

**(2010) 09 MAD CK 0286**

**Madras High Court (Madurai Bench)**

**Case No:** C.R.P. N.P.D. (MD) No. 1541 of 2010 and M.P. (MD) No. 2 of 2010

K.M.N. Jegannathan

APPELLANT

Vs

S. Chidambaran

RESPONDENT

**Date of Decision:** Sept. 2, 2010

**Acts Referred:**

- Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 - Section 10, 10(3), 2(2)

**Hon'ble Judges:** A. Selvam, J

**Bench:** Single Bench

**Advocate:** D. Nallathambi, for the Appellant; B. Bommayan, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

A. Selvam, J.

Challenge in this civil revision petition is to the concurrent orders passed in RCOP. No. 284 of 2003 by the Rent Controller (Principal District Munsif Court), Madurai Town and in RCA. No. 11 of 2008 by the Rent Control Appellate Authority (Principal Sub Court) Madurai.

2. The Respondent herein as Petitioner has filed the petition in question u/s 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, wherein the present revision Petitioner has been shown as Respondent.

3. It is averred in the petition that the Petitioner is the owner of the demised building and the same has been let out on a monthly rental of Rs. 1,650/- for residential purpose and the Respondent has been running a jewellery shop in the demised building. The Petitioner has been running a jewellery shop in a rental building. Under the said circumstances the Petitioner has accentuated the Respondent to vacate the demised building. But the Respondent has failed to concede his demand and subsequently exchange of notices has been made and

even after exchange of notices, the Respondent has refused to vacate the demised building and therefore, the present petition has been filed for the relief sought for therein.

4. It is averred in the counter that the Respondent has been enjoying the demised building as a tenant and the same has been let out to the father of the Respondent on a monthly rental of Rs. 1,200/- and subsequently monthly rental has been raised to Rs.1,650/-. The Respondent has given 15,000/- by way of advance. Since the Petitioner has refused to receive monthly rent, RCOP. No. 202 of 2003 has been filed for depositing monthly rent. The Petitioner is not entitled to get the relief sought for in the petition and therefore, the present petition deserves dismissal.

5. The Rent Controller after considering the rival evidence adduced on either side has allowed the petition. Against the order of eviction passed by the Rent Controller, the Respondent/tenant as Appellant has preferred RCA. No. 11 of 2008 on the file of the Appellate Authority.

6. The Appellate Authority after hearing both sides and upon reappraising the evidence available on record has dismissed RCA. No. 11 of 2008 and thereby confirmed the order of eviction passed in RCOP. No. 284 of 2003 by the Rent Controller. Against the concurrent orders passed by the Authorities below, the present civil revision petition has been preferred at the instance of the Respondent/tenant as revision Petitioner.

7. Before perpending the rival submissions made by either counsel, the Court has to perorate as to whether the requirement of the Respondent/petitioner/landlord is bona fide. The consistent case of the Respondent/petitioner/landlord is that he is running a jewellery shop in a rented building and the revision Petitioner/respondent/tenant is also running a jewellery shop in the demised building and the Respondent/petitioner/landlord wants to shift his business to the demised building. Under the said circumstances the present petition has been filed.

8. It is an admitted fact that the Respondent has been examined as RW1. During the course of cross examination he has candidly admitted that he has been running a jewellery business in the demised building and the Petitioner has also been running a jewellery business in Dinesh Complex and the same belongs to one Subramanian and others. Further he has stated in his evidence that in the demised building now there is no board at all. From the averments made in the petition and also from the clear admission made by the Respondent (RW1), the Court can unflinchingly come to a conclusion that requirement of the Respondent/petitioner/landlord is bona fide.

9. Now the Court has to look into the rival submissions made by either counsel.

10. The learned Counsel appearing for the revision Petitioner/respondent/tenant has vehemently contended that the present petition has been filed u/s 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the same has been

filed on 07.10.2003 and before filing the present petition a partition has been effected on 27.03.2003, wherein the demised building and the building which situates in first floor have been allotted to the share of the Respondent/petitioner/landlord and even though the building which situates in the first floor is a residential building, the Respondent/petitioner/landlord ought to have filed the present petition u/s 10(3)(c) of the said Act and in order to file the partition deed dated 27.03.2003 an attempt has been made in RCA. No. 11 of 2008 by way of filing a separate petition and the appellate authority has allowed the petition. But failed to look into the partition deed dated 27.03.2003. Under the said circumstances the entire petition has been filed erroneously and therefore, the concurrent orders passed by the Authorities below are liable to be interfered with.

11. In support of his contention, he has drawn the attention of the Court to the following decisions:

(a) The first and foremost decision is reported in Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others, wherein at paragraph - 8, it is observed like thus:

It is no doubt true that u/s 2(2) a building has been defined as not building or hut but also part of a building or hut let separately for residential or non-residential purpose. That would, however, only mean that a part of a building which has been let out or which is to be let out separately can also be construed as a separate and independent building without reference to the other portion or portions of the building where it is not necessary to treat the entire building as one whole and inseparable unit. A limitation on the definition has been placed by the Legislature itself by providing that the application of the definition is subject to the contextual position. Therefore, it follows that where the context warrants the entire building being construed as one integral unit, it would be inappropriate to view the building as consisting of several disintegrated units and not as one integrated structure. Secondly there is vast difference between the words "residential building" and "non-residential building" used in Section 10(3)(a)(i) and (iii) on the one hand and Section 10(3)(c) on the other. While Section 10(3)(a)(i) and (iii) refer to a building only as residential or non-residential. Section 10(3)(c) refers to a landlord occupying a part of a building, whether residential or non-residential. (Emphasis supplied) Furthermore, Section 10(3)(c) states that a landlord may apply to the Controller for an order of eviction being passed against the tenant "occupying the whole or any portion of the remaining part of the building" (Emphasis supplied). If as contended by the Appellant each portion of a building let out separately should always be construed as an independent unit by itself then there is no scope for a landlord occupying "a part of a building" seeking eviction of a tenant "occupying the whole or any portion of the remaining part of the building". It is, therefore, obvious that in so far as Section 10(3)(c) is concerned the Legislature has intended that the entire building, irrespective of one portion being occupied by the landlord and the other portion or portions being occupied by a tenant or tenants should be viewed as one

whole and integrated unit and not as different entities. To import the expansive definition of the word "building" in Section 2(2) into Section 10(3)(c) would result in rendering meaningless the words "part of a building" occupied by the landlord and a tenant "occupying the whole or any portion of the remaining part of the building". The third factor militating against the contention of the Appellant is that if a portion of a building let out to a tenant is to be treated in all situations as a separate and independent building then Section 10(3)(c) will be rendered otiose because the landlord can never then ask for additional accommodation since Section 10(3)(a) does not provide for eviction of tenants on the ground of additional accommodation for the landlord either for residential or non-residential purposes. It is a well settled rule of interpretation of statutes that the provisions of the Act should be interpreted in such a manner as not to render any of its provisions otiose unless there are compelling reasons for the Court to resort to that extreme contingency.

(b) The second decision is reported in A.P. Swamy Vs. V. Kunjithapadam, and the third decision is reported in Nataraja Trading Company and Others Vs. K. Manohar. In both the decisions, the decision of the Honourable Supreme Court reported in Shri Balaganesan Metals Vs. M.N. Shamugham Chetty and Others, has been followed.

12. The sum and substance of the decisions referred to supra is that if a landlord who is occupying only a part of the building, whether residential or non residential applied to the Controller, for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purpose or for purpose of business, he must file petition u/s 10(3)(c) of the said Act.

13. Now a nice legal as well as a factual question arises as to whether the present petition can be filed within the contour of the provision of Section 10(3)(a)(iii) of the said Act or the present petition should be filed u/s 10(3)(c) of the said Act.14. The sheet anchor of the argument advanced by the learned Counsel appearing for the revision Petitioner is the partition deed dated 27.03.2003. It is an admitted fact that on 27.03.2003 a partition has been effected, wherein the Respondent/petitioner/landlord and his two sons have been allotted the buildings which situate in T.S. Nos. 756 and 755. At this juncture, the Court has to look into as to whether as per partition deed dated 27.03.2003 the Petitioner is in exclusive occupation of the building which situates in the first floor. It is an admitted fact that the demised building is situate in the ground floor and a building is situate in the first floor.

15. It has already been pointed out that as per partition deed dated 27.03.2003 the Respondent/petitioner/landlord and his two sons have been allotted the buildings mentioned supra. Therefore, the Respondent/petitioner/landlord is not the absolute owner of the buildings mentioned supra and at the most, he is having only a fractional share and in order to clinch the above aspect, the Court has to look into

the decision reported in 1991 1 MLJ 229 (M/s. Shaporji Pollonji & Company (p) Ltd. Salem and Anr. v. A. Nishat and Anr.), wherein this Court has held that "if a person is having fractional interest in a premises, is not such occupation."

16. Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 reads as follows:

A landlord who is occupying only a part of a building, whether residential or non-residential, may, notwithstanding anything contained in clause(a), apply to the Controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be.

Therefore for invoking the said provision, there must be exclusive occupation of a part of the building. In the instant case as per partition deed dated 27.03.2003, the Respondent/petitioner/landlord is having only a fractional share in the buildings referred to supra and as per the decision referred to earlier, a person who is having a fractional share in a building, cannot be said that he is occupying the entire building or part of the building. Therefore, it is needless to say that the provision of Section 10(3)(c) of the said Act is not at all applicable to the present case.

17. It has already been pointed out that as per partition deed dated 27.03.2003 the Respondent/petitioner/landlord is having a fractional share in the buildings mentioned supra. At this juncture also a nice legal question arises as to whether a person who is having a fractional share can file a petition u/s 10 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.

18. In 93 LW 820 (Ehasan Bivi and Ors. v. Nagalakshmi Ammal), this Court has held that "a petition under Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 can be maintained even by a co-sharer without adding other co-sharers." Therefore, it is easily discernible that this petition is legally maintainable so as to evict the revision Petitioner/respondent/tenant.

19. The present petition has been filed u/s 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the same reads as follows:

in case it is any other non-residential building, if the landlord or [any member of his family] is not occupying for purposes of a business which he or [any member of his family] is carrying on, a non-residential building in the city, town or village concerned which is own.

20. The revision Petitioner/respondent/tenant has clearly admitted in his evidence that the Respondent/petitioner/landlord has been running a jewellery shop in Dinesh complex and that too in a rented building. Therefore, it is needless to say that the Respondent/petitioner/landlord is not having any other non residential building for the purpose of carrying on his business except the demised building.

Under the said circumstances the provision of Section 10(3)(a)(iii) of the said Act would clearly apply to the facts and circumstances of the present case. Even assuming without conceding that the present petition should come within the contour of Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the Court has to analyse as to whether the revision Petitioner/respondent/tenant can be evicted on the basis of the facts and circumstances of the present case.

21. It is a well settled principle of law that quoting a wrong provision of law is not a ground to reject the relief sought for in a petition and this view has been fortified in the decision reported in S. Mohammed Iqubal Vs. M. Padmanabhan, wherein this Court has held that it is a well settled law that on account of misquoting the provision of law, a party does not become disentitled to get the relief sought for, provided he is otherwise entitled for the same on facts and on proof.

22. Even at the risk of repetition, the Court would like to point out that the requirement of the Respondent/petitioner/landlord is bona fide. Even for the sake of argument that this petition should be filed under the provision of Section 10(3)(c) of the said Act, misquoting the provision of law in the petition in question, will not disentitle the Respondent/petitioner/landlord to get the relief sought for therein.

23. In order to repudiate the argument advanced by the learned Counsel appearing for the revision Petitioner/respondent/tenant, the learned Counsel appearing for the Respondent/petitioner/landlord has also argued that the present petition is legally maintainable u/s 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the Authorities below after considering all the contentions raised on either side have rightly rejected the contention urged on the side of the revision Petitioner/respondent/tenant and therefore, the entire argument advanced on the side of the revision Petitioner/respondent/tenant is liable to be rejected and the learned Counsel appearing for the Respondent/petitioner/landlord has accited the following decisions.

(a) The first foremost decision is reported in (2006) 2 MLJ 16 (P.M.S. Pakkir Mohideed v. K. Susila), wherein at paragraph - 11, it is observed that "it has been further clarified by the said judgment that if the landlord using a portion for residential purpose wants another portion of the said premises under occupation of the tenant for non-residential purposes then the landlord has to proceed u/s 10(3)(a)(iii) for owner's occupation and not u/s 10(3)(c) which deals with the additional accommodation for the existing usage of the landlord. In the same way if the landlord is in occupation of a portion of the premises for non residential purpose and wants to evict the tenant for residential purpose then also Section 10(3)(a)(iii) shall be resorted.

(b) The second decision is reported in 2009 2 L.W. 141 (M/s. Batco Roadways rep. by its Partner Mr. M.H. Patni v. A. Radhammal), wherein it is observed as follows:

(c) One cannot lose sight of the fact that an innocent landlady like the Respondent herein does not go to a lawyer seeking eviction with particular reference to any specific provision of law. Though ignorance of law is no excuse, the law does not expect a litigant to know the nuances of specific provisions. The Court cannot expect a landlady like the Respondent herein to know, assimilate and understand the fine distinction between Section 10(3)(a)(iii) and 10(3)(c) of the Act and instruct her lawyer to seek eviction under one of those provisions, after making a conscious choice between the two provisions. Therefore in cases of this nature, the Court has a duty to find out, despite the quote of a particular provision of law, as to whether the necessary ingredients of the provision of law as applicable to the case stands satisfied or not. In other words, if the case on hand would fall only u/s 10(3)(a)(iii) but had been filed u/s 10(3)(c), the Court cannot simply dismiss the petition as not maintainable, without looking into the pleadings and the evidence and without finding out whether at least the ingredients of the correct provision of law are satisfied in the pleadings and the evidence. If there are sufficient pleadings and evidence on record, to satisfy the requirements of Section 10(3)(a)(iii), the Court cannot reject the petition for eviction as not maintainable merely because a wrong provision of law is quoted by the counsel. If the case on hand is viewed from this perspective, it may be seen that the pleadings and the evidence certainly satisfy the ingredients of Section 10(3)(a)(iii) also. To satisfy the requirements of Section 10(3)(a)(iii), the landlord should plead and prove (i) that he or any member of his family is not occupying for the purpose of business, which he or any member of his family is carrying on, a non-residential building in the City and (ii) that the nature of user of the leased property by the tenant must correspond to the nature of the requirements of the landlord. In paragraph-6 of the petition for eviction, the landlady specifically pleaded that neither she nor her son was occupying any building of their own, other than the petition-building. In response to this averment in paragraph-6 of the petition for eviction, the tenant merely made a general denial in paragraph-6 of his counter. The tenant did not make a specific denial by pointing out that the landlady or her son was occupying any other building of their own for non-residential purposes. Thus the first requirement of Section 10(3)(a)(iii) stood pleaded. It also stood proved, by virtue of the evidence let in. The second requirement also stood satisfied as is obvious from the pleadings and the evidence. Therefore even the requirements of Section 10(3)(a)(iii) were satisfied in this case. As a matter of fact, the requirements of Section 10(3)(c) are more rigid than the requirements of Section 10(3)(a)(iii). In addition to proving bona fide requirement, a landlord seeking eviction u/s 10(3)(c) has also to prove that the comparative hardship caused by non-eviction will far outweigh the hardship caused to the tenant by eviction. By quoting Section 10(3)(c), the landlady in this case had taken upon herself, an additional burden to prove comparative hardship, which she would not have been called upon to do, if she had quoted Section 10(3)(a)(iii). The test of comparative hardship was also pleaded and proved in this case. Therefore it will be

unjustified to throw out the petition for eviction on the ground that Section 10(3)(a)(iii) and not Section 10(3)(c) ought to have been quoted. R. Banumathi, J., has held in *Suresh Kumar Kothari v. Dr. T. Ramachandran* 2007 (2) MLJ 955, that "on account of misquoting a provision of law, a party is not disentitled to the relief sought for, if he is otherwise entitled to the same on the facts and the evidence." In this case, the Respondent landlady has satisfied the requirements of Section 10(3)(a)(iii) also in addition to satisfying the requirements of Section 10(3)(c).

24. From the cumulative reading of the decisions referred to supra, it is made clear that on the basis of the facts and circumstances of the present petition, the same is legally maintainable u/s 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Further it is made clear that quoting a wrong provision of law in a petition like this, relief sought for therein cannot be refused. It is not an exaggeration to say that quoting provision of law is purely within the limit of a counsel who drafted the petition in question. If any mistake has been done by him, the legitimate right of the Petitioner therein should not be defeated. In the instant case, it has already been pointed out that the fact and circumstances mentioned in the petition would clearly come within the purview of Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and the present petition would not come within the contour of provision of Section 10(3)(c) of the said Act. Therefore, viewing from any angle the entire argument advanced by the learned Counsel appearing for the revision Petitioner/respondent/tenant cannot be accepted.

25. It has already been pointed out in many places that the requirement of the Respondent/petitioner/landlord is bona fide and in fact he has clearly established that the demised building is required for his own jewellery business. The Authorities below after considering all the contentions raised on either side have rightly rejected the main defence taken on the side of the revision Petitioner/respondent/tenant. In view of the foregoing elucidation of both the factual and legal aspects, this Court has not found any error nor illegality in the concurrent orders passed by the Courts below and altogether, the present civil revision petition deserves to be dismissed.

26. In fine, this civil revision petition deserves dismissal and accordingly is dismissed without cost. Connected Miscellaneous petition is also dismissed. The order passed in RCOP. No. 284 of 2003 by the Rent Controller (Principal District Munsif Court), Madurai Town, upheld in RCA. No. 11 of 2008 by the Rent Control Appellate Authority (Principal Sub Court) Madurai is confirmed. The revision Petitioner/respondent/tenant is given four months time to vacate the demised building.