(2002) 10 MAD CK 0135

Madras High Court

Case No: Civil Revision Petition No. 827 of 1999

C. Andiappan	APPELLANT
Vs	
Premier Engine Stores	RESPONDENT

Date of Decision: Oct. 9, 2002

Acts Referred:

- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 25

Hon'ble Judges: P. Thangavel, J

Bench: Single Bench

Advocate: S.V. Jayaraman for T. Murugamanickam and A.L. Ramamoorthy, for the Appellant; V.K. Muthusami for V.P. Sengottuvel, D. Krishna Kumar and V.R. Ramesh for 1st respondent, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Thangavel, J.
The Civil Revision Petition has been filed by the landlord as revision petitioner against the judgment and decree dated 27.7.1998 and made in R.C.A.No. 5 of 1997 on the file of the learned Rent Control Appellate Authority (Subordinate Judge), Erode reversing the order and decretal order of the learned Rent Controller (District Munsif), Erode dated 17.1.1997 in R.C.O.P. No. 36 of 1990.

2. Brief facts that are necessary for disposal of this Civil Revision Petition are as follows:- The revision petitioner, who is the petitioner before the Rent Control Court, is the landlord of the premises described in the Rent Control Original Petition, by virtue of the purchase made under a registered sale deed dated 26.3.1990 for proper and valuable consideration of Rs.1,83,000/- from one M. Arthanari and his son A. Rathinasabapathi residing at Door No.132A, Perundurai Road, Erode. The revision petitioner is carrying on business in stainless steel utensils under the name and style of "Anguvilas Metal Stores" in a rented building at Door No. 6, Agraharam

Street, Erode. The revision petitioner finds it inconvenient to continue his business in the rented building for want of sufficient space and therefore, the demised premises, which is situate in the main bazaar and which is better suited for the business of the revision petitioner, was purchased on 26.3.1990. The revision petitioner has proposed to demolish and reconstruct the demised premises as a multi-storied building to augment the income of the revision petitioner by letting out a portion after occupying sufficient portion to carry on his stainless steel utensils business. The revision petitioner has also applied and obtained necessary sanction from Erode Municipality for construction of multi-storied building. The revision petitioner is having sufficient means to demolish and reconstruct the said building. The requirement for own use and occupation and for demolition and reconstruction is bona fide. The revision petitioner undertakes to commence the demolition work of the existing building not later than one month from the date of recovery of possession of the entire building and shall complete the demolition work before expiry of three months. The respondents, who are in occupation of the demised premises have committed wilful default in payment of rent for seven months from the date of purchase of the demised premises by the revision petitioner. Therefore, the revision petitioner has come forward with a petition for eviction on the grounds of wilful default in payment of rent, own use and occupation and demolition and reconstruction.

3. The respondents herein, as respondents before the Rent Control Court, resisted the claim made by the revision petitioner on the following grounds:- The demised property, which situate in Nethaji Road, Erode town, was taken on lease from its owner, Arthanari on a monthly rent of Rs.1,000/- inclusive of Rs.500/- towards amenities, in the year 1980. One Rathinasabapathi is an undivided son of Arthanari and they constituted a joint Hindu family. On 23.4.1990, the revision petitioner issued a notice to the said Arthanari and Rathinasabathi with a copy to the respondents stating about the purchase of the demised property from the said Arthanari and his son Rathinasabapathi for a consideration of Rs.1,83,000/-. Shortly thereafter, the said Arthanari and his son Rathinasabapathi sent a notice through their counsel stating that they sold the demised property to the revision petitioner for a consideration of Rs.4,08,000/-, though it was recited in the sale deed as Rs.1,83,000/-, that the revision petitioner had retained a sum of Rs.2,25,000/- for being paid at the time of delivery of actual possession of the demised property to him and that therefore, the sale deed was incomplete. It is on these grounds, the said Arthanari and his son Rathinasabapathi with whom the respondents herein had entered into a lease agreement, had informed the respondents not to pay rent or to surrender possession of the demised property to the revision petitioner. The respondents have paid Rs.12,000/- towards 12 months rent for the period from 1.3.1990 to 28.2.1991 to the said Arthanari and his son as early as 1.3.1990. As there was a dispute between the revision petitioner and his vendors, the respondents have filed a petition in R.C.O.P.No. 21 of 1991 to deposit the rent in Court. Therefore,

the respondents are not in arrears of rent for a period of seven months on the date of filing of the Rent Control Original Petition and the respondents have not committed wilful default in payment of rent. The premises bearing Door No. 6, Agraharam Street, in which the revision petitioner is carrying on business in stainless steel utensils, is situate in main bazaar at Erode, while the demised premises is situate in Nethaji street, which is at a distance of one furlong from the main bazaar and therefore, the demised premises is not suitable to carry on business by the revision petitioner. The building in the demised premises was put up in the year 1980 and is in good condition. There is no necessity to demolish the said building and to reconstruct the same. Therefore, the requirement of the demised premises for demolition and reconstruction or for own use and occupation is not bona fide. It is on these grounds, the respondents have sought for dismissal of the petition.

4. After considering the material evidence available on record and the submissions made on both sides, the learned Rent Controller found that the respondents have committed wilful default in payment of rent, that the requirement of the demised premises for own use and occupation and for demolition and reconstruction is bona fide and that therefore ordered for eviction of the respondents from the demised premises. Aggrieved at the order and decretal order dated 17.1.1997 and made in R.C.O.P.No. 36 of 1990, the landlord/revision petitioner as appellant preferred appeal in R.C.A. No. 5 of 1997 on the file of the Rent Control Appellate Authority (Principal Subordinate Judge), Erode. After considering the submissions made on both sides and in the light of the material evidence available on record, the learned Rent Control Appellate Authority has come to the conclusion, that the respondents have not committed wilful default in payment of rent, that the requirement of the demised premises for own use and occupation and for demolition and reconstruction by the revision petitioner, is not bona fide and that therefore, allowed the Rent Control Appeal thereby dismissing the Rent Control Original Petition. Aggrieved at the judgment and decree dated 27.7.1998 and made in R.C.A. No. 5 of 1997 on the file of the learned Rent Control Appellate Authority (Principal Subordinate Judge), Erode, the landlord as revision petitioner has come forward with this Civil Revision Petition.

5. The point for determination is whether there are grounds to interfere with the judgment and decree passed by the learned Rent Control Appellate Authority?

6. The revision petitioner was examined as P.W.1 and Exs. A-1 to A-7 were marked on his side while one of the partners of the first respondent partnership firm K. Muthusamy was examined as R.W.1 and Exs. B-1 to B-6 were marked before the Rent Control Court.

7. Admittedly, the premises described in the Rent Control Original Petition is situate in Nethaji Road, Erode town and it originally belonged to one M. Arthanari and his son Rathinasabapathi. Ex. A-1 dated 26.3.1990 is the registered sale deed executed

by Arthanari and his son Rathinasabapathi in favour of the revision petitioner with regard to the demised property for a sale consideration of Rs.1,83,000/-. A perusal of the above said document would disclose that constructive possession of the demised property was delivered by the vendors to the revision petitioner at the time of execution of the registered sale deed Ex. A-1. There is nothing to show in Ex. A-1 that the revision petitioner had agreed to pay a sum of Rs.2,25,000/- at the time of delivery of actual possession of the demised property by the vendors of the said property.

8. Ex. B-1 dated 23.4.1990 is the notice sent by the revision petitioner to the vendors with a copy marked to M. Venkatachalam, one of the partners of the first respondent partnership firm. Ex. B-1 would disclose that Varthamana letter executed in between the vendors and the revision petitioner was annexed to the said notice. A perusal of the said varthamana letter dated 26.3.1990 annexed to Ex. B-1 would disclose about the admission of the vendors about the sale of the demised premises to the revision petitioner for a sum of Rs.1,83,000/-. It would also disclose that the revision petitioner had authorised the vendors, viz., M. Arthanari and his son A. Rathinasabapathi to take actual possession of the demised premises on behalf of the revision petitioner from the tenants as he was otherwise busy and for such taking actual physical possession, the revision petitioner had agreed to pay a sum of Rs.2,25,000/-. It is also evident from the varthamana letter that such possession should be taken within a period of one year from the said date. It is also evident that the revision petitioner had executed a promissory note in favour of the above vendors for Rs.2,25,000/- and also given the original registered sale deed to them as security for payment of Rs.2,25,000/- which was agreed to be paid for taking actual physical possession from the tenants by the vendors referred to above. If there is any delay in taking delivery of actual physical possession within a period of one year, it was also agreed by the vendors, that a sum of Rs.6,000/- per month may be deducted out of Rs.2,25,000/- agreed to be paid for taking such delivery. It is also specifically mentioned in the varthamana letter that the rent for the demised premises is Rs.1,000/- and the revision petitioner was informed by the vendors to receive the rent from 26.3.1990 from the tenants and out of the said amount, a sum of Rs.500/- has to be paid by the revision petitioner to the vendors every month towards expenses for initiating action to recover actual possession from the tenants. The above said facts would lead to show that the vendors have specifically admitted the transfer of title in the demised property in favour of the revision petitioner and had even received the above said registered sale deed as a security for payment of Rs.2,25,000/- in the event of the vendors getting actual and physical possession of the demised premises from the tenants within a period of one year. It is also evident that the vendors have also admitted that the revision petitioner alone is entitled to collect the rent from the tenants. R.W.1 would admit during his cross-examination about the varthamana letter annexed to Ex. B-1 executed in between the revision petitioner and his vendors and also about the fact of the vendors agreeing and

authorising the revision petitioner to collect rent from the tenants. The above said documentary evidence and admission of R.W.1 would disclose that the revision petitioner alone is entitled to collect rent for the demised property from the respondents from the date of purchase of the said property under Ex. A-1 dated 26.3.1990.

9. Of course after receipt of Ex. B-1 dated 23.4.1990, the vendors of the revision petitioner had sent a notice Ex. B-3 through their counsel to the first respondent firm with a copy marked to the revision petitioner. In Ex. B-3 dated 25.5.1990, the vendors have stated that the value of the demised property sold to the revision petitioner was Rs.4,08,000/- out of which Rs.1,83,000/- alone was paid and the balance amount of Rs.2,25,000/- was withheld by the revision petitioner to pay at the time of delivery of actual possession. They have also stated in Ex. B-3 that the original sale deed Ex. A-1 was given to them as a token of mortgage and that therefore, the tenants should not pay or deliver possession to the revision petitioner. The fact of taking the property covered under Ex. A-1, as mortgage property, by the vendors as mentioned in Ex. B-3, would itself show that the vendors have admitted the passing of title in the demised property to the revision petitioner and therefore there can be no doubt with regard to the ownership of the property after receipt of Ex. B-1 along with varthamana letter referred to above by the respondents from the revision petitioner on 23.4.1990. In any event, the revision petitioner had sent a reply to the notice Ex. B-3 as seen in Ex. B-4 dated 29.5.1990 wherein it was specifically mentioned about the termination of the agency given to the vendors to take delivery of the possession of the demised property from the tenants on behalf of the revision petitioner and therefore the revision petitioner need not pay any amount much less Rs.2,25,000/- towards taking delivery of actual possession from the tenants. Copy of the said reply notice Ex. B-4 was marked to one of the partners of first respondent firm, wherein it is also specified that the vendors have no right to claim any rent from the tenants for the demised property and payment of rent by the tenants to the vendors after passing of title in the demised property from them, will be at the risk of the tenants/respondents.

10. It is relevant to point out that no reply notice was sent to Ex. B-1 dated 23.4.1990 by the respondents, but only after receipt of notice Ex. B-4 dated 29.5.1990, a letter was sent by the respondents to the revision petitioner in the month of June, 1990 as seen in Ex. B-2 by way of reply to Ex. B-1 dated 23.4.1990. While making a mention about the sale transaction as seen in Ex. A-1 and about the retaining of a sum of Rs.2,25,000/- by the revision petitioner payable to the vendors, the respondents have stated about the entertainment of a doubt with regard to the ownership of the property in the revision petitioner and therefore decided to deposit the rent in Court or in a nationalised bank. While stating so, the respondents have claimed to have paid a sum of Rs.25,000/- as advance at the time of entering into a lease agreement in the year 1980 with the vendors of the revision petitioner and also about the advance payment of rent of Rs.12,000/- for 12 months for the period from 1.3.1990

to 28.2.1991. R.W.1 during his cross-examination has admitted that he has not produced any receipt for payment of advance of Rs.25,000/- at the time of entering into a lease agreement with the vendors of the revision petitioner. The vendors of the revision petitioner have also not been examined to prove the above said fact of payment of advance. Therefore the payment of advance of Rs.25,000/- by the respondents to the vendors of the revision petitioner cannot be accepted.

11. The next point to be considered is whether the respondents had paid advance rent of Rs.12,000/- for 12 months commencing from 1.3.1990 to 28.2.1991 to the vendors of the revision petitioner?

12. Admittedly, Ex. A-1 registered sale deed was executed on 26.3.1990. Ex. B-6 series are the receipts said to have been issued by the erstwhile landlords to the respondents herein, for payment of rent. Ex. B-6 series contains one receipt dated 6.3.1990 for payment of rent of Rs.12,000/- towards 12 months'' rent for the period from 1.3.1990 to 28.2.1991 as advance rent. There is no mention about the receipt of advance of rent Rs.12,000/- in Ex. A-1. As already pointed out, the varthamana letter annexed to Ex. B-1 had come into existence on 26.3.1990. In the said varthamana letter also there is no mention of receipt of advance rent of Rs.12,000/- for the period mentioned above by the erstwhile owners. Ex. B-3 dated 25.5.1990 is the earliest letter sent by the erstwhile owners to one of the partners of the first respondent firm with a copy to the revision petitioner. In that notice also there is no mention about the receipt of Rs.12,000/- by them from the respondents as advance rent for the period from 1.3.1990 to 28.2.1991. The receipt has also not been admittedly produced along with the counter as seen from the admission made by R.W.1. As already pointed out, the erstwhile owners have not been examined to prove the receipt of advance rent of Rs.12,000/- by them from the respondents for the period mentioned above.

13. If the circumstances stated supra are taken into consideration, it is quite clear that the receipt issued for payment of advance rent of Rs.12,000/- unusually for the period from 1.3.1990 to 28.2.1991 should have been created in collusion between the erstwhile owners, who are in logger head with the revision petitioner and the respondents, who are sailing with the erstwhile owners, as seen in Ex. B-2. Therefore the payment of advance rent of Rs.12,000/- for a period of 12 months from 1.3.1990 to 28.2.1991 by the respondents to the erstwhile owners cannot be accepted. The respondents, who are aware of the purchase of the demised property by the revision petitioner from the erstwhile owners, are bound to pay rent to the revision petitioner.

14. Of course, the respondents herein, have filed a petition in R.C.O.P.No. 21 of 1991 u/s 9(3) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (herein after referred to as ''the Act''), for deposit of rent in Court. The above said petition was considered by the learned Rent Controller along with the Rent Control Original Petition filed in R.C.O.P. No. 36 of 1990 for eviction and has negatived the claim

made by the respondents to deposit the rent into Court on the ground that the respondents, who are bound to tender rent to the landlord, had not tendered rent to the landlord and the landlord had also not refused to receive the rent. Against the order of dismissal of the petition in R.C.O.P. No. 26 of 1991, the respondents have admittedly not chosen to file any appeal and the said order has become final. Mere filing of a petition u/s 9(3) of the Act will not come to the rescue of the respondents in any respect because of its dismissal on merits.

15. There is a statutory obligation on the part of the respondents to pay rent every month to the landlord without any demand from the landlord. In this case, the respondents have not chosen to pay rent to the revision petitioner colluding with the erstwhile landlords, who are in logger head with the revision petitioner. When the petition for eviction was filed on 26.10.1990 against the respondents by the revision petitioner, seven months rent were in arrears from the respondents to the revision petitioner. The respondents have not even chosen to tender the rent to the revision petitioner without prejudice to their right at any time before. The non-payment of rent even after demand made by the revision petitioner is a calculated, deliberate and intentional action on the part of the respondents herein.

16. In S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, , it has been held by the Hon''ble Apex Court as follows:-

"Thus, a consensus of the meaning of the words "wilful default" appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom."

The non-payment of rent to the revision petitioner for a period of seven months colluding with the erstwhile owners by the respondents knowing the legal consequences flowing therefrom will certainly amount to wilful default in payment of rent.

17. The decision relied on by the learned Senior Counsel Mr. V.K. Muthusamy appearing for the respondents reported in K. Narasimha Rao - vs. - T.M. Nasimuddin Ahamed, 1996 S.C. 1214, wherein it was held by the Hon''ble Apex Court that the landlord was bound to immediately refund the excess advance amount paid by the tenant even before arrears accrued and in the event of not refunding such excess advance amount, the landlord is bound to adjust it towards rent due from the tenant, will not come to the rescue of the respondents since there is no proof on the side of the respondents for payment of advance of Rs.25,000/- at the inception of the tenancy or for the payment of advance rent of Rs.12,000/- for the period from 1.3.1990 to 28.2.1991.

18. In view of the foregoing reasons, this Court holds that the respondents have committed wilful default in payment of rent for the period from the date of purchase of the demised property by the revision petitioner till the filing of the Rent Control Original Petition on 26.10.1990 before the Rent Control Court.

19. The next point for consideration is whether requirement of the demised premises by the revision petitioner for own use and occupation after demolishing and reconstructing a multi-storied building in the said premises is bona fide or not?

20. Admittedly, the revision petitioner is carrying on business in stainless steel utensils under the name and style of "Anguvilas Metal Stores" in a rented building at Door No. 6, Agraharam Street, Erode. According to the revision petitioner, he has purchased the demised property, which situates in Nethaji Street, Erode town, only for the purpose of shifting his business from the rented premises to a portion of the said premises after demolishing the existing superstructure and constructing a multi-storied complex and also to let out the remaining portion to others to augment his income. Therefore, according to the revision petitioner, the building is required bona fide for demolition and reconstruction and for his own use and occupation.

21. Of course, it is the case of the respondents that the said building has been in existence from 1980 and it is in good condition and that therefore there is no need for demolition and reconstruction of the said building. It is also contended by the learned Senior Counsel for the respondents that the requirement of the demised premises by the revision petitioner must be for immediate use, but in this case, it is not for immediate use, but for use of the same later after demolition and reconstruction of the multi-storied building. It is on this ground, the learned Senior Counsel appearing for the respondents contends that the requirement of the demised premises is not bona fide. There is no dispute that the demised premises is a cement sheet roofed building. Cement sheet roofed building is situate in the heart of the Erode town as seen from the evidence of P.W.1 and the revision petitioner is a man of means owning three storied building at a distance of 200 feet away from the junction of Valayakara Street, which was let out for shops and offices already. It is also an admitted fact that the said building is located at a distance of 250 feet away from the rented shop under the occupation of the revision petitioner. It is because of the existence of such multi-storied building owned by the revision petitioner, the respondents have not disputed that the revision petitioner is financially sound to put up a multi-storied building after demolishing the existing cement roofed building in the demised premises. Ex. A-7 is a sanctioned plan by the Erode Municipality for the construction of three storied complex in the demised premises.

22. Whether the revision petitioner has to be non-suited on the ground that the building is not dilapidated or dangerous for human habitation is a question to be considered at this stage.

23. In Vijay Singh etc. etc. Vs. Vijayalakshmi Ammal, , the Hon''ble Apex Court was pleased to hold as follows:-

"On reading Section 14(1)(b) along with Section 16 it can be said that for eviction of a tenant on the ground of demolition of the building for erecting a new building, the

building need not be dilapidated or dangerous for human habitation. If that was the requirement there is no occasion to put a condition to demolish within a specified time, and to erect a new building on the same site. . . . . Permission u/s 14(1)(b) cannot be granted by the Rent Controller on mere asking of the landlord, that he proposes to immediately demolish the building in question to erect a new building. At the same time, it is difficult to accept the stand of the appellants that the building must be dilapidated and dangerous, unfit for human habitation. For granting permission u/s 14(1)(b) the Rent Controller is expected to consider all relevant materials for recording a finding whether the requirement of the landlord for demolition of the building and erection of a new building on the same site is bona fide or not. For recording a finding that requirement for demolition was bona fide, the Rent Controller has to take into account: (1) bona fide intention of the landlord far from the sole object only to get rid of the tenants; (2) the age and condition of the building; (3) the financial position of the landlord to demolish and erect a new building according to the statutory requirements of the Act. These are some of the illustrative factors which have to be taken into consideration before an order is passed u/s 14(1)(b). No Court can fix any limit in respect of the age and condition of the building. That factor has to be taken into consideration along with other factors and then a conclusion one way or the other has to be arrived at by the Rent Controller."

24. Following the decision reported in S. Saraswathi Ammal (deceased) and Others Vs. R.S. Mallikarjun Raja and Others, , a learned single Judge of this Court, in Dorali Gounder - vs. - Ganeshmal and four others, 1998 (2) L.W. 546, has held that the building need not be in a dilapidated condition or in a dangerous state of affairs for ordering eviction u/s 14(1)(b) of the Act. Another learned single Judge of this Court in S.M. Ispahani and another Vs. Harrington House School, , has followed the principles laid down by their Lordships of the Honourable Apex Court in the above said decision and held, on complying with the above said conditions, the requirement of the building for demolition and reconstruction is bona fide.

25. The principle laid down in the said cases has been followed by this Court (P. THANGAVEL, J.) in M.M. Iliyas and another Vs. M.R. Pakkirisamy, also. In view of the decisions referred to above, it is clear that the building need not be dilapidated or dangerous for human habitation for ordering eviction of a tenant on the ground of demolition of the building for erecting a new building. These decisions will be an answer to the submission made by the learned Senior Counsel for the respondents that there is no need for demolishing the building since the said building is not in dilapidated condition or dangerous for human habitation. There is also no evidence worthy of consideration that the intention of the revision petitioner is only to evict the respondents from the demised premises.

26. In Syed Mehdi Ispahani Vs. Shakeel Ur-Rehman, a learned single Judge (R. BALASUBRAMANIAN, J.) of this Court has held that if the building required for

demolition and reconstruction is situate in an important area witnessing development and if the demolition sought for by the landlord is for better utilization of the property and to augment the income, such materials are relevant to test the bona fide requirement of landlord and accordingly held, the requirement is bona fide. In this case, as already pointed out, the building is located in bazaar street of Erode town and the revision petitioner wants to demolish the cement sheet roofed construction and to construct a multi-storied building with three floors to occupy the required portion for his business and to let out the remaining portion to augment his income. Therefore the requirement has to be held as bona fide as per the settled law.

27. The learned Senior Counsel for the respondents contends that the revision petitioner, who is already owning commercial complex on his own in Erode Town, can occupy a portion of that complex and there is no need to seek eviction of the respondents from the demised premises.

28. To counter the above said submission made by the above said Senior Counsel for the respondents, the learned Senior Counsel Mr. S.V. Jayaraman, appearing for the revision petitioner has brought to the notice of this Court, the decisions in M.V. Venkiduswami Pillai (died) and ten others - vs. - S. Swaminatha Rao reported in 1996 2 LW 752 (A.R.LAKSHMANAN, J.) and P. Sundaram - vs. - R. Gangadharan and another reported in (2001) 1 T.L.N.J. 267 (P. THANGAVEL, J.), wherein this Court has held that tenant cannot dictate terms to the landlord as to which premises, the landlord has to choose for his occupation. In view of the above said decisions, the contention raised by the learned Senior Counsel for the respondents herein cannot be sustained.

29. The revision petitioner has filed a petition in C.M.P. No. 1480 of 2000 in C.R.P. No. 827 of 1999 for receiving additional evidence and in the affidavit filed in support of the above petition, it was sworn by the revision petitioner to the effect that he is in a rented premises and he is facing threat of eviction from his landlord. The said averment in the affidavit was not denied in the counter-affidavit filed by the respondents. The above said fact would lead to infer that there is a threat of eviction against the revision petitioner by his landlord from the premises, where the revision petitioner is carrying on his stainless steel utensils business. That apart, it is specifically stated in the said affidavit of the revision petitioner that K. Muthuswamy, one of the partners of M/s. Premier Engine Stores, the first respondent herein, had constructed a shopping complex at Door No. 536, Nethaji Road, Erode-1. The respondents, while meeting out the said allegation, has stated that the shopping complex was constructed at Door No.536, Nethaji Road, Erode-1 by Mr. Nagaraj, son of K. Muthuswamy, one of the partners of the above said first respondent firm and the newspaper advertisement was issued by his son at the time of opening of the above said complex by showing his name also, since he is the father of the said Nagaraj. The above said averments in the counter also would disclose that K.

Muthuswamy, one of the partners of the above said partnership firm is having a shopping complex at Nethaji Road in Erode-1. If the foregoing reasons are taken into consideration, this Court has no other option except to hold that the revision petitioner has established that the requirement of the demised premises for demolition and reconstruction and for own use and occupation of a portion after letting out the remaining portion to others to augment his income, is bona fide.

30. Of course the learned Senior Counsel Mr. V.K. Muthusamy appearing for the respondents cited various rulings in support of the case of the respondents, but they are not relevant to decide the issues to be decided in this case.

31. In view of the foregoing reasons, this Court is not able to agree with the conclusion arrived at by the learned Rent Control Appellate Authority that the respondents have not committed wilful default in payment of rent and that the requirement of the demised premises for own use and occupation and for demolition and reconstruction is not bona fide. Therefore, the judgment and decree of the learned Rent Control Appellate Authority have to be set aside.

32. In fine, the judgment and decree of the learned Rent Control Appellate Authority are set aside and the Civil Revision Petition is allowed thereby restoring the order passed by the learned Rent Controller. In the peculiar circumstances of this case, both parties are directed to bear their own costs. Time to vacate three months.