

M/S.Sonali vs C.Balaji on 19 August, 2010

Author: M.Venugopal

Bench: M.Venugopal

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.08.2010

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.R.P. (NPD).No.3776 of 2009 and
M.P.No.1 of 2008

M/s.Sonali
Rep. By its Partner Mr.Amit K.Saiya,
carrying on business at
Old No.94/2, New No.58/2,
Sir Thiagaraya Road,
Pondy Bazaar, T.Nagar,
Chennai 600 017. ... Petitioner

Vs.

C.Balaji ... Respondent

Prayer: Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Cont

For Petitioner : Mr.Sathish Parasaran

For Respondent : Mr.M.S.Krishnan, S.C.
For M/s.Rajasekaran

ORDER

The Civil Revision Petitioner/Appellant/Respondent/ Tenant has preferred this Civil Revision Petition as against the order dated 12.10.2009 in R.C.A.No.754 of 2008 passed by the Learned VIII Judge, Court of Small Causes, Chennai.

2.The Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai, while passing order in R.C.A.No.754 of 2008 dated 12.10.2009, has among other things observed that '... The Petitioner has pleaded and established has bona fides with regard to his claim and he is entitled for an order of eviction against the Respondent on the ground of owner's own use and occupation.' Further, the Learned Appellate Authority has opined that the 'Learned Rent Controller has addressed all the issues in its proper perspective and has come to a right conclusion that the claim of the Petitioner is bona fide and ordered eviction of the Respondent which suffers from no serious factual or legal infirmity that warrants interference from this Court' and resultantly, dismissed the Appeal without costs.

3.Before the Learned Rent Controller, on the side of Respondent/Petitioner/Landlord, witness P.W.1 has been examined and Exs.P.1 to P.10 have been marked. On the side of Revision Petitioner/Appellant/Tenant, R.W.1 has been examined and Exs.R.1 to R.3 have been marked. Also, C.W.1 has been examined and Ex.C.1-Advocate Commissioner's Report and Plan-Ex.C.2 have been marked.

4.The Learned Rent Controller viz., XII Judge, Court of Small Causes, Chennai, on an appreciation of oral and documentary evidence available on record, has come to the consequent conclusion that the Respondent/Petitioner/ Landlord has proved the necessary ingredients for ordering eviction under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and allowed the Rent Control Petition without costs and granted two months time for eviction.

5.Being dissatisfied with the order passed by the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in R.C.A.No.754 of 2008 dated 12.10.2009, the Revision Petitioner/Respondent/Tenant has preferred this Revision before this Court.

6.According to the Learned Counsel for the Revision Petitioner/Tenant, the order of the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in R.C.A.No.754 of 2008 in R.C.O.P.No.95 of 2008 is opposed to facts, weight of evidence and contrary to law and as a matter of fact, there is non application of mind and non- consideration of relevant evidence available on record. The Learned Counsel for the Revision Petitioner submits that the property has been leased out to the Petitioner measuring an extent of 600 square feet in the ground floor and that the Respondent/Landlord has purchased only 328 square feet, as per Ex.P.9 Sale Deed dated 16.02.006 and the Respondent/Land Lord with an ulterior motive has made a fraudulent misrepresentation before the Learned Rent Controller as well as the Learned Appellate Authority falsely claiming to be the owner of entire 600 square feet and instituted the proceedings for owner's occupation under The Tamil Nadu Buildings (Lease and Rent) Control Act, 1960.

7.Expatiating his arguments, the Learned Counsel for the Petitioner/Tenant urges before this Court that the Revision Petitioner has been let out of the petition mentioned property by means of lease in the year 1971 and the lease has been granted to the Revision Petitioner's firm which has been extended periodically and a registered lease deed dated 05.07.1980 for a period 20 years has been granted with an option of renewal in favour of the Petitioner for a further period of 10 years in respect of the petition mentioned property and as such, the contractual tenancy admittedly will

expire only on 04.07.2010.

8.The main contention of the Learned Counsel for the Revision Petitioner/Tenant is that it is not legally permissible for the Respondent/Petitioner/Landlord to initiate proceedings for owner's occupation during the subsistence of contractual tenancy and the Respondent/ Landlord cannot suo moto put an end to the contractual tenancy and the claim owner's occupation because of the embargo as per Section 10(3)(d) of the Act.

9.In short, the contention of the Learned Counsel for the Revision Petitioner/Tenant is that in view of the fetter as per Section 10(3)(d) of the Rent Control Act, the petition filed by the Respondent/Petitioner/Landlord is legally not maintainable and also has no jurisdiction to entertain such a petition.

10.The Learned Counsel for the Revision Petitioner/ Tenant submits that the Learned Appellate Authority in respect of identical contention in R.C.A.No.777 of 1994 has rendered a finding on 29.10.2001 that the lease expires only after 30 years i.e. on 04.07.2010 and before the expiry of the contractual tenancy and for other reasons the plea of the land owner for owner's occupation is not sustainable in law and on facts and dismissed the Appeal and as such, the said finding which has become final cannot be re-agitated and the same is barred by the principles of res judicata.

11.The Learned Counsel for the Revision Petitioner/ Tenant submits that the Learned Appellate Authority should have held that the Learned Rent Controller has failed to appreciate the report of the Advocate Commissioner 'that no staff were at the time of visit in the premises where the Respondent herein was running business' which clearly establishes that the premises mentioned to be one where the Respondent was carrying on business is created for the purpose of filing the eviction petition against the Revision Petitioner and that the claim of the Respondent/Petitioner is not bona fide.

12.The Learned Counsel for the Revision Petitioner/ Tenant contends that the Respondent/Petitioner has no right, title interest in the entire lease property and since the issues of title and other issues cannot be gone into in summary proceedings before the statutory authorities under the Rent Control Act, the Revision Petitioner/Tenant has rightly invoke the jurisdiction of the common law court for necessary declaratory relief that the Respondent/Landlord is not the owner of the entire demised property and also the Petitioner/Tenant has filed a suit O.S.No.10757 of 2009 on the file of City Civil Court, Chennai seeking relief inter alia for a declaration that the Judgment and Decree of the authorities below are null and void, vitiated by fraud etc.

13.It is the contention of the Learned Counsel for the Revision Petitioner/Tenant that the Revision Petitioner filed M.P.No.251 of 2009 before the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai and the same has been listed for hearing on 09.10.2009 and that the Revision Petitioner's Learned Counsel argued on the petition, while the Learned Counsel for the Respondent/ Landlord has taken time for his submission and that M.P.No.251 of 2009 has been adjourned to 12.09.2009 and on 12.09.2009 the Respondent/Landlord or his counsel has not been present on 12.09.2009 nor argued the petition, but to dismay of the tenant, the order has been

passed on 12.09.2009 without hearing the arguments on the merits of the appeal and in short, the impugned order of the Learned Appellate Authority in R.C.A.No.754 of 2008 has been passed without hearing the submissions of the Revision Petitioner on merits, in the appeal.

14.It is also the contention of the Learned Counsel for the Revision Petitioner/Tenant that the impugned order in R.C.A.No.754 of 2008 dated 12.10.2009 reads as if the appeal has been hearing on 05.10.2009, when the fact remains that there has been no hearing of the appeal at all on 05.10.2009.

15.A plea is raised on behalf of the Revision Petitioner in the memorandum of grounds to the effect that on the side of Respondent/Landlord, written argument has been filed on 07.10.2009 without notice to the Revision Petitioner/Tenant, when the case has been posted at all and that the Revision Petitioner has not been aware of the written arguments of the Respondent and also a copy of the same has not been furnished to the Revision Petitioner and the procedure adopted is not correct and there has been no opportunity provided to the Revision Petitioner to counter to the arguments of the Respondent/Landlord in law and on facts and therefore, the impugned order is bad in law and therefore, prays for allowing the Civil Revision Petition in the interest of justice.

16.According to the Learned Senior Counsel for the Respondent/Landlord, there is no dispute regarding the shop portion of the scheduled mentioned property between the parties and in fact, no plea is raised in this regard and further, the Respondent/Petitioner comes within the definition of Landlord as per Section 2(6) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and in Annexure 1 A of the Sale Deed dated 16.02.2006 executed by Bharani Rajendra Kumar Reddy represented by his agent G.Venugopal, duly appointed as Power Agent [as per Power Deed dated 08.11.2000] to and in favour of C.Balaji [the Respondent/ Landlord], the land alone is mentioned as 328 square feet and this 328 square feet refer to the undivided share of the land and not the superstructure and in the Sale Deed mentioned aforesaid, the land of an extent of 328 square feet comprised in Survey No.6758 (Six Seven Five Eight), Old Door No.94, New Door No.58, Sir Theagaraya Road, T.Nagar, Chennai 600 017, is more particularly described.

17.It is the contention of the Learned Senior Counsel for the Respondent/Landlord that in fact there is no pleading on the side of the Revision Petitioner/Tenant in the counter filed before the Learned Rent Controller viz., XII Judge, Court of Small Causes, Chennai in R.C.O.P.No.95 of 2008 as well as before the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in R.C.A.No.754 of 2008 that the Respondent/Landlord has made a fraudulent representation claiming to be the owner of 600 square feet and has instituted proceedings for owner's occupation under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and in fact, the Revision Petitioner/ Tenant has sent a counsel's notice to the Respondent/ Landlord at his Pollachi address in Coimbatore District and the Respondent/Landlord is having a Firm in Pollachi and is doing his consultancy business and moreover, he is not owning any premises in the city of Chennai, on his own and that the petition mentioned property is the only property owned by him and since he is carrying on his consultancy service business in a rented premises, he requires the petition mentioned property for his own bona fide use and occupation.

18.It is the contention of the Learned Senior Counsel for the Respondent/Landlord that for consultancy service no godown is required and in fact, the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in its order dated 12.10.2009 in R.C.A.No.754 of 2008 in para 34 has observed that '... Besides that there is nothing on record to show that there were previous litigations for evicting the tenant' and the ingredients of Section 10(3)(d) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 will not apply to the Revision Petitioner and hence, the Revision Petitioner cannot place reliance on the ingredients of the aforesaid Section.

19.The Learned Senior Counsel for the Respondent submits that no lease deed has been filed and no copy of the order passed in R.C.A.No.500 of 1994 dated 29.10.2001 in R.C.O.P.No.777 of 1994 has been filed on the side of the Revision Petitioner/Tenant before the Learned Rent Controller in R.C.O.P.No.95 of 2008 proceedings and indeed, the Revision Petitioner/Tenant has not raised a plea in the counter that he is not the owner of the entire property mentioned in the petition and the test in law is whether the Respondent/Landlord needs the petition mentioned property as a fact and bona fide is in need of the same.

20.In support of the contention that a fraud vitiates all judicial acts and a judgement, decree or order obtained by fraud has to be construed as non est and nullity in the eye of law, the Learned Counsel for the Revision Petitioner cites the decision of Honourable Supreme Court in A.V.Papayya Sastry and others V. Government of A.P. and others (2007) 4 Supreme Court Cases 221 at page 222 wherein it is observed as follows:

"A judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision writ or even in collateral proceedings.

The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where the Supreme Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of the Supreme Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law. The principle of "finality of litigation" cannot be stretched to the

extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

21.However, the Learned Senior Counsel for the Respondent/Landlord submits that 'no notice is necessary if a lease of immovable property determines under clause (a) of Section 111 of Transfer of Property Act by efflux of the time limited thereby' as per decision of Honourable Supreme Court in Dattonpant Gopalvarao Devakate V. Vithalrao Marutirao AIR 1975 Supreme Court 1111.

22.In support of the contention that a concurrent finding of the Learned Rent Controller and the Learned Appellate Authority ought not to be interfered with by this Court exercising its powers under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, (18 of 1960) the Learned Senior Counsel for the Respondent/Landlord cites the decision of Honourable Supreme Court in M/s.Sri Raja Lakshmi Dyeing Works and others V. Rangaswamy Chettiar AIR 1980 Supreme Court 1253 wherein it is laid down as follows:

"A concurrent finding, based on evidence, that the landlord did not bona fide require the premises for his own use and occupation is not a finding which can be touched by the High Court exercising jurisdiction under Section 25. In such a case, merely to hold that a question is a mixed question of fact and law is not sufficient to warrant the exercise of revisional power."

23.He also cites the decision of Honourable Supreme Court in Ramdoss V. K.Thangavelu 2000 (1) CTC 303 at page 305 wherein it is among other things observed as follows:

"... Thus, in our view, the revisional power of High Court under Section 25 of the Act not being an appellate power, it is impermissible for the High Court to reassess the evidence in a revision petition filed under Section 25 of the Act. In this appeal what we find is that, the High Court in the revision petition filed by the tenant proceeded to decide the revision as if it was deciding an appeal. In the present case the Rent Control Authority and the Appellate Court on assessment of evidence concurrently recorded a finding of fact that there existed relationship of landlord-tenant between the parties. The Rent Control Authority and the Appellate Authority both for purposes of determining the relationship of landlord-tenant placed reliance on account books produced by the appellant to show that the respondent tenant had been paying rent in respect of the said premises. The Rent Control Authority also took note of the fact that the respondent tenant admitted in his evidence that the disputed premises i.e. Door Nos.24A and 25 do not belong to him and Door Nos.24A and 25 had been constructed on the land covered by survey NO.592-593. Curiously, the High Court in its revisional jurisdiction acting as an Appellate Court re-assessed the evidence of the parties and held that since the appellant landlord having undertook to file the lease deed for showing that the respondent was a tenant of erstwhile landlord failed to file the same, the relationship of landlord and tenant therefore is not established between the parties. This view of the High Court is legally and factually not correct. The relevant paragraph of the petition filed by the appellant

landlord thus runs as under:-

"The petitioner learns that Kuppuswamy Chettiar has executed a lease deed in favour of Ramanathan Chettiar at the time of taking the building on lease. The lease deed is missing and will be filed after it is traced."

A perusal of the said paragraph would show that the lease deed executed between Kuppuswamy Chettiar and Ramanathan Chettiar was neither in the personal knowledge of the appellant nor was in his possession which could have been filed. The only allegation that was made in the petition was that the appellant has learnt that a lease deed has been executed which is missing and the same would be filed after it is traced. Mere non-filing of lease deed, which could not be traced, would not necessarily lead to the conclusion that there existed no landlord-tenant relationship between the parties atleast when there were numerous documents on record to show that the appellant purchased this premises from Kuppuswamy Chettiar. We are, therefore, of the view that the High Court was not justified in interfering with the finding of fact recorded by the two courts below."

24.Yet another decision of Honourable Supreme Court is cited on the side of the Respondent/Landlord in Vallampati Kalavathi V. Haji Ismail (2001) 4 Supreme Court Cases 26 at page 27 wherein it is held as follows:

"Under Section 22 of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 the revisional power vested in the High Court is to be used for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceeding, and if satisfied that the order/orders suffer from any such vice the High Court may pass such order in reference to the proceeding as it thinks fit. The expressions "legality", "regularity" or "propriety" are undoubtedly wider than mere correction of jurisdictional error. But even such revisional power cannot be exercised to upset the concurrent findings of fact recorded by the forums below merely on the ground that the High Court is inclined to take a different view. However, it should not be inferred that the concurrent findings of fact can in no case be interfered with in revision. For such interference it has to be shown that the findings recorded by the forums below suffer from any inherent defect or are based on inadmissible or irrelevant materials or are so perverse that no reasonable person will come to such conclusion on the materials.

The judgment of the High Court under challenge is set aside and the judgment/order passed by the Rent Controller, which was confirmed by the Rent Control Appellate Authority is restored."

25.The Learned Senior Counsel for the Respondent/ Landlord contends that 'as per Section 25 of the Tamil Nadu Act (XVIII of 1960) the revisional power of Honourable High Court is not similar to Section 100 of Civil Procedure Code and the High Court cannot go into the questions of fact in detail and assess the evidence in exercise of revisional powers' as per decision of this Court in N.Rengaiyan V. A.M.Noorullah 1996(I) CTC 681."

26.He seeks in aid of the decision of this Court in S.M.Mohamed Meera Sha, Partner, Golden Oils V. E.Hyder Ali 1997 (II) CTC 631 at page 635 wherein at paragraph 11 and 12 it is observed as follows:

"11.So, in this case the findings of the authorities below cannot be said to be without any evidence. Sitting in revision, as held in the decision in Smt.Rajbir Kaur and another, V. M/s.S.Chokosiri and Co., AIR 1988 SC 1845, this Court cannot interfere with the findings of fact unless there is perversity in the appreciation of evidence. To come to such conclusion, I take aid of the Apex Court decision of Smt. Rajbir Kaur and another V. M/s. S.Chokosiri and Co., AIR 1988 SC 1845 stated which reads as follows:

"When the findings fact recorded by the courts below are supportable on the evidence on record, the revisional court must be reluctant to embark upon an independent re-assessment of the evidence and to support a conclusion of its own, so long as the evidence on record admitted and supported the one reached by the courts below. Therefore in the instant case the concurrent finding as to exclusive possession of sub-tenant was not amenable to reversal in revision by the High Court."

12.In the decision in Dev Kumar (Died) through Lrs. V. Swaran Lata (Smt) and others, 1996 (1) SCC 25 it is held as follows:-

"The jurisdiction of the High Court under Sub-section (5) of Section 15 of the Act, would entitle the Court to examine the legality and propriety of a conclusion of the Appellate Authority and is thus much wider than the revisional jurisdiction under Section 115 of the Code of Civil Procedure. But it has to be exercised subject to the well-known limitations inherent in all revisional jurisdictions and cannot be equated with an appellate jurisdiction. Unless there is a perversity in the matter of appreciation of evidence by the Appellate Authority or unless the Appellate Authority has arrived at a conclusion which on the materials, no reasonable man can come to the High Court will not interfere with the same."

27.The Learned Senior Counsel for the Respondent/ Landlord cites the decision of this Court in Tamil Nadu Mercantile Bank Share Holders' Welfare Association, rep. By its President, Thoothukudi and another V. Reserve Bank of India and others 2008 (4) CTC 776 at page 790 wherein at paragraph 14 it is observed thus:

"14.Is the finding that the appellants are guilty of forum shopping incorrect? We think not. The appellants had been trying to stall the conduct of the Annual General Meetings. They did not succeed in getting any ex parte interim injunction on 29.4.2008. The Appeals were dismissed. Therefore, the appellants filed another Application before the Vacation Court hoping to get an interim order, but took an adjournment. Then, since it was not possible to stall the consequences of the conduct of the Annual General Meetings under the Chairmanship of R.Balasubramanian, J. (retired), they moved the Contempt Petition without disclosing any of these facts and

obtained an order. If this is not forum shopping, we do know what is."

28.The Learned Senior Counsel for the Respondent/ Landlord invites the attention of this Court to the decision of Honourable Supreme Court in Tamilnadu Mercantile Bank Share Holders' Welfare Association V. S.C.Sekar and others 2008 (5) CTC 844 at page 863 wherein at paragraph 55 it is held as follows:

"The superior Courts of this country must discourage the forum shopping. A person seeking equity must do equity. A party cannot take recourse to a machination which amounts to abuse of the process of the Court."

29.At this stage, it is useful for this Court to refer to the R.C.O.P.No.95 of 2008 averments filed by the Respondent/Landlord and the counter averments made by the Revision Petitioner/Tenant for better and fuller appreciation of the case. In the petition R.C.O.P.No.95 of 2008 filed by the Respondent/Landlord, it is averred that he is the owner and the Revision Petitioner/Respondent is a tenant under him in respect of the petition mentioned property, on a monthly rent of Rs.2,887/- and that he has purchased the petition mentioned premises by way of a registered Sale Deed dated 16.02.2006 from one Bharani Rajendra Kumar Reddy represented by his Power of Attorney Agent Mr.Venugopal. It is also averred that the Respondent/ Landlord after purchasing the petition mentioned property has informed by a letter dated 29.03.2006 about the purchase of the said property and also requested the Revision Petitioner/Tenant to attorn the tenancy in his favour and thereafter also the Revision Petitioner/Tenant has been tendering the monthly rent of Rs.2,887/- to and in favour of the Respondent/Landlord.

30.Besides the above, in R.C.O.P.No.95 of 2008 the Respondent/Landlord has also averred that he hails from a family of businessmen and he is an Organic Farming Consultant and he has been operating from a rented premise at T.Nagar, paying a monthly rent of Rs.3,250/- from January 2006 and that he has purchased the petition mentioned property under the occupation of the Revision Petitioner/Tenant only for the purpose of his business use and he does not own any other property in Chennai and he is carrying on the consultancy service only in the rented premises. However, he is incurring huge expenditure due towards payment of rent and other overheads on account of his rented premises and as such, required the premises for his own use and occupation, in order to expand his consultancy services commercially etc.

31.The case of the Respondent/Landlord is that he has orally requested the Revision Petitioner/Tenant to vacate the premises, since he wants the premises for his own use and occupation and inspite of the said demand, the Revision Petitioner/Tenant has failed to adhere his request and therefore, he has been perforced to issue a legal notice dated 03.09.2007 to the Revision Petitioner requesting to vacate and deliver vacant possession of the petition mentioned property and the Revision Petitioner/Tenant has issued a reply dated 27.09.2007 with all false and vexatious allegations.

32.According to the Respondent/Landlord, the Revision Petitioner/Tenant's main contention is that the Respondent/ Landlord is having an established business in Pollachi and hence, there is no

requirement for him to use the petition mentioned premises.

33.The request of the Respondent/Landlord is that the petition mentioned property is the only property owned by him and therefore, the requirement of his own use and occupation is bona fide and further that he is carrying on his consultancy service in a rented premises and further he does not own building on his own in the city of Chennai.

34.The Revision Petitioner/Tenant, in the counter, has stated that the Respondent/Landlord has conveniently suppressed the information that G.Venugopal is none other than his father-in-law and that Bharani Rajendra Kumar Reddy has already paid full consideration by the said Venugopal at the time of obtaining power and in fact, the R.C.O.P.No.687 of 1994 has been filed before the Learned XVI Judge, Small Causes Court, Chennai against which an Appeal has been filed before the VIII Judge, Small Causes Court, Chennai in R.C.A.No.1434 of 1996 which has been dismissed, in and by which the current rent has been determined at Rs.2,887/- per month.

35.Moreover, it is also stated that the purpose of filing the aforesaid RCOP petition under Section 4 of the Act by G.Venugopal on behalf of Bharani Rajendra Kumar has been only to fix a higher rent and thereby to evict the Revision Petitioner/Tenant which has not succeed. As a matter of fact, R.C.O.P.No.777 of 1994 has been filed by the same name lender Bharani Rajendra Kumar for owner's occupation, which has also been dismissed by the Learned XIV Judge, Small Causes Court, Chennai by an order dated 22.08.1999. Indeed, the entire premises of the present M/s.Naidu Hall has been acquiring portion by portion and only the petition premises is remaining outside their possession as on date and the adjacent shop No.94/1, the Respondent in R.C.O.P.No.778 of 1994 has already been purchased by the Partner of M/s.Naidu Hall, Mr.Navin, Son of Mr.G.Venugopal, from Mr.G.Venugopal, Power of Attorney of Mr.Bharani Rajendra Kumar Reddy, which was thereafter added to the present extent of M/s.Naidu Hall and as such all the premises in and around the petition premises are belonging to M/s.Naidu Hall the partnership firm.

36.The stand of the Revision Petitioner/Tenant is that if the Respondent/Landlord has only started his business in January 2006, there is absolutely no bona fides for him to purchase the petition premises in February 2006 except if the only purpose is that he wanted to evict the Revision Petitioner/Tenant, and the very fact the Petitioner has started the business in January in a rented place in T.Nagar and thereafter, purchasing the property on 16.02.2006 knowing fully well that his father-in-law the power agent for the said Bharani Rajendra Kumar has already embroiled himself in several litigation with the Revision Petitioner/ Tenant and as such, the claim for owner's occupation is completely without any merit, but seems to be tailor made to some how fit in the provisions of the Rent Control Act for eviction of a tenant and nothing else. In fact, the adjacent shop M/s.Roma was similarly purchased by Partners of M/s.Naidu Hall and as such, all the premises in and around the petition premises belong to M/s.Naidu Hall.

37.A specific plea is taken on behalf of the Revision Petitioner/Tenant that there is a subsisting lease deed dated 05.07.1980 in favour of the Revision Petitioner/Tenant which is to continue till 2010 and the Respondent/Landlord is bound to honour the terms of the lease having renewed it after the first 20 years.

38.The Revision Petitioner/Tenant has filed a suit in O.S.No.4790 of 2003 against G.Venugopal and others who have attempted to break the roof of the Revision Petitioner's/ Tenant's premises to forcibly evict her and the trial is being conducted before the Learned XVIII Assistant Judge, City Civil Court, Chennai. The Naidu Hall Family Shop has purchased all the properties behind and besides Revision Petitioner/Tenant's shop and has practically encircled the petition premises and therefore, is desperate to evict her.

39.The Revision Petitioner/Tenant, in the counter, has pleaded that the Respondent/Petitioner's father-in-law who is the adjacent shop owner in the identical garment textile business has been swearing to false statements before the Learned XVIII Assistant Judge, City Civil Court by initially stating that he is not a Partner of M/s.Naidu Hall for which District Registrar (Admn.), (in the Cadre of Asst. Inspector of General of Registration) Chennai South, Chennai 600 015 has to provide the records showing the name of G.Venugopal as a Partner. Furthermore, G.Venugopal has stated that thereafter he is conducting business at No.7, Somasundaram Street, T.Nagar, Chennai 600 017 for which the Advocate Commissioner has verified that there is no business and in fact, his Accounts Manager has admitted in his evidence before the Learned XVIII Assistant Judge, City Civil Court that No.7, Somasundaram Street is the only residence of G.Venugopal and as such, the RCOP petition before this Court is also yet another pack of lies at the behest of G.Venugopal to somehow evict the Revision Petitioner/Tenant.

40.In short, there is no genuine business of Organic Farming Consultancy and there is no bona fide for the Respondent/Landlord claiming requirement of the premises for his own use and occupation.

41.In support of the contention that a tenant cannot dictate terms to the landlord, the Learned Senior Counsel for the Respondent/Landlord cites the decision of this Court in Janaki Ammal and others V. Saminathan (died) and others (2004) 2 MLJ 14 at page 15 wherein it is held as follows:

"When the landlord is carrying on business in a rented building and he does not own any other non-residential building he is entitled to ask for eviction of the tenant'.

'Requirement of the premises by the landlord would also be a requirement for and on behalf of any member of his family'.

'A tenant cannot dictate terms to the landlord. Legal heirs who prove the bona fide requirement can maintain the eviction petition'."

42.He also relies on the decision of this Court in M/s.Akthars, represented by its Proprietor, R.Syed Tajuddin V. Hitesh V. Shah 2000 (I) MLJ 413 at page 414 wherein it is held as follows:

"The claim of the landlord is that the premises in the occupation of the tenant is alone suitable for him. Therefore, it will not be open to the tenant to dictate as to the requirement of the landlord. It is neither for the authorities concerned nor the tenant to dictate as to where the landlord shall carry on his business."

43.He brings it to the notice of this Court to the decision in Lakshmidas Ved V. Parag Mawani (2000) 2 MLJ 456 wherein it is held that 'Apex Court has pointed out that the genuineness of requirement by the landlord of the premises for his own occupation is not to be tested on par with dire need of a landlord, because the same is a much greater need which is not the intention of the Act. The landlord has only to prove that his requirement is reasonable and genuine.'

44.The Learned Senior Counsel for the Respondent/ Landlord cites the decision of Honourable Supreme Court in Sarla Ahuja V. United India Insurance Company Limited 1998 (III) CTC 679 wherein it is held that 'While deciding question of Bona fide requirement of Land Lord it is Unnecessary to make an endeavour as to how else Land Lord could have adjusted himself.'

45.The Learned Senior Counsel for the Respondent/ Landlord has cited the following decisions:

In V.Dinesh Kumar, Chennai V. Dr.Indira Bai, rep. By her Power of Attorney, P.Suresh Chanderpaul, Chennai (2007) 2 MLJ 976 it is held that 'though landlady, aged, her bona fide requirement for owners' occupation cannot be doubted and when requirements of relevant provisions, satisfied, it is not for tenant to say that property, suitable or not suitable to landlord's requirement and concurrent findings of Courts below ordering eviction on grounds of owner's occupation, not to be interfered with.' In Mohamed Rehmatullah V. Sankaran and another (2004) 1 MLJ 690 this Court has held that 'requirement for own use and occupation, cannot be said to be mala fide and eviction order passed by the appellate authority is proper.'

46.Besides the above, the Learned Senior Counsel for the Respondent/Landlord cites the decision of this Court in Dhanasekaran V. The A.R.C. School Board, rep. By its Secretary, V.Balu, 26, Saiva Muthiah Mudali Street, Muthialpet, Chennai 600 001 2009 (1) CTC 779 at page 780 wherein it is held that 'when there is no pleading or evidence new plea cannot be allowed to be raised for the first time at the stage of revision.'

47.To lend support to the contention that lack of pleadings and evidence on the side of the Revision Petitioner/Tenant is fatal, the Learned Senior Counsel for the Respondent/Landlord cites the decision of this Court in Rasi Silks, by its Partner, K.Arunachalam V. Rasi Silks T.A.Venkatachalam and 8 others 2007 (3) CTC 152 wherein it is held that 'the initial burden is on the landlord to establish advantage and burden and then burden shifts to tenant to establish hardships and the lack of pleadings and evidence in this regard on the side of tenant is fatal and the mere fact that the tenant has to vacate is no ground to disallow eviction when landlord has established bona fides as well as relative hardships of landlord outweighing that of tenant.'

48.The Learned Senior Counsel for the Respondent/ Landlord cites the decision of this Court in Senaithalaivur Mahajana Sangam Charitable Trust, rep. By its President and another V. A.K.Loganathan 2009 (3) CTC 264 at page 265 wherein it is held that 'when party alleges fraud, undue influence, coercion and misrepresentation, it is for such party to make precise and specific allegations sans ambiguity and simple allegations to vices without required details are not sufficient'.

49.Furthermore, he also relies on the decision of this Court in Batco Roadways, rep. By its Partner, Mr.M.H.Patni, No.21, Muthu Mari Street, Chennai 600 001 V. A.Radhammal 2009 (2) CTC 705 at page 707 and 708 wherein it is held as follows:

"Thus, the pleadings and the evidence show that the landlady was in occupation of one portion of the same building, but the purpose of such accommodation, whether residential or non-residential, was not focused by both parties. In the absence of a specific pleading by the tenant that the landlady was using her portion for residential purposes and that therefore she cannot maintain a Petition under Section 10(3)(c) for non-residential use, it is not possible for this Court, sitting in revision, to upset the concurrent orders of eviction passed by both the Courts below, by applying the ratio in Kanniammal V. Chellaram, 2002 (2) CTC 312 (SC): AIR 2002 SC 1739. After all, every principle of law has to be applied to the facts of the case on hand. Since the facts are not borne out in the case on hand, to fit into the ratio decidendi in Kanniammal V. Chellaram, 2002(2) CTC 312 (SC): AIR 2002 SC 1739, it is not possible to set aside the orders of eviction."

50.In regard to the contention that a plea not raised before the Learned Rent Controller or Appellate Authority cannot be allowed to be raised in revisional proceedings the Learned Senior Counsel for the Respondent/Landlord cites the decision of this Court in S.Mohammed Jamal V. Smt. Sureka 2002 (1) CTC 65 wherein it is held that 'a plea not raised before the Rent Controller or Appellate Authority cannot allowed in revisional proceedings.'

51.The Respondent/Landlord, before the Learned Rent Controller has been examined as P.W.1. The Respondent/ Landlord as P.W.1 has deposed that his occupation is agriculture and that he is doing the natural agriculture marketing and consulting business and that at Pollachi he is doing the agriculture and he is distributing the agricultural produce in a big way to the cities and is doing the natural agriculture from the year 2001 and in Chennai he is doing this kind of marketing for the past 2/3 years and he is doing this business at a rented office at No.7, Pinjala Subramaniam Street, T.Nagar, Chennai- 600 017 from the year January 2006. It is the further evidence of P.W.1 (Respondent/Landlord] that he has purchased the petition mentioned property during February 2006 and he has purchased the petition mentioned property for commencing a Retail Selling Centre for selling the Natural Agricultural Produce and presently he is paying a monthly rent of 3,250/- and that the Revision Petitioner/Tenant is paying a monthly rent of Rs.2,887/- and he does not know what type of case that has been going on between the earlier owner and the Revision Petitioner/Tenant, prior to his purchase of the petition mentioned property.

52.P.W.1 has further deposed that the Receipts from the year 2005 to show that he is doing business at Chennai are Ex.P.1 series (45 numbers) and from the year 2006, he has taken a building for rent in connection with his business and the Rental Agreement is Ex.P.2 and the rent Receipts are Ex.P.3 series (12 in number) and the Letters Ex.P.4 series (4 in number) are to show that he is doing business in Chennai at the rented place and the Revision Petitioner/ Tenant has issued two Caveat Notices-Ex.P.5 and the copy of the Lawyer's Notice addressed by him to the Revision Petitioner/Tenant is Ex.P.6 and the Revision Petitioner/ Tenant has issued Ex.P.7-Reply Notice

through counsel and Ex.P.8 is the Membership Document to show that he is a Member of the Organic Association.

53.The evidence of P.W.1 is to the effect that he has purchased the petition mentioned property as per Ex.P.9-Sale Deed dated 16.02.2006 and in the said Sale Deed, he has mentioned about the detail that he requires the petition mentioned property for his own use and the purpose of purchasing the petition mentioned property is for his business.

54.P.W.1, in his cross examination, has stated that in Ex.P.9-Sale Deed the person mentioned as Venugopal, Authorised Agent as his father-in-law and Ex.P.1-Invoices (series) are to show that from Chennai vegetables have been sent to Omkara Company and presently, they are sending vegetables to that Company and there is no other customers for him and it is correct to state that less than Rs.10,000/- stock of vegetables have been sent in Ex.P.1-Invoices and Ex.P.2-Rental Agreement dated 15.01.2006 relates to T.Nagar address and it is correct to state that in Ex.P.1-Invoices, there are no indications to show that the vegetables have been sent from T.Nagar address.

55.P.W.1 (Respondent/Landlord), in his cross examination, has stated that he is now residing at Pollachi and monthly once or twice whenever required he would come to Madras and when Ex.P.9 property has been purchased, at that time the tenant has been available and he has been under the impression that the tenant could be vacating immediately and he is not aware that the Power Agent Venugopal, his father-in-law had several litigation with the Revision Petitioner/ Respondent/Tenant in order to evict her and that the Sale Deed has been executed on 16.02.2006.

56.P.W.1, in his evidence, further goes on to depose that Ex.P.4-Document is the discussion that a person in Bombay and he denies the suggestion that in Chennai he is attending his father-in-law's business at Naidu Hall and the extent of property purchased is around 1000 square feet and in Ex.P.9 in the schedule the extent is shown as 328 square feet and he deny the suggestion that since the vendor is none other but the father-in-law, he is not aware of the extent of the property and he is doing his business only at Pollachi and that he is not doing the business in Chennai and only at the instance of his father-in-law, this petition is filed and he deny the suggestion that he is nothing but a name lender.

57.R.W.1, one of the Partners of the Revision Petitioner/Respondent concerned in his evidence has stated that Ex.R.1-Letter has been sent by Dhiren A.Shah, which has earlier been sent to the Respondent/Landlord and Ex.R.2 is the certified copy of the Firm Registration in the year 1971 and Ex.R.3 is the xerox copy of the Partnership Deed and from the year 1971 the partnership firm continues. R.W.1, in his further examination, has deposed that the Partner of Naidu Hall G.Venugopal has filed R.C.O.P.No.777 of 1994 against him in respect of the petition mentioned property and that petition has been filed on behalf of Bharani Rajendra Kumar Reddy and the petition mentioned property has been sold by Bharani Rajendra Kumar to the Respondent/Landlord, Balaji and the Respondent/Landlord is the son-in-law of G.Venugopal and against him R.C.O.P.No.687 of 1994 has been filed by Bharani Rajendra Kumar and as against the said order in RCOP, R.C.A.No.143 of 1996 has been filed and in that appeal, the fair rent has been fixed at Rs.2,887/- and subsequently, Venugopal has made an attempt to evict him against law and he has

filed a civil suit against Venugopal in respect of the damage caused to the petition mentioned property's upper portion and the said suit is pending and from 1994 G.Venugopal is attempting to evict him somehow from the petition mentioned property and in reality, the petition mentioned property is not required to the Respondent/Landlord and to his knowledge in T.Nagar area there is no Organic Farming Consultant Office and he has asked his causing to send Ex.R.1-Letter to the Respondent/ Landlord to find out whether truly he is doing the business of Organic Farming, for which the Respondent/Landlord has not given a reply and apart from Ex.R.2-Partnership concern he has no other concern and apart from the petition mentioned property, he has no shops at any place.

58.C.W.1 (Advocate Commissioner) in his evidence has stated that he has inspected the petition mentioned property on 05.09.2008 at about 3.30 p.m. and he has submitted his Ex.C.1-Report and Ex.C.2-Plan and when he has inspected a petition mentioned property, at that time, the shop has been opened and that the Respondent-Balaji has been present.

59.C.W.1, in his cross examination, has stated that the Revision Petitioner's lawyer has been at Salem and therefore, he has not given notice to him and in the inspection place of the petition mentioned property, when Advocate has been present, he has given him the notice and that in the petition mentioned property he has mentioned that there is no indication for the conduct of the business and when he enquired the watchman, he informed him that he does not know about the business and asked him to enquire about it and since there are no files or materials available in the petition mentioned property to show about the conduct of business, he has come to the conclusion that no business is conducted and in the almirah, two files have been there and when he opened it, it remained empty and the Respondent/ Landlord showed him one file from his drawer and in that file, there have been some papers and the photos shown to him are related to the petition mentioned property but when he has inspected the petition mentioned property, there have been no files as seen in the photo and the photos are Ex.P.10 series. C.W.1, in his cross examination, has stated that in the front of the petition mentioned property there has been a Notice Board.

60.The Advocate Commissioner in his Report-Ex.C.1 has stated that he has gone to the warrant mentioned premises No.7, Pinjala Subramanaia Street, T.Nagar, Chennai-600 017 at 3.30 p.m. on 05.09.2008 and he commenced the inspection work in the presence of both the counsels and during his inspection, he has found the following things in the petition mentioned property (1)One table (2)5 Chairs (3)Diwan (4)T.V. Table (5)One Ceiling fan (6)One table fan (7)3 files (8)attached Toilet (9)Certificate of Registration (Nachiar Gardens 12-1-2007) (10)One tube light (11)Name Boards (12)Consultant Organic Farming and except the above items, there was nothing found in the petition portion, which is a small portion.

61.Continuing further, the Learned Advocate Commissioner, in his Ex.C.1-Report, has further mentioned that during his inspection, he has found no business activities in the petition portion and the Name Boards are only found in the front of the said portion but not in front of the premises and as seen from the Name Boards, they were put up only recently and except the single person viz., the Respondent (Landlord) nobody was there and there is no symptom that in the petition portion the business is being carried on by the Respondent and he is of the opinion that the petition portion is

only a residential portion which is at the end of the premises.

62.According to the Learned Advocate Commissioner-C.W.1 no bill book or any other papers or business materials were found in the petition portion nor the Respondent (Landlord) produced anything concerned with the business when he himself was present in the petition premises at the time of inspection. Furthermore, the Learned Advocate Commissioner as C.W.1, in Ex.C.1-Report, has stated that the petition building is situated in a residential area, the adjacent buildings are only residential buildings and there is no evidence, proof or anything to show that the Respondent (Landlord) is carrying on any business in the petition portion and except the items mentioned above, nothing is found in the petition portion concerned with any business and therefore, he is of the view that the petition portion is only a residential portion.

63.A reading of Ex.P.6-Respondent/Landlord's Lawyer's Notice dated 03.09.2007 addressed to the Revision Petitioner /Tenant indicates that the Revision Petitioner/Tenant has been informed about the Respondent/Landlord purchasing the property by means of Sale Deed dated 16.02.2006 and further he has informed about the purchase of the said property to the Revision Petitioner and also requested the Revision Petitioner/Tenant to attorn the tenancy in his favour and that after attorning the tenancy in respect of the petition mentioned premises, the Revision Petitioner/Tenant is paying a monthly rent of Rs.2,887/- to the Respondent/Landlord.

64.Also in Ex.P.6 Respondent/Landlord's Lawyer's Notice dated 03.09.2007 it is mentioned that the Respondent/ Landlord is an Organic Farming Consultant and he is operating from a rented premises for paying a monthly rent of Rs.3,250/- since January 2006 and he has purchased the property under the Revision Petitioner/Tenant's use and occupation only for the purpose of his business and that he does not own any other property and he is carrying on the consultancy service only in the rented premises.

65.In short, through Ex.P.6 Respondent/Landlord's Lawyer's Notice dated 03.09.2007 addressed to the Revision Petitioner/Tenant, it transpires that the Respondent/ Landlord has terminated the Revision Petitioner/Tenant tenancy, who is requested the Revision Petitioner/Tenant to vacate and deliver vacant possession of the shop portion of the petition mentioned property within 15 days from the date of receipt of the notice.

66.The Revision Petitioner/Tenant sent Ex.P.7-Reply Lawyer's Notice addressed to the Respondent/Landlord's counsel in and by which it is mentioned that the Respondent/ Landlord has not disclosed that his father-in-law, G.Venugopal Naidu was the Power of Attorney having paid erstwhile landlord Mr.Bharani Kumar Reddy the full consideration on execution of the said Power of Attorney and there has been plethora of litigation between the Power of Attorney Agent G.Venugopal in various Courts and every attempt to dislodge the Revision Petitioner in which he had failed till date etc. and further, to hear that C.Balaji, who is only the son-in-law of G.Venugopal having an established business in Pollachi being shown in as an Organic Farming Consultant would have been amusing to hear except that it is not stated in jest but apparently in some new strategy to evict the Revision Petitioner etc. and moreover, the business of C.Balaji is just a sham in Venugopal's desperate bid to evict the Revision Petitioner having run out of legal and illegal

methods.

67. In Ex.P.9-Sale Deed dated 16.02.2006 executed by .Bharani Rajendra Kumar Reddy through is Agent G.Venugopal, duly appointed Power Agent as per Power of Attorney dated 08.11.2000 to and in favour of the Respondent/Landlord, it is mentioned that the Seller is the absolute owner of the property being land and building, land of an extent of 328 square feet comprised in Survey No.6758 (Six Seven Five Eight), Old Door No.94, New Door No.58, Sir Theagaraya Road, T.Nagar, Chennai 600 017, more particularly described in the Schedule hereunder, he having purchased the same under a Sale Deed dated 24.04.1989 (Doc.No.522/1989 SRO T.Nagar) from G.Gopalakrishnan and G.Ramamurthy etc. In the Schedule of the Sale Deed dated 16.02.2006 it is mentioned as follows:

"All that piece and parcel of property being land and building, land of an extent of 328 sq. ft. comprised in Survey No.6758, (Six Seven Five Eight) Old Door No.94, New Door No.58, Sir Theagaraya Road, T.Nagar, Chennai 600 017, bounded on the:

NORTH BY Vacant Site SOUTH BY Sir Theagaraya Road EAST BY Property owned by Naidu Hall WEST BY Property owned by Mr.G.Venugopal Situate within the Sub-Registration of District of T.Nagar and Registration District of Chennai South The Sale Consideration for the property is Rs.10,00,000/- However, the Stamp Duty and Registration charges are being paid for the guideline value of the property viz., Rs.16,91,000/-"

68. It is relevant for this Court to point out that a sale is complete on the execution of sale deed. The object of registration of the sale deed and the delivery of possession is to publish to the world that such a document has been executed. In fact, if two individuals mutually exchange two things and fix the value of exchanged things, in current coins, this must be held to be sale. The term 'Sale' is the specific word. 'Transfer' is a larger word. Sale as per Section 54 of the Transfer of Property Act is defined as transfer of ownership for a price.

69. It is to be borne in mind that the need for the business of the Respondent/Landlord as per Section 10(3)(a)(iii) of the Tamil Nadu Act, 1960 must satisfy the following conditions: (a) The building ought to be non-residential in character; (b) A landlord must be carrying on business on the date of petition for eviction; (c) A landlord should not be occupied any building belonging to him in respect of the business and the claim is bona fide for his business any and is not found to be indirect or oblique motive for evicting a tenant either with a view to get more rent than the already determined rent or with a view to harass the tenant in possession.

70. A landlord must deserve to obtain possession under Section 10(3)(e) of the Act. Otherwise an eviction under Section 10(3)(a)(iii) cannot be ordered as opined by this Court.

71. At this stage, this Court pertinently points out that Section 10(3)(d) of the Act enjoins that 'whether the tenancy is for a specific period agreed between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before the expiry of such period, it is

sufficient if a tenant prima facie establishes that he is entitled to be protected as per Section 10(3)(d) of the Act by means of a registered document.

72.In the decision M/s.Children's Choice represented by its Partner Mr.Lakshmidhand Shamjee V. G.K.Adishesiah and another 1982 (I) MLJ 411 this Court has held as follows:

"The mere fact that the shops were separately numbered by the Corporation for purposes of assessment was not a bar for the maintainability of the application of the landlords under Section 10(3)(c). It could not be said that the shops 5 and 6 viz., the premises in question constitute a separate building disentitling the landlord to apply under Section 10(3)(c).

The fact that there was no written agreement for the renewals of the lease deed nor that there was no registration of the same would not take away the right of the tenant to continue the lease, as per the original contract of tenancy. The present landlords themselves were fully aware of the contract between the original owner and the tenant for a further renewal of four years from 1st February, 1975, and they had purchased the property with knowledge of the same. Therefore, the subsequent purchasers could not ignore the previous agreement of their vendor and seek to evict the tenant when the latter had exercised his option in writing. Thus, this petition for eviction filed in July, 1977, before the expiry of the period of four years was premature and was liable to be dismissed in limine."

73.This Court worth recalls the decision in M/s.Gillanders Arbuthnot & Co. Ltd. V. Mrs.V.R.Badhrunnissa 1982 (I) MLJ 437 at page 438 wherein it is held as follows:

"Firstly, there was nothing to show that the landlady's husband was actually carrying on any business at Madras. Secondly, the premises that fell vacant had not been occupied by the husband. Thirdly, there was no evidence at all to show that the landlady's husband had made any preparations for starting the business. These vital points had been ignored by the Appellate Authority which had come to an erroneous conclusion that the requirement must be bona fide.

The Appellate Authority committed an error and probed into the question whether the renewed lease deed was true or not and came to the conclusion that the lease deed was executed by the vendor, namely, the previous owner of the building without proper authority. For one thing, the validity of the lease deed need not be proved in detail in a proceeding under the Rent Control Act and it was enough if the tenant prima facie proved that he was entitled to be protected under section 10(3)(d) by virtue of a solemnly registered document. For another, the rent deed also stood scrutiny, and it could not be rejected in the manner in which the Appellate Authority had done it."

74.If there is no valid agreement, the ingredients of Section 10(3)(d) of the Tamil Nadu Act (XVIII of 1960) cannot be resorted to as opined by this Court. Indeed, the validity of a lease deed ought not to be proved in detail in a summary proceeding under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and it is enough if a tenant prima facie proves that he has entitled to be protected as per Section 10(3)(d) of the Act.

75.In the decision A.Perumal and others V. P.Mohammed Sarbuddeen 1998 (2) MLJ 50 at page 51 & 52 in paragraph 6 it is held as follows:

"6.As submitted by the learned counsel for the petitioner there is no positive averment in Ex.P-1 and in the petition to the effect that the landlord has been carrying on business in some other premises. But, from the reading of the Ex.P-1 and the petition we cannot come to the conclusion that the landlord has admitted that he was not carrying on any business in any other place. In the evidence, P.W.1 has categorically stated that he has been carrying on business. In support of his evidence, the landlord filed Exs.P-6 to P-15."

76.In Jayaram Metal Works represented by its Partner Subramanian V. G.Jaganathan and another 1998 (2) MLJ 261 it is laid down as follows:

"Doing a business in a rented premises is not a prerequisite to file a petition under Sec.10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. To invoke the section, it is not necessary that the landlord has to carry on business in a rented premises. It is not the case of the tenant that the said premises is owned by the landlords/Respondents. But on the other hand, the Respondents in para 6 of the petition have specifically stated that they are not carrying on the business in a premises of their own or that of the minors. Since the respondent's are not carrying on the business in a premises of their own, the submission of the learned counsel that unless the landlords plead and prove that they are carrying on business in a rented premises, the petition is not maintainable, cannot be sustained."

77.In the decision Nandan Brothers and Others V. Kamaladevi Chandak and others 1989 (2) MLJ 469 it is held as follows:

"Whenever a landlord requires a building for the purpose of his own occupation, it does not mean that he should occupy the building as it is. He is certainly entitled to carry out certain structural alienations after getting possession of the building according to law under the provisions of the Act before occupying the same or soon after occupying the same. The provision under which a landlord is entitled to seek possession from the tenant on the ground of requirement for own occupation is under section 10(3)(a)(iii) of the Act in the case of a non-residential building. Under Section 10(3)(a)(iii) of the Act, there is no reference whatever to the condition of the building. The section does not prescribe that a landlord who has obtained possession of the building under the sub-section shall not in any fictions as may be required to

suit his convenience. The provision for requirement for purposes of demolition and reconstruction is found in Section 14(1)(b) of the Act."

78.This Court aptly points out the decision of Honourable Supreme Court in *Biswabani Private Limited V. Santosh Kumar Dutta and others* (1980) 1 Supreme Court Cases 185 at page 186 wherein the Honourable Supreme Court has laid down as follows:

"(1)The appellant was accepted as a tenant by the landlords even though the first lease deed dated September 11, 1948 was executed by respondent 3, its Managing Director. The indenture of the first lease granted an option to the lessee to claim renewal of the lease. Notwithstanding the non-exercise of the option on the date of expiry of the lease, the contractual tenancy having come to an end, the tenant would be a tenant holding over if the requirements of Section 116 of the Transfer of Property Act are satisfied. However, on the date of expiry of the contractual tenancy the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 was in force and therefore the rights of such a person remaining in possession are governed by the statute alone. He became a statutory tenant, the status of irremovability.

(2)There is no bar in law to a statutory tenant entering into a fresh contract of tenancy with the landlord which is what was attempted by the consent decree *Anand Nivas Pvt. Ltd. V. Anandji Kalyanji Pedhi*, (1964) 4 SCR 892: AIR 1965 SC 414, followed.

(3)Since the appellant was already in possession as a tenant of the premises, an unsuccessful attempt to create a fresh lease would not change the nature of his possession.

(4)Even if it is assumed that the appellant is put in possession for the first time under a lease which turns out to be void, the appellant came into possession of the premises with the consent of the landlords and paid rent from month to month. Thus an inference of tenancy can be made. In the context of the fiction enacted in Section 106 of the Transfer of Property Act, considering the nature of lease, namely one of a theatre, the person so put in possession would be a tenant from month to month.

(4)If the appellant thus continued to be a tenant it could not be forcibly evicted. In such circumstances the appellant as tenant would be entitled to protect its possession unless evicted in due course of law and in order to protect its possession it can legitimately sue for a declaration of its status as tenant and for an injunction, either prohibitory or mandatory, as the case may be."

79.In *Ram Kumar Das V. Jagdish Chandra Deo, Dhabal Deb and another* AIR (39) 1952 Supreme Court 23, the Honourable Supreme Court has held as follows:

"That the tenancy created by implication of law in favour of the defendant should be held to be from month to month since its inception in 1924. The tenancy not being for manufacturing or agricultural purposes it could be regarded as a tenancy from month to month under S.106, unless there was a contract to the contrary. The stipulation as to payment of annual rent would no doubt raise a presumption that the tenancy was from year to year but being contained in an inoperative document could not come in the way of raising a presumption under S.106. A lease for one year certain could not be inferred from the payment of annual rent because to do so would be to substitute a new agreement for the parties which they never intended to do: 11 Cal. W.N. 1124 & A.I.R. (3) 1916 Cal. 358, Approved."

80. In the decision M/s. Nataraja Trading Company represented by its Partners and others V. K. Manohar 1995 (II) MLJ 27 at page 28 this Court has held as follows:

"In order to obtain an order of eviction under Sec.10(3)(a)(iii) of the Act, the landlords should not only prove that they are not in occupation of any other non-residential premises of their own in the city of Madras and that they are carrying on their business in the rented premises but they should also prove the bona fide as contemplated under Sec.10(3)(e) of the Act. In the present case, no attempt was made to establish the bona fide requirement of the landlords as contemplated under Sec.10(3)(c) of the Act. Therefore, even on merits the landlords are unable to establish their bona fide in requiring the petition premises under Section 10(3)(a)(iii) of the Act. The Petition for eviction is dismissed."

81. In the decision M/s. Raval & Co. and another V. K.G. Ramachandran (Minor) and others 1966 (II) MLJ 68 (FB) this Court has held as follows:

"Entry 18 of List II (State List) of the Seventh Schedule of the Constitution of India includes the relationship of landlord and tenant and rights in or over land and hence the Madras Legislature had the competence to enact the provisions of the Madras Buildings (Lease and Rent Control) Act (XVIII of 1960) which do interfere with the contractual tenancies under the Transfer of Property Act, both relating to such matters as the fixation of fair rent during such tenancies, and such matters as protection against the eviction of a tenant whether during a contractual tenancy or after its determination and the Act having received the assent of the President under Article 254 (1) of the Constitution of India, will prevail over the Transfer of Property Act to the degree of any inconsistency between the two laws in Madras State."

The Madras Buildings (Lease and Rent Control) Act (XVIII of 1960) plainly purports to deal with all tenancies in respect of residential and non-residential buildings, which had been let out, both contractual and statutory. The argument that the Act does not deal with or interfere with contractual tenancies at all during their subsistence and that it applies only to statutory tenancies after the contractual tenancy has been terminated by a notice under Section 106 read with section 111(h) of

the Transfer of Property Act, is unsustainable. Such a view is opposed (i) to the Preamble and the intendment expressed in the enactment, (ii) to the definitions of 'landlord' and 'tenant' in the Act, (iii) to the self-sufficient code enacted in section 10 including a special machinery for eviction, (iv) to the provisions of section 7 which enacts specific inroads upon the rental agreements of contractual tenancies and (v) to the provisions of section 4 as to the fixation of fair rent, as available to all landlords and all tenants as defined in the Act. Thus, the Madras Act (XVIII of 1960) has to be interpreted as a special Act which does abrogate the Transfer of Property Act with reference to several of its provisions; of course its goes further and applies, in its terms, not merely to contractual tenancies during their subsistence, but also to statutory tenancies after the determination of the contractual tenancy. Under the terms of this Act therefore a landlord can evict a tenant on the special grounds available, notwithstanding the subsistence of a contractual tenancy and even though it has not been determined by a statutory notice under section 106 of the Transfer of Property Act. But equally, the tenant has the protection of the Act, even after the termination of the contractual tenancy, so long as he does not do anything which removes the bar of eviction and provides no ground for eviction in terms of the Act. Similarly both during the subsistence of the contractual tenancy and thereafter the parties have the right to get the fair rent determined under the Act.

This seems to be the only interpretation which does justice to the specific provisions of this statute, the legislative competence for such an enactment not being in question. If that is the intendment to be gathered from the plain language of the Preamble and the structure of the provisions of the enactment this inference cannot be shirked merely because there is the absence of a non obstante clause. It was no doubt easy for the Legislature to have enacted words, such as "notwithstanding anything in the Transfer of Property Act or any other law to the contrary". But in its wisdom the Legislature might have well intended that the provisions sufficiently and amply do indicate, by their very force, the degree of interference with contractual tenancies sought to be enforced.

The amending Act, Madras Act XI of 1964, including Section 3 thereof, cannot be struck down as ultra vires under Article 14 of the Constitution of India on the ground of hostile discrimination. The classification of 'residential' and 'non-residential' tenancies has been adopted in many tenancy enactments and is a well-recognised and rational principle of differentiation. If this is so, hostile discrimination can be conceivably urged only if persons of this class (landlords of non-residential tenements) have been differentially treated. There is no basis for the plea of hostile discrimination or the denial of equal protection of the law either with regard to the Amending Act XI of 1964, or with regard to the earlier Rent Control enactments of the Madras Legislature, including Act XVIII of 1960. These successive enactments have embodied a perfectly rational principle of classification and the criteria and their application have been evolved, from time to time, in accordance with the needs of this class of citizens. There is also a clear and discernible nexus between the object

of the measure and the differentia themselves."

82.Before the Learned Rent Controller, on the side of the Respondent/Landlord, objections to Commissioner's Report have been filed. In the said objections, the Respondent/Landlord has stated that the Report of the Commissioner has been filed in a biased manner to favour the Revision Petitioner/Tenant and in fact, the Learned Advocate Commissioner has taken a call over a phone on 04.09.2008 at about 3.00 p.m., when the Counsel for the Respondent/Landlord has been at Salem and informed him that the inspection has been fixed at 3.30 p.m. on Saturday i.e. 06.09.2008 and the Learned Counsel for the Respondent/ Landlord confirmed to the Advocate Commissioner that it is convenient to the Respondent/Landlord as well as his Counsel to have the inspection on 06.09.2008, but suddenly the Advocate Commissioner for reasons best known to him called on 05.09.2008 at about 12.00 p.m. and informed that since the Counsel for the Tenant has expressed some personal inconvenience, the inspection has been preponed on 05.09.2008 at 3.30 p.m. and since the Learned Counsel for the Tenant has expressed some personal inconvenience as colleague, the Counsel for the landlord has expressed his consent for the inspection on 05.09.2008 at about 3.30 p.m. and moreover, the Advocate Commissioner has never served notice in writing and has communicating only through mobile etc.

83.The Respondent/Landlord has further stated in his objections that when they entered the warrant premises, the Advocate Commissioner posed a question that there was no garment business as stated in the warrant premises and at that instance, the Counsel for the tenant represented that there is no business carried on in the warrant premises and the Counsel for the landlord clarified the garment business done in the premises for which eviction is required and the warrant premises is the premises in which the landlord is carrying on consultancy and only thereafter the Learned Advocate Commissioner has understood the premises, which is to be inspected as per the warrant and commenced the inspection.

84.That apart, the Respondent/Landlord in his objections has further added that the Name Boards are kept as per the convenience of the parties with regard to their needs and the Learned Advocate Commissioner has exceeded the scope of the warrant and the Report of the Commissioner that the warrant premises is a residential portion, is again beyond the scope of the warrant.

85.Furthermore, it is the objection of the Respondent/ Landlord that the Learned Advocate Commissioner, without verifying/inspecting the nature of files available in the premises, has come to the conclusion that there have been no bills/materials available.

86.The Revision Petitioner/Tenant, in the objections to Commissioner's Report, has stated that the Advocate Commissioner in his report has clearly reported that the entire business of the Respondent/Petitioner is only stage managed for the Commissioner's visit and though the Advocate Commissioner has categorically stated that there was absolutely no business whatsoever etc. However, there seems to be a typographical error in the Report at page No.2 line 8 "Further the name boards are found only in the front of the said portion but not found in front of the premises" and apparently the name boards were hurriedly erected for Advocate Commissioner's visit and it may be just and necessary to clarify the same.

87. In the counter in R.C.O.P.No.95 of 2008 on the file of XII Judge, Court of Small Causes, Chennai, the Revision Petitioner/Tenant, in paragraph 5, has stated among other things that there is a subsisting lease deed [but not mentioning the date of lease and leaving that portion blank] in her favour which is to continue till 2010 and that the Respondent/Landlord is bound to honour the terms of the lease having renewed it after the first 20 years. However, the Learned Counsel for the Revision Petitioner/ Tenant submits that the subsisting lease deed is 05.07.1980 in favour of the Revision Petitioner/Tenant, which is to continue till 2010.

88. A perusal of the order passed in main R.C.O.P.No.95 of 2008 dated 07.11.2008 on the file of XII Judge, Court of Small Causes, Chennai indicates that in the list of exhibits on either side, the lease deed dated 05.07.1980 has not been marked. Also, in the order dated 07.11.2008 in R.C.O.P.No.95 of 2008 passed by the Learned XII Judge, Court of Small Causes, Chennai there is no reference to the subsisting lease deed dated 05.07.1980 in favour of the Revision Petitioner/Tenant. In the order of the Learned Rent Controller in R.C.O.P.No.95 of 2008 dated 07.11.2008 there is a reference in paragraph 11 under Section 10(3)(a)(iii) of the Act (XVIII of 1960) that the Respondent/Landlord has proved the necessary ingredients for ordering eviction. In the whole order of the Learned Rent Controller in R.C.O.P.No.95 of 2008 there is no mention of Section 10(3)(d) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. In short, whether the Revision Petitioner/Tenant is entitled to claim protection as per Section 10(3)(d) of the Act by virtue of the lease deed dated 05.07.1980 has not been adverted to by the Learned Rent Controller in the order passed in R.C.O.P.No.95 of 2008 dated 07.11.2008. Likewise, the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in the order in R.C.A.No.754 of 2008 dated 12.10.2009 has not gone into the aspect as to whether the Revision Petitioner/Tenant is entitled to get protection as per Section 10(3)(d) of the Act. The subsisting lease deed dated 05.07.1980 which has been made mention of by the Revision Petitioner/Tenant has not been repudiated by the Respondent/Landlord, in the considered opinion of this Court. Even though the lease deed dated 05.07.1980 in favour of the Revision Petitioner/Tenant has not been marked before the Learned Rent Controller in the proceedings in R.C.O.P.No.95 of 2008, yet, this Court opines that the validity of the said lease deed need not be proved in detail in summary proceedings under the Tamil Nadu Act (XVIII of 1960). It will suffice, if the Revision Petitioner/Tenant establishes prima facie that it is entitled to be protected as per Section 10(3)(d) of the Act by means of a subsisting lease deed.

89. As far as the present case is concerned, when the subsisting lease deed dated 05.07.1980 in favour of the Revision Petitioner is to continue till 2010, then, this Court is of the considered view that the Revision Petitioner/Tenant is entitled to be protected as per Section 10(3)(d) of the Act by means of the subsisting lease deed dated 05.07.1980. At this stage, it cannot be forgotten that the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 speaks of mutual rights and obligations as per contractual tenancies and the requirement of preserving them against the inroad of a special Act in certain situations. Added further, even though the Respondent/Landlord has filed R.C.O.P.No.95 of 2008 on 8th January 2008, he has purchased the petition building property on 16.02.2006 as per Ex.P.9-Sale Deed. In Ex.P.9 Sale Deed dated 16.02.2006 the Schedule refers to 328 square feet. Also, Annexure 1 A of the said Sale Deed refers to an extent of site as 328 sq. ft. and the built up area is 1312 sq. ft. However, P.W.1, in his cross examination, has stated that the extent of the property purchased is around 1000 sq. ft. Significantly, in R.C.O.P.No.95 of 2008 the Schedule of Property

viz., all the piece and parcel of the land and building comprised in shop portion bearing New Door No.58/2, Old No.94/2, Sir Thyagaraya Road, Pondy Bazaar, Chennai 600 017, refers to an extent of 600 sq. ft. or thereabouts situate within the Sub-Registration District of T.Nagar and Registration District of Chennai-South.

90.In this connection, it is not out of place for this Court to point out pertinently that in R.C.A.No.500 of 1997 in R.C.O.P.No.777 of 1994 the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai has observed in para 6 of the order dated 29.10.2001 that the lease deed expires after 30 years i.e. on 04.07.2010 and also that as per registered Sale Deed dated 05.07.1980 the Appellants are receiving the rent without any refusal etc. In R.C.A.No.500 of 1997, the Revision Petitioner/Tenant [in C.R.P.No.3776 of 2009] as figured as the Respondent on the file of VIII Judge, Court of Small Causes, Chennai. In that appeal, one Bharani Rajendrakumar Reddy, Malathi Reddy have figured as Appellants.

91.In regard to M.P.No.251 of 2009 in R.C.A.No.754 of 2008, it is to be pointed out that the Revision Petitioner/ Tenant has filed this miscellaneous petition to issue subpoena [under Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 r/w Act 23 of 1973] to the Income Tax Officer, Pollachi for returns of the Respondent/ Landlord and to the Commercial Tax Officer, Nandanam, 46 Greenways Road, Chennai to produce the records of the business including statutory registration for service tax, commercial and Income Tax Returns relating to the business carried on by him at No.7, Pinjala Subramaniam Street, T.Nagar, Chennai 600 017 for the years 2006, 2007 and 2008.

92.A perusal of the Notes made by the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in M.P.No.251 of 2009 shows that on 07.09.2009 when the matter has come up for enquiry, the enquiry has been posted to 14.09.2009 and again on 14.09.2009, the enquiry has been adjourned to 29.09.2009 and on 29.09.2009, the enquiry has been adjourned to 09.10.2009 and on 09.10.2009, the enquiry has been adjourned to 12.10.2009 and on 12.10.2009, it is mentioned that 'as RCA has been disposed, this petition is closed as not necessary'.

93.It transpires from the Notes of endorsements made by the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in R.C.A.No.754 of 2008 that on 07.09.2009 when the RCA has been posted for arguments, the matter has been adjourned to 14.09.2009 and on 14.09.2009, it is endorsed that 'Heard appellant side arguments. For respondent side arguments adjourned to 29.09.2009' and on 29.09.2009, it is endorsed as 'Heard respondent side arguments. Judgment by 09.10.2009 and on 09.10.2009, written arguments of respondent side filed on 07.10.2009. For perusal and Judgment adjourned to 12.10.2009 and on 12.10.2009 the Judgment has been pronounced and R.C.A.No.754 of 2008 has been dismissed without costs.

94.Be that as it may, on a careful consideration of respective contentions and in view of the fact that there is a subsisting lease deed dated 05.07.1980 in favour of the Revision Petitioner/Tenant, which is to continue till 2010, this Court, without going into the merits of the case, comes to an inevitable conclusion that the Revision Petitioner/Tenant is entitled to the statutory protection as per Section 10(3)(d) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and viewed in that

perspective, R.C.O.P.No.95 of 2008 filed by the Respondent/Landlord on 08.01.2008 before the Learned Rent Controller is a premature and otiose one, but these aspects of the matter have not been adverted to by the Learned Rent Controller as well as the Learned Appellate Authority in a proper perspective which has resulted in miscarriage of justice and as such, both the orders of the concerned authorities suffer from serious irregularity and patent illegality and as such, this Court is left with no other option but to interfere with the said orders and accordingly, set aside both the orders of the authorities in R.C.O.P.No.95 of 2008 dated 07.11.2008 and in R.C.A.NO.754 of 2008 in 12.10.2009 and consequently, allows the Civil Revision Petition to prevent an aberration of justice.

95.In the result, the Civil Revision Petition is allowed, leaving the parties to bear their own costs. Resultantly, the order of the Learned Rent Controller viz., XII Judge, Court of Small Causes, Chennai in R.C.O.P.No.95 of 2008 dated 07.11.2008 and the order of the Learned Appellate Authority viz., VIII Judge, Court of Small Causes, Chennai in R.C.A.No.754 of 2008 dated 12.10.2009 are set aside for the reasons assigned by this Court in this Civil Revision Petition. The R.C.O.P.No.95 of 2008 filed by the Respondent/Landlord before the Learned XII Judge, Court of Small Causes, Chennai is dismissed as premature and otiose one. However, it is made clear that the dismissal of the R.C.O.P.No.95 of 2008 on the file of XII Judge, Court of Small Causes, Chennai will not preclude the Respondent/Landlord to file a fresh petition raising all factual and legal pleas under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the Revision Petitioner/Tenant seeking appropriate remedy thereto before the competent forum in the manner known to law and in accordance with law. Consequently, connected miscellaneous petition is closed.

Sgl To

1.The VIII Judge, Court of Small Causes, Chennai.

2.The XII Judge, Court of Small Causes, Chennai