discharged the statutory duty in exercise of its power and after demolition, as per the law laid down by the Hon'ble Supreme Court in the case referred supra, the plaintiff is not entitled to claim to be in continued possession, as without structure upon the premises, he is not entitled to contend that he continued as a tenant in respect of the suit schedule property which became vacant premises after demolition of thus dilapidated structure. Therefore fastening of the liability and awarding of damages against the defendant No. 7 is totally impermissible in law, as the plaintiff is not entitled to institute the suit against the 2nd defendant-BMP, much less, against the 7th defendant, as he has no role to play in demolishing the suit schedule premises, as the building has become dilapidated, which is taken note of and demolished by the BMP. Therefore the defendants 2 to 7 are not liable to pay the monthly damages, as awarded tin restoration of possession of the premises. The question of restoration of possession of the suit schedule premises to the plaintiff by the 7th defendant does not arise in this case, as the 2nd defendant after demolition of the building handed over the same to him; thereafter he has been in its possession; he constructed a commercial building after obtaining necessary sanctioned plan, licence, etc. from the BMP under the provisions of the KMC Act in conformity with the building by-laws and the Regulations and the same is leased out to the tenants. Therefore, it is urged that the defendants are not liable to pay the damages.

17. Sri. Ashok Haranahalli learned Counsel for defendants 2 to 6 submits that the Trial Court ought to have dismissed the suit on the short ground of its maintainability itself. He submits that no suit can be filed against the officials of the BMP in respect of the acts done by them in good faith in discharge of their statutory duties. He further submits that there are no allegations of malafides or ulterior motive in the plaint against the defendants No. 2 to 6. The averment in paragraph 5 of the plaint alleging collusion between defendant No. 7 and defendant Nos. 2 to 6 is too bald, vague and deficient to be taken note of seriously. Sri. Ashok Haranahalli submits that assuming, without admitting, that the defendants are liable to pay damages to the plaintiff, no factual foundation in pleadings or evidence is laid, became the particular of the machinery, raw material, fixture and other items are not furnished. The quantification of damages by the Trial Court under the circumstances is next only to impossible, He also submits that there is no allegation of wrongful fees caused to the plaintiff against the BMP. Therefore if any damages are to be paid to the plaintiff, the same has to be done by defendant No. 7 and not defendants No. 2 to 6. Sri Ashok Haranahalli submits that the 2nd relief granted by the Trial Court is conditional, as the same is subject to the final decision of the suit in O.S No. 10082/1995. As the said suit itself is dismissed, the second relief granted by the Trial Court has become unenforceable and nugatory, therefore, not sustainable in law. He submitted that the BMP officials brief

mission is demolishing the dilapidated buildings in the public interest to Avoid payment of damages. Once this work is accomplished, they quit the place. Therefore, there is no question of BMP officials staying back in the suit schedule premises and/or handing over its possession to defendant No. 7 as pleaded by him.

18. The learned Counsel further contends that the original suit instituted by the plaintiff is barred under Section 482 of the KMC Act. Despite the foot that such a plea is not taken in the written statement, since it is a legal plea, the same can be raised at any stage and this Court can consider and examine the correctness of the finding recorded on the contentious issues. The aforesaid statutory provision confers immunity to the BMP and its officers, keeping in view, the laudable object and statutory duly cast upon it to see that the dilapidated building within the BMP limits was not causing any danger either to the neighbouring residents or passersby including the occupants. The BMP having regard to the factual position that the building was in dilapidated condition, afar following the procedure provided under the provisions of the Act and in compliance with the principles of natural justice and by affording an opportunity to the plaintiff and recording a finding on the basis of the relevant material available before the Officer of the BMP, the Deputy Commissioner (Estate), BMP) the suit schedule premises was demolished which cannot be found fault with either the 2nd defendant or its officers. This important aspect of the matter is required to be taken into consideration by this Court while examining the correctness of the liability of the defendants No. 2 to 7 being fastened with damages against them in the impugned judgment and decrees.

19. The Trial Court while appreciating the documentary evidence on record has not taken into consideration, the relevant important aspect of the matter namely, that the plaintiff has not filed the complaint against the officers of the BMP stating that they have demolished the suit schedule building illegally and that he had been put to low and unmitigated hardship, therefore, they are liable for penal action and for the payment of damages to him. The complaint lodged by the plaintiff is only against the 7th defendant Ex.P.6 is the legal notice sent to the BMP by the plaintiff mentioning the details of articles which were lost in the building on account of its demolition and it is also not his case that the raw material, finished garment products, machinery or fixtures were taken by the BMP officers after demolition of the suit schedule building. The learned Trial Judge has lost sight of the important fact that there is no pleading in the plaint that the plaintiff is entitled for damages or stated in the plaint that the sewing machines and other goods namely, raw materials and finished products as per Ex.P.9 were lost by him. Therefore the evidence without pleadings is totally impermissible is, well-settled proposition of law laid down toy the Apex Court and accepting such evidence by the Trial Judge is contrary to law. Therefore, the finding recorded on the contentious issue in that regard has vitiated the judgment on the ground of error in law. The learned Trial Judge while answering the contentious issue and fixing the damages at lumpsum and also fastening the liability at Rs. 10,000/-per month towards lows of business of the plaintiff at the instance of defendants 2 to 7, the same could not have been awarded by the learned Trial Judge, for the reason that the legally or the illegality of the demolition order of the suit schedule building was not and could not have been an issue in the original suit and no such issue is framed and parties have been permitted to adduce evidence and record a finding in this regard. Therefore, the only issue which fell for consideration of the Trial Court is that whether the plaintiff is entitled for damages? That issue is answered in the affirmative in favour of the plaintiff. Without considering the relevant aspect of the matter namely, unless the order of demolition is declared as illegal either by the Trial Court or by the competent Court, the plaintiff is not entitled for the damages against the defendants No. 2 to 6. It is also the further case of the defendants that neither the pleadings nor the legal evidence adduced on record by the plaintiff, show that the BMP employees have wrongfully dispossessed the plaintiff from the suit schedule promises. It is on account of discharge of statutory duty by them lay following the procedure, as contemplated under the provisions of Section 322 of the KMC Act, the suit schedule building is demolished by them. He has been dispossessed by the 7th defendant from the suit schedule premises. The 2nd defendant itself cannot be made liable for payment of the damages, as awarded in the impugned judgment, as they have nothing to do with regard to the taking of possession of the suit schedule premises by the 7th defendant, as the defendants No,2 to 6 did not deliver possession to the 7th defendant.

20. It is farther urged by the learned Counsel that the learned Trial Judge ought to have taken into consideration another important aspect of the matter, i.e. the statutory provision, Section 322 of the KMC Act is a complete code by itself, an order would be passed in exercise of the power by the BMP in discharge of its statutory duty after affording opportunity to the plaintiff. The order is implemented by the defendants No. 2 to 6 by demolishing the building situated in the suit schedule premises, which was in a dilapidated condition. Against such an order an appeal under Section 444 of the KMC Act, is provided to the appellate authority. Without exhausting that remedy and challenging the correctness of the demolition order passed under the above said provision, the plaintiff in not entitled to ask for the damages from them.

21. After hearing the learned Counsel for the parties -defendants 2 to 7 and the plaintiff, party-in-person at length, the questions that would arise far our determination are:

a) Whether the findings and reasons recorded on the contentious issue Nos. 1, 2, 3 and 7 are either erroneous or suffer from error in law?

b) Whether the defendants 3 to 6 are entitled for immunity for their action in demolishing the property in exercise of their power Under Section 322 of the KMC Act?

c) What Judgment?

22. We have to answer the aforesaid points in the negative against the defendants and in favour of the plaintiff for the following reasons:

It is an undisputed fact that the plaintiff has been in lawful possession of the suit schedule property as a tenant under his erstwhile landlord one Sri K.V. Panduranga Shady, as the premises was allotted by the House Rent Controller, Civil Station, Bangalore in HRC-ACC 75/1974, dt.7/5/1974 for non-residential premises on a monthly rent of Rs. 450/- on the vacancy reported by the landlord. The premises is situated at No. 50, Ibrahim Sahib Street, Civil Station, Bangalore, which measures East-West: 37.6 feet and North-South :28.6 feet. This fact is established on the basis of the Commissioner's report, who was appointed in W.P. No. 20400/1994, at the instance of the plaintiff. The said Commissioner's report along with sketch is marked as Exs. D. 64 and D. 65 respectively. The rent of the suit schedule premises was enhanced from time to time by the erstwhile landlord. As on the data of demolition of the building by the defendants 2 to 6, he was paying rent of Rs. 650/- per month. It is also an undisputed fact that the vendor of 7th defendant who was the erstwhile owner of the suit schedule premises had instituted eviction petition against the plaintiff in HRC No. 10030/92 before the Additional Small Causes Court Judge, Bangalore. The certified copy of the petition is marked as Ex. D8. The certified copy of the order sheet marked as Ex. D7. Ex. D9 the certified copy of the I.A. I filed in the said HRC. EX.D12 is the certified copy of the objections filed by the plaintiff. The same came to be withdrawn by the erstwhile landowner. It is also an undisputed fact that the same came to be withdrawn by the landowner as per Ex. D23, (a memo filed by the petitioners in the said HRC after the evidence of Sri K.V. Panduranga Shetty, erstwhile landlord, was recorded.)

23. It also an undisputed fact that petition Under Section 21(1)(j) of the repealed KRC Act in HRC No. 1092/94 as per Ex.P.28 was filed by the 7th defendant against the plaintiff in respect of the suit schedule premises. The certified copy of the order sheet is produced at Ex.D.27. As per Ex.D.77, the 7th defendant filed a memo and withdrew the said case. The aforesaid documentary evidence would establish the fact that the plaintiff has been in lawful possession as a statutory tenant in the suit schedule premises ever since the date of allotment of the premises by the House Rent Controller in favour of the plaintiff.

24. The plaintiff instituted the suit for bare permanent injunction in O.S. No. 10572/91 before the Addl. City Civil Judge, Civil Station, Mayo-Hall as per Ex.D3. The certified copy of the plaint in which I.A.I under order 39 Rule 1 & 2 r/w. 151 CPC was filed as per Ex.D.4 alongwith the certified copy of the affidavit as per Ex.D.5. Interim order of temporary injunction was granted by the said Court in his favour against the defendant in the said suit as per Ex.D6, which was in force till the same came to be dismissed for default on 28/6/1995. To

evidence this fact, Ex.D2, certified copy of the order sheet is produced by the 7th defendant Ex.D14 is the written statement filed by the erstwhile landowner, Sri K.V. Panduranga Shetty. During the pendency of the said suit, eviction petition case was fifed by the erstwhile owner in HRC No. 1230/92, which was subsequently withdrawn by him. Afterwards the landlord sold the property to the 7th defendant He has also instituted HRC No. 1092/94 Under Section 21(1)(j) of the repealed Act, which came to be withdrawn subsequently, the plaintiff had filed his objection to the eviction petition as per Ex.D.66. During the pendency of the said HRC petition filed by the 7th defendant against the plaintiff, the proceeding Under Section 322 of the KMC Act were initiated by the 2nd defendant-BMP by issuing notice as per Ex.P.5 Under Section 322 of KMC Act, calling upon the plaintiff and the 7th defendant to demolish the suit schedule building on the ground that it was in a dilapidated condition, against which W.P. No. 20400/94 was filed by the plaintiff as per Ex. P4. There was an interim stay of further action pursuant to the said notice served upon them. In the said writ petition, the Court Commissioner was appointed to find out the nature of the building and the machinery, fixtures and other goods; and the Commissioner has submitted his report as per Ex.D.64 alongwith D.65-sketch. The aforesaid writ petition filed by the plaintiff was allowed with a direction to the BMP to give him an opportunity and pass orders in accordance with law. He had filed a detailed statement of objections to the show-cause notice inter alia contending that the allegation that the building is in a dilapidated condition, there is an imminent danger to the neighbors and passersby. Unless it in demolished, there would be every possibility of the building being collapsed and endangering the life and property of the neighbouring occupants and passersby. The 2nd defendant has passed the order, dt. 5/1/1995, which was served upon on the plaintiff in person on 6/1/1999 as per Ex.P.5 at 17.30 hours. The said notice/order was also sent by registered post acknowledgement due and was served upon the plaintiff 11/1/95. The operative portion of the order reads thus:

After careful consideration of all aspects the objections filed by the occupier Sri H.M. Chandiramani are overruled and it is ordered and directed that the building situated at No. 50, Ibrahim Shahib Street, Bangalore, which is in a dilapidated and dangerous condition be taken down immediately to avoid the danger to the passersby.

If the owner or occupier fails to take down the building within 3 days action will be taken by the BMP under Section 462(2) of the K.M.C Act 1976 to take down the building at the cost of the owner and the said cost will be recovered as per Section 470 of K.M.C Act, 1976.

25. From the careful reading of the aforesaid operative portion of the order it is clear that the order passed by the BMP on 5.1.1995 was served upon the plaintiff on 6/1/1995 at 17.30 hours and as per the said order he was required to take down the building within 3 days from the date of receipt of the notice/order, that would be on 9/1/1995 after 17.30 hours. As could be seen, it an undisputed fact that before the expiry of 3 days, the defendants 2 to 7 with police protection and help dismantled the premises by destroying the machinery, fixtures, raw material and finished goods, is the pleading and evidence of the plaintiff, which evidence is accepted by the Trial Court by its overall appreciation of the evidence on record and applying its mind consciously. This would clearly go to show that defendants 2 to 6 without waiting for the contemplated time to elapse, had hurriedly demolished the suit schedule building with its personnel by taking police assistance also. That by itself speaks volumes of the conduct of the defendants 2 to 7; the action is not blatantly illegal; they did not even allow the plaintiff to buy temporary respite by challenging the notice/order before any forum. Apart from the bonafides on the part of the 2nd defendant in resorting the proceedings Under Section 322 of the KMC Act for demolition of the building on the alleged ground as it is in a dilapidated condition and without examining the fact that the plaintiff has got statutory protection as he being a statutory tenant in occupation of the premises, which is governed under the provisions of the repealed KRC Act and as the eviction petition filed by his previous landlord was withdrawn in the year 1994, he sold it to the 7th defendant and katha was changed to his name, as per Ex.P.43 and D. 71 on 21/11/1994. Whereas the show-cause notice Under Section 322 was issued on 24/5/1994 which would clearly go to show that absolutely there are no bonafides either on the part of the 2nd defendant and its officers 3 to 6 or the 7th defendant, the owner of

the suit schedule building. Further, the 7th defendant filed the HRC eviction petition under Section 21(l)(j) of the provisions of the repealed KRC Act, which came to be subsequently withdrawn by him, The aforesaid facts would clearly go to show that the landlord/7th defendant of the premises in question has initiated the proceedings to recover the suit schedule premises invoking the ground under Section 21(1)(j) of the KRC Act, which proceedings came to be withdrawn and thereafter the BMP Under Section 322 of the KMC Acton the alleged ground that it is in a dilapidated condition show-caused the plaintiff and defendant No. 7 as to why it should not be pulled down. The show-cause notice was seriously objected by the plaintiff and the same has not been property considered by the Deputy Commissioner (Estate) of the 2nd defendant-BMP. Therefore, the order passed Under Section 322 of the KMC Act, is not legal and valid for non-consideration of the tenable objections filed by the plaintiff before the 2nd defendant-BMP. Further the action taken by the 2nd defendant-BMP before the expiry of three days time given in the order served upon the plaintiff (Ex.P.5), if the order not complied with by the plaintiff, then only the cause of action would arise for the 2nd defendant to demolish the building after passing an order Under Section 462 of the KMC Act. Not following the mandatory procedure by the 2nd defendant has vitiated the action of demolishing the suit schedule building and it is wholly an illegal and arbitrary action on the part of the 2nd defendant and it is tainted with legal malafides, as the BMP has exercised its power other than the purpose for which it is entrusted in demolishing the suit schedule premises on the grounds provided under Section 322 of the KMC Act. The demolition of the suit schedule building has taken place prematurely and for collateral reasons. Therefore the findings recorded with cogent and valid reasons on the contentious issues 2, 3 and 6 in the impugned judgment are legal and valid.

26. The learned Trial Judge has rightly appreciated the Court proceedings in respect of the suit schedule premises in O.S. No. 10572/91 instituted against the defendant in the said suit, namely, Sri K.V. Panduranga Shetty, the erstwhile landlord. The earlier lease holders namely, Surendranath, A.V Gowramma and A.V Ravi Kumar who have entered into a lease with the erstwhile landlord of the suit schedule premises threatened the plaintiff with dire consequences of demolition and dispossessing him from the suit schedule premises. Therefore he had filed the aforesaid suit against the defendant therein. Further during the pendency of the said proceedings, show-cause notice was issued by the 2nd defendant in respect of which Writ Petition No. 14446/93 was filed before this Court on 17/5/1993 praying to safeguard his interest in the suit schedule property. There was interim order of stay in the said proceedings against the Commissioner of BMP as per Ex.D.18. In the said Writ Petition, the 7th defendant got impleaded as 2nd respondent by filing an application as per Ex.D.34. The order was passed by this Court on 18/12/1994 as per Bx.D.67 dismissing the Writ Petition in view of the aforesaid suit filed by the plaintiff for permanent injunction and that he did not challenge the order passed by the Commissioner of BMP. Further as could be seen from the documentary evidence on record, another original suit No. 2501/94 as per Ex.D.25 filed by the plaintiff against the 7th defendant and two other persons namely, Shaik Hyder and Nazir Ahmed for the relief of perpetual injunction in respect of the suit schedule premises restraining them jointly and severally or anybody claiming on their behalf from interfering with his peaceful possession and enjoyment or in any way dispossessing the plaintiff from the suit schedule property otherwise than in the due process of law. The certified copy of the order sheet produced in the said original suit Ex.D.24 would disclose that an ad-interim order of temporary injunction was operating in favour of the plaintiff, During the pendency of the aforesaid suit, the Executive Engineer of the BMP issued show-cause notice Under Section 322(1) of the Act alleging that the premises is in a dilapidated condition and as the structure was dangerous both to the life and properly of the passersby and the neighbouring occupants, he was called upon to show-cause as to why action should not be taken in the event of failure to take necessary steps to take down the building within three days from the date of service of notice upon him. The same is produced as per Ex.D.26. The said document would clearly goes to show that after the institution of the suit by the plaintiff, the said notice was got issued which fact is admitted by DW1. DW1 has admitted in the cross-examination that notice to the 7th defendant tinder Section 322 of the KMC Act and a copy of the said notice was also served upon the plaintiff on 8/7/1994. Therefore the finding of fact recorded by the Trial Court that there was collusion between the 7th defendant and defendants 2 to 6 in getting the notice issued under Section 322 on the alleged ground of dilapidatedness and dangerous condition of the suit schedule building is based on the legal evidence. The evidence of DW-1 is appreciated by the learned Trial Judge

wherein the plaintiff had suggested to him that 7th defendant has fully co-operated with defendants 2 to 6 for demolition of the building. Though the said suggestion was denied by the said witness, the Trial Court has rightly recorded a finding of fact holding that the proceedings were initiated under Section 322 of the KMC Act against the plaintiff at the instance of the 7th defendant and illegally demolished the suit schedule building.

27. Further, the learned Trial Judge has rightly referred to Ex.D 30 the order passed in the Writ petition, filed against the 2nd defendant-Commissioner by the plaintiff in which proceedings the 7th defendant was also got impleaded as the 6th respondent, though the interim direction was sought in the said Writ petition for issue of a writ of certiorari to quash the Notice- Ex.D26. Since the interim order was granted for a period of six weeks as per Ex.D 29 on 21st July, 1994, which came to be extended on two occasions, Sri P. Ravikumar, Advocate was appointed as the Commissioner to ascertain the present condition of the building to visit the spot and submit the report of the suit schedule premises. The Commissioner submitted his report Exhibit-D.64 giving the measurement and existing position of the suit schedule premises. Along with the report, he had provided the sketches as per Exhibit D65. The learned Trial Judge has referred to the Order passed by this Court in Ex.D68, which document discloses that the Writ Petition was disposed off with a direction to the 2nd defendant not to dismantle the building in question without passing final order, pursuant to the notice issued by him to the plaintiff and 7th defendant. Further, the learned Trial Judge has also rightly taken into consideration the Ceveat petition No. 10647 of 1994 as per Ex. D70, filed by the 7th defendant on 20th February 1994 before the City Civil Court in the original suit proceedings. In the cross-examination of DW2, at paragraph 93 he has pleaded his ignorance and deposed that he does not know whether he had filed caveat petition earlier to the filing of the Suit. The learned Trial Judge has taken lot of pains to consider both oral and documentary evidence with regard to the pendency of the original suit as well as the interim order obtained by the plaintiff against demolition of the suit schedule building until the objections filed by the plaintiff to the show-cause notice was also considered by them. Further, the learned Trial Judge has also referred to the final order passed under Section 322 read with 462(2) of KMC Act by the Deputy Commissioner (Estate), calling upon the plaintiff to demolish the building, was served upon him by Registered Post Acknowledgement Due on 11th January, 1995 and at 17.30 hours on 6.1.1995 the same was served on him personally. The learned Trial Judge has referred to the evidence on record for delivering a folding that the defendants 2 to 6 and the 7th defendant were very much present at the time of demolition of the suit schedule building on 9.1.1996 at 9.00 a.m. itself. Further, the admission of DW. 1 at paragraph 30 in fail deposition of cross-examination, answer was elicited with regard to the notice/order under Section 322 of the KMC Act, was served upon the plaintiff on 6.1.1995 at 17.30 hours, which relevant portions of his evidence is rightly extracted in the impugned judgment while answering the relevant contentious issues at paragraph 62 of the impugned judgment, and thereafter the finding of fact is recorded by him stating that the demolition of the suit schedule building by the defendants 2 to 6 before expiry of three days' time. Therefore, the finding of fact is rightly recorded by the learned Trial Judge that the demolition of the building is in haste by the defendants 2 to 6 at the instance of the 7th defendant; and further the learned Trial Judge has correctly referred to statement of evidence elicited from DW. 1 wherein he has stated that the objections filed by the plaintiff to the show-cause notice as per Ex.P 20 and as per the direction issued by this Court in the Writ Petition order, the 2nd defendant was required to consider the same and pass suitable order. Further the learned Trial Judge has referred to the admission of PW. l their neither the neighbouring residents of the suit schedule premises nor the passersby have given any complaint to the BMP stating that the suit schedule building was in dilapidated condition, has been property appreciated and recorded a finding and held that the demolition of the suit schedule building by defendants 2 to 6 on the alleged ground of dilapidated condition, is not legal and valid.

28. Further with reference to the complaint given by the plaintiff to the jurisdictional police as per Ex.P 28 on 9th January 1995 morning regarding the demolition order, which is passed by the Deputy Commissioner (Estate), the said order of demolition was passed on Thursday itself at 17.20 hours. But DW.2 in his cross-examination, had stated that he does not know as to whether the notice/order of demolition was issued by

the BMP Authorities, which was served on the Plaintiff on 6.1.1995 at 17.20 hours and farther he does not know at what time the demolition work of the building was started by the Defendant No. 2 and its employees. The learned Trial Judge has recorded a finding of fact on the basis of the evidence on record and held, that the demolition order was served on the plaintiff at 17.20 hours on 6.1.1995. According to the evidence of DW. l, the plaintiff was given three days' time to comply with the order of demolition. According to the plaintiff he had time till 9.1.1995 to take legal action against the said order. Even before the expiry of time, on 9.1,1995 at about 8.00 a.m, the suit schedule building was demolished prematurely. Therefore, it is the case of the plaintiff that the demolition of the suit schedule building was made in haste by the defendants 2 to 6 and with an ulterior motive. On appreciation of the pleadings and the evidence on record and the answers elicited in cross-examination of DW. l at paragraph 20 of his statement of evidence, the finding of fact is recorded by the learned Trial Judge stating that the manner in which the demolition order was executed by the defendants 2 to 6 and demolished the building without waiting for the expiry of three days time given to the plaintiff, would clearly go to show that there is a collusion between defendants No. 2 and 7. The said finding of fact recorded by the learned Trial Judge is based on the proper appreciation of legal evidence on record. The learned Trial Judge, while answering the aforesaid contentious issue, has also examined whether the order of demolition under Section 322(2) of the KMC Act, was required to be passed on the alleged ground that the suit schedule building was in a dilapidated condition, is examined keeping in view the decision of this Court in the case of Mysore City Bmp v. Chote Sab reported in 1996(1) KLJ 1 and also the other decisions of this Court in the case of Narendra Badigar Mattu Kammarak Sahakari Sangha Niyamaitha v. Krishnaji Vaikuntharao Deshpandi reported in (sic) 1985 KAR. 3539 and in the case of Javeed Ahmed Khan v. Syed Ali reported in ILR 1994 KAR. 1619, wherein the Trial Court has answered the folding in favour of the plaintiff. Having answered the contentious issues on facts holding that demolition order passed by Deputy Commissioner (Estate) of defendant No. 2 was not warranted having regard to the facts and circumstances of the case as the building was not in a dilapidated condition in established in view of the previous litigation initiated by the 7th defendant and his vendor who was the erstwhile landlord of the premises in question against the plaintiff seeking an order of eviction against him in respect of the very same premises. Therefore as alleged by the defendant No. 2, the nature of the suit schedule building was not in a dilapidated condition, is the sum and substance of the finding of fact recorded by the Trial Court on proper appreciation of evidence on record, which finding cannot be disturbed by us either on the ground of erroneous reasoning or error in law as the learned Counsel for the defendants No. 2 and 7 have not shown to us that the said finding is not based on pleading and evidence, but on the other hand we are satisfied that the 7th defendant's counsel took us to the voluminous documentary evidence produced in this case before the Trial Court to show to us that the finding are not based on the proper appreciation of evidence, but he has miserably failed to show that there is no evidence to support the impugned judgment that applying Section 322(2) of the KMC Act to the suit schedule building is totally unwarranted in the case on hand. On the question of law whether the order of demolition could have been passed under Section 322(2) in also examined by us keeping in view the provisions of Section 21(1) of the KRC Act, which states that the landlord has got the right of eviction under Section 21(1)(k) of Part-V of the KRC Act which states that the premises are required for immediate purpose of the demolition order by any local authority or other competent authority. It is an undisputed fact that either the 7th defendant or his vendor had filed eviction petition under the above provisions of the Act. The case of them in the eviction proceedings initiated in respect of the suit schedule building was not that the premises was required for the purposes of demolition on the ground that that it is in dilapidated condition which is one more strong circumstance to come to the conclusion that the proceedings were initiated by the defendants 2 and 7 by invoking statutory provisions under Section 322 of the KMC Act. The provisions of Section 21(l)(k) of the KRC Act has overriding effect under Section 322(2) of the KMC Act. As the statutory protection is granted to the tenant under the provisions of the KRC Act for eviction of the tenants from the tenanted premises, the defendant No. 7 without recourse to the aforesaid provisions of Section 21(2)(k) of the KRC Act though eviction petitions were filed by the 7th defendant and his vendor on different ground under Section 21(l)(j) seeking for eviction of the plaintiff from suit schedule building having been withdrawn by them, would clearly go to show that there were bonafides on their part to initiate proceedings and get an order of eviction and

evict the plaintiff from suit schedule premises, Since they did not hove valid grounds under the provisions of the KRC Act and the 7th defendant had proceeded upon the 2nd defendant to pass on order under Section 322 of KMC Act which is not permissible in law, as the statutory protection was there in favour of the plaintiff/tenant and the suit which was filed by him in respect of the suit schedule premises against the 7th defendant anticipating that there is going to be his unlawful eviction from suit schedule building without due process of law. The finding that the defendant No. 7 in collusion with defendant No. 2 got the proceedings under Section 322 of the KMC Act are initiated, is evident from the previous litigation between the plaintiff and the 7th defendant as referred to above in detail In view of Section 21(1)(k), the Deputy Commissioner should not have invoked his power under Section 322 of the KMC Act and passed an order of demolition in respect of suit schedule building, This fact was brought to the notice of the BMP Authorities in reply to the show-case notice after the liberty was given to the plaintiff in the Writ Petition referred to supra, the order of this Court in Writ Petition directed the defendant No. 2 to consider the statement of objections of the plaintiff and pass a considered order in accordance with law. Therefore, the order passed under Section 322 of the KMC Act by the Deputy Commissioner (Estate) of defendant No. 2 is not legal and valid as he had not considered the tenable objections filed to the show-cause notice issued by him to the plaintiff. The undisputed fact according to the 7th defendant is that after demolition of suit schedule building, the defendant 2 to 6 delivered the possession of the suit schedule premises to him is the case which is sought to be established which contention of the 7th defendant is seriously contested by the defendants 2 to 6.

29. The plaintiff, party-in-person, in support of his case had rightly placed reliance upon the decisions of the Apex Court and Division Bench decisions of this Court and other High Courts in support of his contention that destruction of the leased premises by itself does not determine the tenancy that the leasing of the land will not put to an end so also the relationship of the landlord and the tenant in respect of suit schedule building. The plaintiff has placed strong reliance upon the decisions of the Hon'ble Supreme Court in the case of Kordethi Satyanarain and Ors. v. Punithi Sheshagiri Rao reported in 1991(8) SCC 658 wherein the Apex Court, after interpretation of Sections 12(l)(b) and 12(2) of the Andhra Pradesh (Lease, Rent and Eviction) Control Act, 1960, it has held the words 'demolition and reconstruction' and therefore the landlord is not required to reconstruct the building after demolition was rejected that would amount to encouraging unscrupulous landlords to get the tenants evicted, He has also placed reliance on the decision of the Kerala High Court in the case of George J. Onungal v. Peter reported in AIM 1991 KER 55, and the Division Bench judgment of this Court in the case of Dharmapal v. Vagji Bhai reported in ILR 1990 KAR. 4017 and in the case of C. Yethrapa v. D. Yusuf Khan reported in ILR 1990 KAR 3981. The superstructure alone could not be the subject-matter of lease. It includes the land on which the definition of building under the Kerala Building and Lease and Rent Control Act, includes site of the building which is a part of it. The Division Bench of our High Court in the above referred case has held that the matter within jurisdiction of the Court under the provisions of the repealed KRC Act, the Civil Court's jurisdiction is excluded.

30. The aforesaid decisions were sought to be distinguished by the 7th defendant's counsel, Sri N. Vasudevan, by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Vannattankandi Ibrayi referred to supra wherein the definition of the premises of the Kerala Buildings (Lease and Rent Control) Act was interpreted and it is laid down that if there was destruction on account of natural calamity, the vacant possession will not be continued, since the tenancy of the shop presupposes the property in existence and there cannot be any subsisting tenancy where the property is not in existence as in the definition of the aforesaid Act 'building' or Superstructure' is sought is excluded as the definition is not comprehensive one. Therefore, it is contended that Awarding the claim for the damages on the ground of demolition order was illegal and after demolition order the plaintiff has continued, as a tenant and the possession has been taken by the 7th defendant illegally as it was delivered by the defendants 2 to 6 is factually incorrect This contention of the defendant No. 7 is wholly untenable in law in view of the decision of the Hon'ble Supreme Court and the decision of the Kerala High Court and also the Division Bench decision of this Court referred to above, wherein the defendant No. 2 has no jurisdiction to exercise its power in view of the statutory provisions under Section 21(l)(k) of the KRC Act, which provision prevails over Section 322(2) of the KMC Act Therefore, this

abovesaid legal aspect is no doubt not referred to in the impugned judgment. However, having regard to the rival legal contentions urged by the learned Counsel with reference to the provisions of the Act and law declared by the Hon'ble Supreme Court and the decisions of Kerala High Court and of the Division Bench of this Court, we have supplemented the reasons in support of the finding recorded by the Trial Court on the contentious issues in the impugned judgment. Having answered the said issues by the Trial Court, the next issue that would arise for our consideration is whether the Trial Court was justified in awarding damages in favour of the plaintiff in the suit for damages is also examined by us with reference to the legal contentions urged. Maintainability of the original suit, as contended by the defendants learned Counsel, is also examined by us. White examining the correctness of the findings and reasons recorded on the contentious issue No. 2 framed in the suit, the Trial Court has answered partly this issue in the affirmative in favour of the plaintiff by recording its reasons. In this regard a submission was made by the learned Counsel Mr. Vasudevan that suit for damages was not made in the plaintiffs earlier suit and therefore the same is maintainable in law in view of Order 2 Rule 2 CPC. The claim for damages against the defendants is without any basis. It is not preceded by a notice issued and served upon the second defendant as required in law. The learned Counsel for the defendants 2 to 6 seriously contested that unless the order passed under Section 322(2) of the KMC Act is declared as null and void or quashed by the competent Court, the action taken by the BMP in respect of the suit schedule building cannot be held to be bad. The BMP has discharged its statutory duty in the larger interest of the public after following the procedure contemplated under Section 322 of the KMC Act, which is a complete code by itself. The civil suit cannot be filed against the defendants 2 to 6, therefore they are not liable to pay the damages as awarded and the findings and reasons recorded granting relief of damages by answering the issue No. 2 against the defendants 2 to 7. In this regard, we have carefully examined the findings and reasons recorded on issue No. 2. The learned Trial Judge has taken paint to refer to the pleadings and oral evidence of PW.l, DW.l and DW.2 and also the documentary evidence at paragraph 77 to 105 and recorded the findings on the above said contentious issues in favour of the plaintiff. The correctness and the findings recorded on the said issue is seriously questioned by the defendants 2 to 7 counsel contending that the same is an error in law and therefore, the judgment awarding damages is liable to be set aside. Though this Court has got power of re-appreciation of facts, evidence on record to find the correctness of the findings recorded on the contentious issues, after careful weighing of the evidence on record by us, we are of the firm and considered opinion that it is not fit case for our interference in these Appeals.

31. The rival legal contentions have received our anxious consideration. The Trial Court has referred to the Commissioner's report, submitted after the spot inspection made on 16.11.1994, it narrates the particulars of the plaintiffs occupation with the aid of the sketch marked as Ex.D65. The said factual position is neither seriously contested in the cross-examination of PW.1 nor rebuttal evidence is produced by the defendant No. 7 with reference to the documentary evidence to show the actual measurement of the accommodation available to the plaintiff. The Trial Court has rightly placed reliance on the report of the Commissioner and held that there were 12 sewing machines, one big fan and four small fans in the suit schedule premises, and he had stock worth of about Rs. 1.50 lakh, which is supported by documentary evidence Exhibit P35 and P37 to P40 and Ex.P.38, which is the notice issued by the Commercial Tax Officer wherein he was called upon to appear before the Assessing Authority, XXII Circle with account books in respect of his assessment for the financial year 1986-87. Exhibit P39 is another such notice issued under KST Act; and Exhibit P.40 is the proposition notice in form No. 31A wherein it id stated that the GTO is Rs. 5,00,000.20 (rupees five lakh and paise twenty only). Exhibits P.35 and P35(a) are the letters addressed by the plaintiff to the said Assessing Authority on 17.2.1995 wherein it is stated that the business premises was demolished mercilessly by defendants 2 to 6 on 9.1.1995 as there was heavy rain during the night as such everything that was left behind was ruined and the business was temporarily suspended and he would open the business after intimation to the Sales-tax Department. EX.P36 is another letter, dated 11.3.1995 wherein it is stated that the Electric Meter Old No. 2EP 1352 C.P.I. 41 and New No. 2EP 1352/94-95 is standing in his name. All these things indicate that the plaintiff was doing business in the suit schedule premises. The defence taken defendant No. 7 at paragraph 51 that the plaintiffs wife came to the spot at the time of demolition and she requested the BMP authorities to permit her to take few things like plywood, stool, two chain, an old table, tube light, etc.

has been rightly rejected by recording reasons at paragraph 91 of the judgment under the Appeals holding that if the defence of the 7th defendant that the plaintiffs wife took away all the articles from the shop about a quarter load of small tempo, is to be accepted, then the explanations as to what happened to the sewing machines, fixture, furniture, raw-materials and ready-made garment found in the said suit schedule premises is not forthcoming. Therefore, the Trial Court's finding that the aforesaid materials were lost during the demolition of the suit schedule building has to be accepted. The said finding is supported with evidence elicited in the cross-examination of DW2, wherein he had stated that he was not present at the time of the demolition of the building.

32. The Trial Court, on appreciation of the legal evidence on record, particularly the admission of DW1 elicited in his cross-examination which portion a extracted at paragraph 92 of the impugned judgment, has rightly recorded the fact that the 7th defendant is not telling the truth before the Court and he had avoided to speak the truth and to set out actual facts, regarding the plaintiff's wife taking away certain materials from the place of demolition of building. Further, DW.l has rightly admitted in his cross-examination that about 25 policeman were present and 15 to 16 members from the demolition squad of the BMP were also present and he had further admitted that he does not know whether there were any hired coolies of the defendant No. 7 being present at the time of demolition of the building. The PW.3 and DW.2 have further admitted in their evidence that during the night of the demolition of the suit schedule building there was a heavy downpour, Therefore, the case pleaded by the plaintiff has been rightly accepted by the learned Trial Judge and also made an observation that OS. No. 10082 of 1995 filed by the plaintiff for permanent injunction and referred to the documentary evidence produced by the defendants at paragraph 96 of the impugned Judgment Thereafter he filed the present suit by filling the pleadings in P.Misc No. 10140 of 1996 on 30.10.1900 under Order XXXIII Rule 1 read with Section 151 CPC and he was permitted to prosecute the suit as an indigent person and rightly at paragraph 98 of the impugned judgment the learned Trial Judge has accepted the case of the plaintiff that 30 persons were working under the plaintiff in the suit schedule premises. The balance sheet, profit and toss account were referred and price of the sewing machines are properly valued at Rs. 2,000/- per each machine and for 12 machines was fixed at Rs. 24,000/-, the value of the machinery is claimed at Rs. 1,50,000/- and the Trial Court has estimated the toss of earning of the plaintiff at Rs. 1,000/- per day. The learned Trial Judge, on the basis of evidence on record, has fixed the value of machinery at Rs. 50,000/-; and as regards the raw materials and ready-made garments the learned Trial Judge has rightly accepted the case that the plaintiff and held that he is entitled for Rs. 10,000/- per month towards loss of his business and the same is based on proper appreciation of evidence on record. The defendants were required to prove their case by producing positive and substantive evidence to discharge the burden that the raw-materials, ready-made garments, furniture and fixtures were also taken away by the plaintiffs wife as pleaded by the defendant No. 7. The defendants have not discharged their burden by adducing rebuttal evidence in this regard. Therefore the finding of fact recorded with regard to damages and loss of properties as stated supra and fixed Rs. 10,000/-per month as his earning in the business is justified. Having regard to the undisputed fact that he was an assesses under CST and KST Act the damages awarded in the judgment is legal and valid. The contention urged by the defendants 2 and 7 that they are not liable to pay the compensation as awarded by the Trial Court in the judgment and a decree cannot be accepted by us for the reasons, which we have already assigned above. The damages awarded at Rs. l0,000/- per month till the possession of the suit schedule premises is restored to the plaintiff, the submission made in this regard by the defendants 2 to 7 is also considered, Though O.S. No. 10062 of 1995 is dismissed, as we are passing a separate judgment allowing the appeal of the plaintiff by setting aside the judgment and decree passed in this suit.

33. We are now left with RFA No. 1247 of 2005 arising from the judgment and decree, dated 16th April, 2005 passed in O.S. No. 10082 of 1995 by the Additional City Civil Judge, Civil Station, Bangalore. As the facts of this appeal and connected RFA No. 15 and 88 of 2004 are the same, narrating the facts again would only amount to repetition and overlapping. In this appeal, we are referring to the parties as per their ranks in this

34. The Appellant filed O.S. No. 10082 of 1995 for the relief of permanent injunction restraining the

respondent from interfering with his possession and enjoyment of suit schedule property and from letting out or alienating or putting up any construction of any kind on the suit schedule properly or in any portions thereof, pending disposal of the proceedings in HRC No. 1029 of 1994. During the pendency of the suit, the Appellant was dispossessed by the respondent in collusion with BMP as it has exercised its power under Section 322 read with 462 of the KMC Act and got the building hastily demolished and forcibly and unlawfully taken the possession of the suit schedule property from the plaintiff in respect of which suit for damages was filed by the Appellant which was decreed, is the subject matter of appeals filed by the respondent and BMP and its officers, from the suit schedule property. In view of this subsequent development, he had amended the plaint by adding, inter alia, the relief for repossession of the suit schedule property to him.

35. It is the case of the Appellant that the erstwhile owner of the suit schedule property is one Sri K.V. Handuranga Shetty. At the time of the Appellant's induction into the suit property, he had given a security deposit of Rs. 6,000/- (Rupees six thousand only) to him, He was initially paying the rent of Rs. 450/-(Rupees four hundred fifty only) per month. The rate of rent was being raised from time to time. The Appellant was running a garment business in the name and style of 'Sain Zuber Garments' in the suit schedule property. As the said Sri K.V. Panduranga Shetty was attempting to dispossess the Appellant from the suit premises, he fifed O.S. No. 10572 of 1991 against Sri K.V. Panduranga Shetty. In the said suit, the order of temporary injunction, dated 25th July, 1991, was granted in favour of the Appellant On Sri K.V. panjuranga Shetty's failure to secure the vacant possession, he sold the suit schedule property to the respondent, who later filed HRC No. 10092 of 1994. Without waiting for the outcome of these eviction proceedings, the respondent had resorted to throw the Appellant out of the suit schedule properly in active collusion with BMP and its officials without following due process of law. Therefore he had pleaded that their action is highly arbitrary, illegal, as the same is in violation of 'Rule of law'. This situation made the Appellant to file O.S. No. 2501 of 1994 and obtained an interim order of status quo regarding suit schedule premises.

36. During the pendency of the said suit, the officials of Bangalore City BMP with active support of the police, demolished the suit building causing the situation where the possession of the suit property was made over to the respondent. The machinery and stock-in-trade, moveable were either ransacked or destroyed or taken away by them in the high-handed manner. Aggrieved by his dispossession, he filed the necessary application for the purpose of seeking repossession of suit schedule premisee. Subsequent to the amendment the Defendants No. 2 to 4 were impleaded in the original suit. In this appeal the defendants 2 to 4 are not made partial, as no relief is claimed against them and also as the appellant proposes to prosecute them under the Contempt of Courts Act

37. The respondent (Defendant No. 1) filed elaborate statement of objections. He justified the demolition of the building on the suit properly by the BMP, an the building was in dilapidated condition. He claims to have taken, along with two other persons, possession of the suit property alter the demolition of the building standing thereon. He and his two brothers claim to have purchased the suit property by three independent sale deeds consisting of three items of properties. The respondent also raised the threshold bar of the suit being barred by Order 2 Rule 2 of the Code of Civil Procedure ('CPC' for short). The defendants No. 2 and 3, in addition to affirming what the respondent (defendant No. 1) has said, averred in their common written statement that they have put up the building on the suit property in accordance with the sanctioned plan and they have been in peaceful possession and enjoyment of the same. The Defendant No. 4 in his written statement stated that he is a tenant in occupation of the entire first floor. He also raised the bars of limitation and of Order 2 Rule 2 CPC.

38. On the basis of the rival pleadings of the parties in the original suit, the trial Court has formulated nine issues for its determination.

(i) Whether the plaintiff proves that he was illegally dispossessed from the suit property in violation of court orders?

(ii) Whether the plaintiff proves that he is entitled for Mandatory injunction order directing defendant No. 1 to construct staircase to reach 1st floor put up by defendant No. 1 facing Ibrahim Saheb street?

(iii) Whether the plaintiff is entitled for Mandatory injunction order directing defendant No. l to put up partition wall separating suit schedule premises from the rest of the premises in the 1st floor and construct a toilet there?

(iv) Whether plaintiff is entitled for using the existing staircase from Matman lane street to reach suit schedule premises in the 1st floor put up by defendant No. 1 till the construction of staircase by defendant No. 1 as alleged?

(v) Whether defendants prove that the suit is barred by limitation?

(vi) Whether the defendants prove that the suit is hit by Order 2 Rule 2 CPC?

(vii) Whether the defendants prove that the suit is not maintainable in law as contended by them?

(viii) Whether like plaintiff is entitled for possession, Mandatory injunction and permanent injunction order as prayed for?

(ix) What Order?

39. The Trial Court answered issue No. 1 to 5 and 8 in the negative and issue No. 6 and 7 in the affirmative. Consequently it dismissed the Appellant's suit by passing the impugned judgment

40. Aggrieved by the dismissal of the suit, this appeal is instituted. The Appellant, Sri H.M. Chandiramani, the party in person, had assailed the impugned judgment and decree by urging the following contentions:

(a) The respondent-landlord has taken the law in his own hands. What he could not achieve legally, he achieved illegally through BMP. Knowing fully wall that the eviction proceedings initiated by him and/or his predecessor-in-title in respect of the suit schedule property could not lead him anywhere, he managed the Bangalore Mahanagare Palike office to get the building on the suit schedule property demolished in exercise of its power ostensibly under Section 322 read with 462 of the KMC Act, which action is tainted with legal malafides. With the respondent, there is no rule of law, but only the law of jungle.

(b) The sum of Rs. 6,000/- paid by him towards the security deposit is not yet refunded by the respondent. This is again a collateral circumstance to show that the tenancy in respect of suit schedule premises is not terminated.

(c) The BMP, through its employees with the active support of the police at the instance of the respondent, demolished the building in question prematurely even without waiting for the three days period stipulated in the notice/order to expire, which was issued by the Deputy Commissioner of BMP to the appellant.

(d) The Trial Court has not applied its mind to the admitted facts and legal evidence on record as to whether the Appellant's dispossession from the suit schedule property was in accordance with law.

(e) The political pressure was exerted upon and monetary favours were shown to the BMP officials for getting them to demolish the building in question, with an ulterior motive to see that the Appellant is unlawfully dispossessed from the suit schedule property without following the due process of law.

(f) The Appellant has not handed over the possession to the respondent-owner. There is no judgment or order by any Court for handing over the possession of the suit schedule property to the respondent-landlord.

(g) the appellant has relied on a judgment in the case of George J. Ovungal v. Peter reported in AIR 1991 KER. 88 wherein it is held that even after the destruction of the superstructure, the tenant is entitled to continue in

the possession of the land upon which the superstructure has stood before its destruction. Nextly, the appellant has also relied on a judgment of the Bombay High Court report In Hind Rubber Industries Pvt. Ltd. v. Tayeemai Mohammedehai Bagasarwalla and Ors. reported in AIR 1996 BOMBAY 389 to buttress his submission that the right of the lessee in the leased property subsists even if the leased property has been destroyed by fire, tempest, flood or violence or irresistible force.

(h) The Trial Court has not afforded adequate opportunities to him to make out his submissions. As marry as 264 documents, running into 1100 pages, were produced on behalf of the defendants, But the Appellant was not permitted to cross-examine the defendants on such materials produced. The points he had raised in the written submissions have not weighed with the Trial Court.

(i) The issues were recast almost after the closure of the evidence stage. Such a course is highly impermissible, because the parties lead their evidence depending upon the issues framed.

(j) The allied contention of Sri M.N. Chandiramani in that in the process of recasting the issues, the issues correctly framed are diluted.

(k) The documentary and oral evidence is not property appreciated by the Trial Court at the time of recording the findings on contentious issues.

41. Per Contra, Sri N. Vasudevan, learned Counsel for the respondent submits that the judgment under appeal is just and proper warranting no interference at our hands. Sri Vasudevan further submits that the Appellant has been initiating one after the other litigation only to harass the respondent-landlord. It is the further submission of Sri Vasudevan that the Appellant, Sri M.N. Chandiramani has been making reckless allegations, both against his own counsel and also the Court below. The Trial Court has rightly negatived the claim of the Appellant for repossession of the suit schedule property. No tenant has any vested right or any legally recognisable interest to get back the occupation of the property, whose nature has been altered and which has changed hands.

42. Considering the rival legal submissions made on behalf of the parties at the bar, the correctness of the judgment under appeal has to be examined. The Trial Court makes only a reference to some of the exhibits but it does not discuss their effects, the evidentiary value of the operation of the temporary injunction order dated 15th February, 1995 in OS No. 10082 of 1995 and its continuation on 30th March 1995 (Exhibit D.88). We do not see any meaningful discussion on the oral and documentary evidence placed on the record of the Trial Court. In answer to the contentious issues and no reasons are assigned by the learned Trial Judge in not accepting the legal evidence on record and therefore, the findings recorded on the same are erroneous, hence the same are liable to be set aside. The Trial Court has not made any endeavour to ascertain and satisfy itself on the most important aspect of the matter, namely, whether the dispossession of the Appellant was in accordance with law or not, even when there was an ad-interim order of temporary in juriction against the respondent in force for peaceful enjoyment of his occupation and possession as he is a tenant of the suit schedule properly.

43. The Trial Court has passed the verdict holding that the Appellant has no right in law to ask for any portion of the newly constructed building in the possession of respondent herein or defendant No. 2 and 3 in the original suit This finding suffers from serious error both on the facts and in law as the same is erroneous in law, because the act of taking over the possession of the suit property illegally, cannot be condoned or made legal by taking into account the subsequent event and development of the properly by the respondent changing the hands of the property from him to other persons which is unlawfully leased and the property being developed after unlawful dispossession of the Appellant from the suit schedule property in collusion with the BMP with active support of the police.

The propriety or impropriety of the demolition of the building in question should not have been justified by the reasoning that there was no interim order restraining the BMP from demolishing the building in question.

On the other band, the Trial Court ought to have been examined whether the demolition was without the authority of law and further whether the demolition was premature, i.e. before the expiry of the time granted for pulling down the structure, in the BMPs notice. The learned Trial Judge ought to have taken into consideration that there was ad-interim order of temporary injunction against the respondent in respect of the suit schedule property, the provisions of Section 21(1)(k) of the repealed KRC Act, has got overriding effect over the provisions of Section 322 of the KMC Act, as the former Act is a special Act in respect of the tenanted properties covered tinder the Act and the Appellant had got statutory protection against his eviction from the suit schedule property, that being the legal position, the BMP should not have exercised its power having regard to the undisputed facto that the respondent's-vendor and himself had failed to get an order of eviction against demolishing the building in which he had been in lawful possession and enjoyment as a tenant, as there was an order of temporary injunction against the respondent regarding peaceful possession and enjoyment of the Appellant, therefore the demolition of the building by the BMP at the instance of the respondent, even then also the Appellant, in law, continues to be in constructive possession of the suit schedule property as a tenant These finer legal aspects of the matter have not been gone into by the Trial Court in their proper perspective and recorded its findings with valid reasons while answering the contentious issues framed in the suit.

44. We also see considerable substance in the submission of Sri M.N. Chandiramani Appellant party-in-person, that the recasting of the issues by the Trial Court has diluted the whole matter, This is evident from the wording of Old Issue No. l and new Issue No. 3, which are extracted hereinbelow:

Old issue No. 1:

Whether the plaintiff proves that he is in lawful and legal possession of the suit property?

New issue No. 3:

Whether plaintiff is entitled for mandatory injunction, order directing the defendant No. 1 to put up a partition wall separating schedule premises from the rest of the premises the first floor and construct a tallest therein?'

45. Order 2 Rule 2 CPC will be applicable only if the two conditions are satisfied; that the previous and subsequent suits arise out of the same cause of action and that they are also between the same parties. It is not in dispute that OS No. 10082 of 1995 was instituted for the relief of permanent injunction pending disposal of HRC No. 1029 of 1994. During the pendency of the said suit, the suit schedule property was demolished and consequently the appellant was dispossessed.

Therefore, he amends the plaint by incorporating the relief of re-possession in the said suit.

46. On the other hand, O.S. No. 16443 of 1999 was instituted seeking the relief of damages. In this suit the appellant impugned the highhanded acts of the Government of Karnataka, BMP and its officials. As O.S. No. 10082 of 1995 was between the appellant and his landlords, O.S. No. 16443 of 1999 was between the appellant and the Government, BMP and its officials, besides his landlord the bar imposed by Order 2 Rule 2 CPC is not attracted to OS 10082 of 1995. Therefore, the Trial Court has fallen into an error by answering issue No. 6 (Whether the defendants prove that the suit is hit by Order 2 Rule 2 CPC) in the affirmative.

47. We have discussed the foots and legal contentions at great length about the illegal demolition of the building in question and consequently the Appellant's dispossession therefrom in RFA No. 88 and 15 of 2004. In the result, we have no hesitation in delivering a categorical finding that the Appellant is entitled to repossession of the building in the suit property as he had been unlawfully dispossessed. In fact the eviction proceedings initiated by them against the Appellant in the above cases referred to supra under the provisions of 21(1)(j) of the Act of 1961 were withdrawn and therefore it is not legally permissible for the BMP to invoke its power under the above provisions, as the ground urged in the H.R.C cases is not under Section 21(1)(k) of

the K.R.C. Act, alleging that the building upon the suit schedule properly was in dilapidated condition, which was dangerous to the passerby and to the neighbouring occupants. Therefore an order of eviction against the Appellant was in urgent need, as there is an imminent danger either to the neighbouring occupants or passersby, For the reasons stated above, we set aside the judgment and decree in appeal by decreeing the Appellant's suit by allowing this appeal as the same vitiated on account of erroneous findings and error in law as the learned Trial Judge has not appreciated the admitted facto pleaded, legal evidence on record and law laid down and the Apex Court and by this Court and other High Courts in a catena of cases upon which the Appellant has rightly placed reliance.

48. The respondent is directed to restore the possession of the suit property to the Appellant within two months from today. In view of the development made to the suit property, the space comparable in size and form in the built portion on the suit property with a separate access thereto, shall be created and given to the Appellant. The registry is directed to draw up the decree accordingly.

49. In the result, R.F.A. Nos. 15 of 2004 and 88 of 2004 are dismissed; R.F.A. No. 1247 of 2005 is allowed. The costs of all these proceedings are Rs. 10,000/- payable by BMP(Appellant in RFA No. 15 of 2004 and defendant No. 2 in Original Suit No. 16443 of 1999) and Abdul Khuddus (Appellant in RFA No. 88 of 2004 and defendant No. 7 in O.S. No. 16443 of 1999). Each one of them shall pay a cost of Rs. 5,000/- to Sri H.M. Chaudiramani, (appellant in RFA No. 1247 of 2005) and the plaintiff in both the original suit. O.S. No 16443 of 1999 and O.S. No. 10082 of 1995 within two months from the date of issuance of the certified copy of this judgment, failing which the plaintiff is at liberty to recover the same, as if it is a decree.

ORDER

Judgment pronounced dismissing RFA Nos. 15 of 2004 and 88 of 2004 and allowing RFA No. 1247 of 2005.

Office is directed to intimate the pronouncement of today's judgment to the party-in-person, who is not present before the Court today.