Hari Rao vs N. Govindachari & Ors on 15 September, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3389, 2005 (7) SCC 643, 2005 AIR SCW 4485, 2006 SCFBRC 76, (2005) 4 CTC 694 (SC), 2005 (4) CTC 694, 2005 (7) SCALE 280, 2005 (9) SRJ 56, (2005) 35 ALLINDCAS 931 (SC), 2005 (7) SLT 59, 2005 (35) ALLINDCAS 931, (2005) 8 JT 305 (SC), 2005 (8) JT 305, (2005) 2 CIVILCOURTC 416, (2005) 1 PUN LR 721, (2005) 1 RENCR 459, (2005) 4 MAD LJ 115, (2005) 2 RENTLR 651, (2005) 2 RENCR 344, (2005) 5 ANDHLD 134, (2005) 2 RENCJ 19, (2005) 1 RENTLR 734, (2005) 3 CIVILCOURTC 802, (2005) 4 KER LT 244, (2005) 4 MAD LW 1, (2005) 7 SCJ 22, (2005) 6 SUPREME 366, (2006) 1 ICC 304, (2005) 7 SCALE 280, (2005) 2 WLC(SC)CVL 769, (2005) 61 ALL LR 597

Author: P.K. Balasubramanyan

Bench: B.N. Srikrishna, P.K. Balasubramanyan

CASE NO.:
Appeal (civil) 5751 of 2005

PETITIONER:
Hari Rao

RESPONDENT:
N. Govindachari & Ors.

DATE OF JUDGMENT: 15/09/2005

BENCH:
B.N. SRIKRISHNA & P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T [Arising out of Special Leave Petition (Civil) No. 24112 of 2002] P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. A room in a building in Thousand Lights, Mount Road Madras, is the subject matter of this proceeding. The respondent-landlord leased that room, a 'building' as defined in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 to the appellant. According to the landlord, the letting was for the purpose of a shoe trade or trade in leather goods by the tenant. There was a prior proceeding in which there was a compromise and the building was re-let to the tenant after it was re- modeled or re-constructed. While carrying on his business, the tenant had used a part of the

premises for carrying on a trade in readymade garments and that amounted to a user of the building by the tenant for a purpose other than that for which it was leased, within the meaning of Section 10 (2) (ii) (b) of the Act. The tenant had also fixed name-boards outside and drilled two holes in the walls for fixing racks for the purpose of his trade and had taken an independent three phase electric connection and for that purpose he had made holes on the floor and on the wall; that these acts of the tenant amount to commission or causing the commission of such acts of waste as are likely to impair materially, the value or utility of the building within the meaning of Section 10 (2) (iii) of the Act. Thus, the landlord claimed eviction of the tenant, the appellant, on these two grounds.

3. The appellant resisted the claim. He contended that the original letting was not for the purpose of trade in shoes or leather goods alone. He was still carrying on the business of selling shoes, but had expanded his trade by including the trade in readymade garments. There was no user of the room by him for a purpose other than the purpose for which it was let. He was not liable to be evicted on that ground. The fixing of the sign-boards was permitted by the landlord and fixing of the boards or the fixing of the racks for the purpose of his trade, did not amount to acts of waste as are likely to impair materially the value and utility of the building. He had to take the electric connection, a three phase one, for the purpose of his trade and that act again did not result in any damage to the building or amount to waste and hence he was not liable to be evicted on that ground as well. He thus prayed for dismissal of the petition for eviction.

4. In addition to marking Ex. A1, to A4, the landlord examined himself as P.W.1 and examined the Engineer who prepared Ex. A4 report as P.W. 2. The tenant marked Ex. B1- letter and Ex. B2-report and examined himself as R.W.1 and examined the engineer who prepared Ex. B2- report as R.W.2. According to him, Exhibit B1 indicated that there was no restriction on his user of the premises. The Rent Controller held that the user of the building also for the purpose of carrying on a trade in readymade garments, amounted to using the building for a purpose other than that for which the building was let within the meaning of Section 10 (2) (ii) (b) of the Act and an order for eviction was liable to be passed thereunder. He also held that the fixing of the sign-boards, the fixing of the racks and the taking of an independent three phase electric connection by drilling holes for that purpose, amounted to commission of waste in the building attracting Section 10 (2) (iii) of the Act. Thus, eviction was ordered both under Section 11(2)(ii)(b) and under Section 11 (2) (iii) of the Act. The tenant appealed. The Appellate Authority found that the user by the tenant of the building also for the purpose of a retail trade in readymade garments, did not amount to user of the building for a purpose other than that for which the building was let and consequently, held that the landlord was not entitled to an order for eviction under Section 10 (2)

(ii) (b) of the Act. The Appellate Authority further held that the fixing of the sign-boards, the fixing of the racks and the taking of an independent three phase connection did not amount to commission of waste by the tenant attracting Section 11 (2) (iii) of the Act. Thus, the Appellate Authority found that the landlord has not made out his claim for eviction on the two grounds he had put forward. It reversed the decision of the Rent Controller and dismissed the eviction petition. The landlord filed a revision before the High Court challenging the legality, regularity and propriety of the order of the Appellate Authority. The High Court held that the Rent Controller was correct in ordering eviction on the facts established in the case and the decision of the Appellate Authority was liable to be

reversed. The High Court, thus, allowed the revision and setting aside the decision of the Appellate Authority, restored the order for eviction passed by the Rent Controller. The decision of the High Court thus rendered, is challenged in this appeal at the instance of the tenant.

5. Admittedly, the building was let out for the purpose of carrying on of a trade by the tenant. There is no lease deed executed by the parties evidencing the transaction. The evidence indicates that at the relevant time, the tenant wanted to start a business in sale of leather goods, particularly shoes, and for that purpose he took the building on lease. Exhibit B-1 letter, written by the landlord to tenant referred to and quoted by the Rent Controller, shows that the tenant was entitled to 'continue the tenancy with the present increased rent, on the premises, with all tenancy rights including the rights of putting up boards and painting on the walls of the portion of the premises, No. 638 at Mount Road, Madras-6 under your occupation'. In his evidence as P.W.1, the landlord stated that he had let out the premises for running a shoe-mart and he had not entered into any other agreement permitting the tenant to sell readymade garments in the premises. But, there was an agreement to allow him to sell decoration materials but the tenant was not selling them. There was also a permission to sell fancy goods but that represented only leather goods. Chappals and socks as well as shoes could be sold from the premises. There was no agreement by which the tenant was permitted to sell clothes and T-shirts. In his petition for eviction, the landlord had only stated that the tenant had taken the building on lease for the purpose of running a shoe-mart but the tenant had converted a portion of the shop for selling readymade dresses and this amounted to user of the shop by the tenant for a purpose other than that for which it was leased. This was disputed by the tenant in his objection, who took the stand that it was generally for the purpose of his trade that the building was let, though, at the relevant time, he was only conducting a trade in shoes. There was no violation by him of any term of the letting and there was no user of the shop for a purpose other than the purpose for which it was let out to him. It is necessary to notice here that there was no plea of the tenant having covenanted not to use the building for any other trade.

6. On the plain terms of the statute, uninfluenced by authorities, it appears to us that user of the building for a purpose other than that for which it was leased, has to be considered in the context of Section 21 of the Act which prohibits conversion of a residential building into a non- residential building except with the permission in writing of the controller, any covenant in that behalf entered into by the tenant and the nature of the tenancy. In other words, when the lease is granted for the purpose of a trade, in the absence of any covenant in the contract between the parties prohibiting a user different from the particular one mentioned in the lease deed, the tenant would be entitled to carry on any trade in the premises, consistent with the location and the nature of the premises. In a case where the premises let out for a commercial purpose, is used by the tenant for a residential purpose, it would be a user for a purpose other than that for which it was leased attracting Section 10 (2) (ii) (b) of the Act. Similarly, if a building had been let out for the purpose of a trade, but a tenant uses the premises for the purpose of manufacture or production of materials after installing machinery, that would be a user other than the one for which the building was let. User of a building let out for a trade as a godown may attract the provision. Ultimately, the question would depend upon the facts of a particular case, in the context of the terms of the letting and the covenants governing the transaction and the general spirit of Section 108(o) of the Transfer of Property Act. Merely because a shop let out for trade in shoes and other leather goods, is used by the tenant also

for the purpose of trading in readymade garments, it could not be held to be a user by the tenant of the premises for a purpose other than that for which it was leased. It has to be noted that even now, the tenant is carrying on the business of trading in shoes, which according to the landlord was the purpose for which the building was let. The trade in shoes has not been stopped by the tenant. All that has happened is, that he has also diversified into selling some readymade garments or T-shirts, the manufacture of which even some of the manufacturers of shoes have taken up.

7. Learned counsel for the landlord placed considerable reliance on the decision in M. Arul Jothi & anr. Vs. Lajja Bal (Deceased) and Anr.[(2000) 3 SCC 723]. That case also arose under Section 10 (2) (ii)

(b) of the Act. The transaction between the parties was governed by a lease deed. The tenant covenanted that the premises, "shall be used by the tenant for carrying on his own business and the tenant shall not carry on any other business than the above said business." The business intended was dealing in radios, cycles, fans, clocks and steel furniture. Subsequently, the tenant also started a trade in provisions (spices and dals etc.). The landlord sought eviction and the courts below ordered eviction under Section 10 (2) (ii) (b) of the Act. The tenant had appealed to this Court. This Court referred to the earlier decisions of this Court including the one in M.K. Palaniappa Chettiar Vs. A. Pennuswami Pillai [(1970) 2 SCC 290]. It also referred to Section 108 (o) of the Transfer of Property Act. This Court distinguished the various decisions brought to its notice under other sister enactments and took the view that the covenant in the rent deed not to use the premises for any purpose, other than the one referred to in the rent deed, brought the user by the tenant within the mischief of Section 10 (2) (ii) (b) of the Act and, therefore, the order for eviction was justified. With respect, as we see it, their Lordships rested their decision on the existence of the negative covenant in the lease deed and on the view that a breach of that covenant, would attract Section 10 (2) (ii) (b) of the Act, and make the user, one coming within the mischief of that provision. In this case, as observed, there is no covenant as the one involved in Arul Jothi's case. In M.K. Palaniappa Chettiar Vs. A. Pennuswami Pillai [(1970) 2 SCC 290], the tenant, while continuing the business for which the building was taken on rent, was using a negligible portion of the building for the purpose of cooking. This Court held that the High Court was in error in reversing the decision of the Rent Controller and the Appellate Authority to the effect that no ground for eviction under Section 10 (2) (ii) (b) of the Act was made out. This Court dismissed the petition for eviction. In Mohan Lal Vs. Jai Bhagwan (1988 (3) SCR 345), this Court, interpreting the corresponding provision in Haryana Urban (Control of Rent & Eviction) Act, 1973, held that when a tenant who had taken a building on lease for the purpose of running a business in liquor, converted the business into that of general merchandise, in the absence of a negative covenant, the user did not amount to user for a purpose other than that for which the building was leased. The same position was adopted in Gurdial Batra Vs. Raj Kumar Jain (1989 (3) SCR 423), where the premises was let out for repairing business and the tenant along with the repairing business, also carried on sale of television sets for a while. This Court held that there was no change of user which would attract the liability for eviction under the corresponding provision of the East Punjab Urban Rent Restriction Act, 1949. It was clearly stated that the concept of injury to the premises which forms the foundation of Section 108 (o) of the Transfer of Property Act is the main basis for a provision similar to the one in Section 10 (2)

(ii) (b) of the Act. We think that the case on hand is governed by the principles recognized in the latter decisions and the ratio of the decision in Arul Jothi has no application in the absence of a negative covenant as the one obtaining in that case. Dashrath Baburao Sangale & Others Vs. Kashimath Bhaskar Data [1994 Supp (1) SCC 504] was a case where the premises was taken on rent for "sugarcane crushing with the help of an ox and for the shop thereof" and the tenant was to get constructed a temporary shed of tin-sheet for that purpose. The tenant started a cloth business in the premises. The courts below found that this was a user for a purpose other than that for which the premises was leased and this Court found no ground to interfere. This decision only re-affirms the position that everything would depend on the terms of the letting and the facts of the case. Obviously, the cloth business started, had no connection with crushing of sugarcane. The decision in Ram Gopal Vs. Jai Narain and others [1995 Supp. (4) SCC 648], shows that the user by the tenant of a building taken on rent for the purpose of running a shop (commercial), for a manufacturing purpose, would entail his eviction on the ground of change of user. The tenant, in that case, installed an Atta Chakki and an Oil Kolhu, in the shop. The case on hand is not one of that nature. In other words, in the present case, there was no change of user, from non-residential to residential or from business to manufacturing or industrial. As emphasized already, there was also no negative covenant as was available in Arul Jothi's case. In such a situation, we are satisfied that the High Court was clearly in error in interfering with the decision of the Appellate Authority that there was no change of user in the case on hand attracting Section 10 (2) (ii) (b) of the Act. Merely because a tenant, who has taken a building for the purpose of running a trade, alters the commodity in which he was trading when he took the building on lease or trades in other commodities also, he could not be held to be using the premises for a purpose other than the purpose for which it was let. The purpose has to be understood, as the purpose of trade and in the absence of a covenant barring the using of it for any other trade, it will be open to the tenant to use the premises for expanding his trade or even for taking up other lines of trade as befits a prudent trader.

8. It is true that this Court has held in Malpe Vishwanath Acharya and others Vs. State of Maharashtra and Anr. [(1998) 2 SCC 1], that the Rent Control Legislation is enacted in the larger interest of the society as a whole and it is not intended to confer any disproportionately larger benefit on the tenant to the disadvantage of the landlord. But that does not mean that the Rent Control Legislation should not be approached as a beneficial piece of legislation and with the recognition that reasonable protection to the tenant is one of the objects of that legislation. While construing a provision of law imposing a liability, for eviction, like Section 10 (2) (ii) (b) of the Act, one must see whether there has been such a change of user of the premises as to make it alien to the purpose for which the building was let and deny eviction when the basic activity remains the same and there is only a variation in the manner or mode of carrying on of that activity. Therefore, the interpretation placed on Section 10 (2) (ii) (b) of the Act by the High Court in the decision under appeal and in some other decisions of that Court referred to in the orders of the Rent Controller and the High Court, has to be held to be not warranted or justified. The order of eviction passed by the High Court under Section 10 (2) (ii) (b) of the Act has, therefore, to be reversed.

9. In support of his claim for eviction under Section 10(2)(iii) of the Act, what the landlord pleaded was that his tenant had put up new sign-boards and fixed two additional racks by drilling holes in the wall and in the beam and had taken an independent electric connection for which holes have

been drilled in the floor and the wall, and all this amounted to commission of acts of waste as are likely to impair materially the value and utility of the building. He also pleaded that the tenant had damaged the building while converting the shop for selling readymade dresses. He had installed additional show-cases on the walls of the building by making holes therein. He had increased the consumption of electricity by fixing up more lights and fans. He had increased the electric load, causing constant blowing out of the fuse in the building and causing damage to the electric service connection to the whole building and the entire building may catch fire at any moment. He also put up a big name board outside, damaging the building and had also drawn heavy electrical lines and taken service connection to the name board, with a heavy load of electricity. The tenant admitted the putting up of sign-boards and the fixing up of racks but he denied that he had caused any damage. Whatever he had done was with the consent of the landlord and the claim put forward by the landlord was only an attempt to gain the sympathy of the Court. The Engineer, P.W. 2 noted that new racks were fixed by making holes in floor walls and also in the beams. Two new massive sign boards were fixed in the front and side. Holes were made in the parapet wall of the first floor and angle irons supporting the sign boards were fixed. The parapet wall was only 2" thick and it could not take the weight of the huge sign boards and the parapet wall may collapse at any time. New electric connection has been given by making holes in the foundation and the wall in front and a new meter board had been fixed. This report of P.W.2 was not sought to be corroborated by any other material to show that there was any danger because of the taking of a new electric connection or by the increase in load. It is true that for the purpose of his trade, the tenant fixed new racks by making holes in the floor, the walls and in the beams. But, in the absence of any other material, it cannot be said to be the commission of acts of waste as are likely to impair materially the value and utility of the building. We must say that there is hardly any evidence on the side of the landlord to show that there was material impairment, either in the value or the utility of the building by the acts of the tenant. The mere fixing of sign-boards outside the shop by taking support from the parapet wall, cannot be considered to be an act of waste which is likely to impair materially the value or utility of the building. The report of the Engineer, P.W.2, merely asserts that the parapet wall will collapse at any time. There is no supporting evidence in respect of that assertion. Ex. B1-letter of the landlord giving permission to the tenant to fix boards, cannot also be ignored in this context. Moreover, when a trade is carried on in a premises, that too in an important locality in a city, it is obvious that the tenant would have to fix sign-boards outside, to attract customers. These are days of fierce competition and unless the premises is made attractive by lighting and other means, a trader would not be in a position to attract customers or survive in the trade. Therefore, the acts of the tenant established, are merely acts which are consistent with the needs of the tenant who has taken the premises on rent for the purpose of a trade in leather goods and shoes and in furtherance of the prospects of that trade. The fixing of racks inside the premises even by drilling holes in the walls or beams cannot be said to be acts which are themselves acts of waste as are likely to impair materially the value and utility of the building. Broadly, a structural alteration however slight, should be involved to attract Section 10 (2) (iii) of the Act. In fact, we see hardly any pleading or evidence in this case which would justify a conclusion that the acts of the tenant amount to such acts of waste as are likely to impair materially the value and utility of the building. In G. Arunachalam (died) through L.Rs. and anr. Vs. Thondarperienambi and anr. [AIR 1992 SC 977] dealing with the same provision, this Court held that the fixing of rolling shutters by the tenant in place of the wooden plank of the front door by itself did not amount to a structural alteration that impaired the value of

the building and no eviction could be ordered under Section 10 (2) (iii) of the Act. Of course, in that case, there was also a report by an Engineer that the structural alteration made for fixing the rolling shutter, did not impair the value of the building. In the context of the Kerala statute which spoke of impairment in the value or utility of the building materially and permanently, this Court has recently held in G. Raghunathan Vs. K.V. Varghese [2005 (6) SCALE 675] that the fixing up of rolling shutter and doing of the allied acts referred to in that decision, would not amount to user that materially and permanently impairs the value or utility of the building. The Act here, only speaks of acts of waste as are likely to impair materially the value and utility of the building. The impairment need not be permanent. But even then, it appears to us that it must really be a material impairment in the value or utility of the building. In British Motor Car Co. Vs. Madan Lal Saggi (Dead) and anr. [(2005) 1 SCC 8], this Court considered the aspect of material alteration or damage in the context of Section 13(2)(iii) of the East Punjab Urban Rent Restriction Act, 1949. In the lease deed in that case, there was a covenant that the lessee will not make any addition or alteration or change in the building during the period of the tenancy. This Court referred to Om Prakash Vs. Amar Singh [(1987) 1 SCC 458], Om Pal Vs. Anand Swarup [(1988) 4 SCC 545], Waryam Singh Vs. Baldev Singh [(2003) 1 SCC 59], Gurbachan Singh Vs. Shivalak Rubber Industries [(1996) 2 SCC 626], Vipin Kumar Vs. Roshan Lal Anand [(1993) 2 SCC 614] and held, 'When a construction is alleged to have materially impaired the value and utility of the premises, the construction should be of such a nature as to substantially diminish the value of the building either from the commercial and monetary point of view or from the utilitarian aspect of the building.' There is hardly any material in the present case on the basis of which the Court could come to the conclusion that the act of the tenant here has amounted to commission of such acts of waste as are likely to impair materially the value and utility of the building. The Rent Controller and the High Court have not properly applied their minds to the relevant aspects in the context of the statute and have acted without jurisdiction in passing an order of eviction under Section 10 (2) (iii) of the Act. The Appellate Authority was justified in denying an order of eviction to the landlord on this ground.

10. In these circumstances, we allow this appeal and setting aside the decision of the High Court restore that of the Appellate Authority. That would mean that the petition for eviction filed by the landlord would stand dismissed. In the circumstances of the case we make no order as to costs.