

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.2323 of 2007
and
M.P.No.1 of 2013

Nagasamy Chettiar
rep. by his Power of Attorney Agent
N. Veeraraghavan

... Petitioner

vs.

1. Fathima Gani
2. Nazar
3. Bir Mohammed
4. Sultan

... Respondents

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Tamil Nadu Act 23 of 1973 and by Act 1 of 1980.

For Petitioners : Mr.V. Raghavachari

For Respondents : Mr.N.A. Nissar Ahmed
for R1 to R3

Mr. S. Sounthar
for proposed respondent

ORDER

This Civil Revision Petition arises against the fair and decretal order passed in R.C.A. No.5 of 2005 on the file of the Sub Court, Poonamallee dated 27.02.2007, confirming the order in R.C.O.P No.5 of 2001 on the file of District Munsif cum Rent Controller, Poonamallee dated 12.08.2004.

2. The facts of the case is as follows :-

The petitioner filed R.C.O.P No.5 of 2001 before the District Munsif, Poonamallee under Section 10(2)(ii)(a) and (b), 10(3)(a)(iii) of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, seeking to evict the respondents from the schedule mentioned premises of the petitioner on the grounds of, sub-letting, using the premises for different purpose other than for which it was let out, for owner's occupation and for repair and reconstruction. According to the petitioner, he is the owner of the demised property. The petitioner's father Nagaswamy Chettiar, had let out the demised property to one Mr. Sikkanthar, husband of the 1st respondent, father of the 2nd and 3rd respondents and father-in-law of the 4th respondent. The aforesaid Sikkanthar was a tenant under the petitioner's father and was running foot wear business, as per the agreement entered between the petitioner's father and the deceased Sikkanthar. At the

time of entering the agreement in the year 1978, rent was fixed at the rate of Rs.200/- and the same was increased periodically by renewing the agreement. The said agreement was renewed till 1993. As per the last renewal in the year 1993, the period of rental agreement expires on 06.02.1998, after five years period. According to the petitioner, after the expiry of the said agreement period, the petitioner requested to deliver the vacant possession of the demised premises. Considering the request of Sikkanthar, the petitioner allowed him to continue in possession, for further few months, on humanitarian grounds. In the meanwhile, the said Sikkanthar passed away in the year 1998 and the respondents 1 to 3, who are the legal heirs of the said Sikkanthar, continued in possession, without the consent of the petitioner. Therefore, the petitioner's father had caused legal notice on 10.10.2000 to the respondents, to vacate the premises.

3. It is a specific case of the petitioner that the said demised property has been sub-let by the respondents, in violation to the terms and conditions of the agreement. In spite of the legal notice caused by the petitioner's father, the respondents refused to vacate the premises. Therefore, he instituted a case in R.C.O.P No.5/2001 before the District Munsif Court, Poonamallee, to evict the

respondents, on the grounds of illegally sub-letting the premises to the 4th respondent, the premises is not being used for the purpose of running foot wear business as per the tenancy agreement, the demised premises is a old one and requires to be renovated and lastly, for the purpose of own use by the petitioner to run a tailor shop in the demised premises. The respondents filed a written statement in the aforesaid R.C.O.P contending that the petition filed by the petitioner is not maintainable and denied the allegation of sub-letting to a third party and disputed the ownership occupation of the petitioner and also denying the other grounds raised by the petitioner and hence pleaded for dismissal of the RCOP, before the Rent Control Authority.

4. On the side of the petitioner exhibits P1 to P4 were marked and exhibits R1 and R2 were marked by the respondents. The Rent Control Authority appointed an Advocate Commissioner in the year 1992, to inspect the demised property. A report was filed before the court below and the said report was marked as C1 and C2. Originally, the Rent Control Authority had considered the first issue of sub-letting the premises to the 4th respondent and decided that there is no contract between the petitioner and the 4th respondent. On the basis of the evidence of RW2/ the 4th respondent, it was decided that

the 4th respondent had conducted business in front of the shop, on the platform and not inside the shop as alleged by the petitioner. Since, the allegation of sub-letting was not supported by the petitioner's evidence, the contention of the petitioner on that ground was rejected. In so far as the second issue is concerned, the premises was leased out to the respondents for running a foot wear shop but the premises is used other than, for which it was leased out. Relying on the exhibits C1 & C2, the report of the Advocate Commissioner, stating that the said premises is used only for the purpose of running Raja Foot Ware and so the said allegation was also rejected, by the Rent Control Authority. The third ground is that the aforesaid premises is old, dilapidated and is in dangerous condition, requires renovation. Since the said ground was also not proved by the petitioner, the Rent Control Authority rejected the same. The last and final ground raised is that the petitioner require the premises for his own occupation. The reason stated by the Rent Control Authority for the rejection of the said ground is that the petitioner is an employee and a salaried person and that another shop was vacant at the time of filing the petition. The Rent Control Authority dismissed the RCOP No.5/2001 on 12.08.2004, on the above reasoning.

5. Assailing the above said order, the petitioner preferred an appeal in RCA No.5/2005 before the Subordinate Judge, Poonamallee. Learned Rent Control Appellate Authority, after considering the grounds raised by the petitioner, confirmed the order of the Rent Control Authority cum District Munsif, Poonamallee. The appellate authority gave a finding that the petitioner has not produced any documents to prove that he has sufficient sources of income to construct a building or renovate the building in the demised property. Therefore, in the absence of any such documents, the contention of the petitioner to renovate the property, as raised in the grounds, cannot be accepted. According to the Rent Control Appellate Authority, the petitioner has failed to establish his case, adducing oral and documentary evidences, for evicting the respondents from the demised premises. Challenging the order passed by the Rent Control Appellate Authority, the present Civil Revision Petition has been filed before this Court by the petitioner.

6. In the counter, the respondents have denied that the contentions of the petitioner as not banafide one, as the petitioner is employed and neither he has any tailoring shop nor has taken any steps to run a tailoring shop. But, there is no denial with regard to the qualification of the revision petitioner in the aforesaid counter

statement. Learned counsel for the respondents would further submit that the contention of the petitioner was strictly denied by the respondents before, both the Rent Control Authorities. The specific plea of the petitioner that he requires the premises for his own use, namely, for running a tailoring shop, has been rightly rejected by both Courts. It was held that the said requirement is not bonafide. According to the respondents, the contention of the revision petitioner's father in the RCOP that his son is employed and is going to run a tailoring shop in the above said premises, is only invented, for eviction. To deny the said ground, the 3rd respondent who was examined as RW-1, has categorically deposed in his statement that Nagasamy Chettiar's son does not know tailoring, which is extracted below :-

“ ehfrhkp brl;oahupd; kfDf;F ijay; ntiy bjupa[k;
vd;why; bjupahJ ”

7. Learned counsel for the respondents further contended that in order to collect exorbitant rent, the petitioner has proceeded to evict them from the demised premises and has filed the cases before the Rent Control Authorities stating that he requires the building for his own use. The finding of the Appellate Authority in RCA 5/2005 is

that another shop was vacant at the time of filing the petition and so the petitioner has not proved that the said requirement, is bonafide. Both the authorities, have considered both the oral and documentary evidences of the respondents and had come to a right conclusion and dismissed the case of the petitioner. Therefore, the petitioner has failed to prove his case and the courts below, based on facts and law, have rendered a well considered orders and so there no grounds to interfere with the orders passed by the authorities. Hence, prayed to dismiss the Civil Revision Petition.

8. Heard learned counsel for the petitioner and the learned counsel for the respondents.

9. Learned counsel for the petitioner would submit that the present revision petition has been filed for eviction of the respondent mainly for own use and occupation of the petitioner. According to the learned Rent Control Authorities, to succeed under the said section, the petitioner has to prove that,

- a) the building is of a non-residential character;
- b) the landlord or a member of the family should be carrying on business on the date of filing of the petition;
- c) the landlord should not be occupying any other non-residential

building of his own;

d) the landlord's claim should be bonafide;

The aforesaid ingredients are necessary to prove the bonafide, for eviction of tenant from the property. But, without considering the same, the Rent Control Authorities relying upon the decisions submitted by the respondents, had come to a conclusion that the petitioner has not proved his case and that the requirement is not bonafide on the part of the petitioner. Further, learned counsel for the petitioner would submit that when the matter was taken on appeal by the petitioner, the Appellate Authority had gone beyond the pleadings of the respondents and have come to the conclusion that one shop was vacant in the premises, at the time of filing the petition and that the petitioner has failed to prove the bonafide requirement to run his business, in the above said shop.

10. Learned counsel for the petitioner would further submit that the petitioner's father, namely, Nagasamy Chettiar, in the appeal petition has particularly raised a plea that his son, the petitioner herein, is a diploma holder in tailoring and intends to run a tailoring shop in the said premises. Further, it is contended that the property has been bequeathed in favour of the petitioner, after the life time of his father Nagasamy Chettiar, by a registered settlement deed.

Although it is the stand of the respondents, as categorically deposed by RW-1 in his statement, that Nagasamy Chettiar's son, namely, the petitioner does not know tailoring, the respondents have not explained as to why such contention has been denied in the counter statement and in the evidence of RW-2.

11. Learned counsel for the respondents has relied on the order passed in the case of **Ramalingam Pillai & 7 Ors. vs. Murugesan & anr., reported in 1993-1-LW-356**, where in paragraphs 9, 10, 14 and 18, this Court has held as follows :-

"9. It is common ground that there was no pleading to the effect that P.W.1 for whose benefit the suit premises was bonafide required, has no other non-residential building of his own in the same city. Of course, he has vaguely stated in the evidence that he does not own any other shop.

10. In (1981) 3 SCC 103 (supra) the Supreme Court has stated, under similar circumstances, as follows :-

"S.12 starts starts with a non-obstante clause thereby curtailing the right of the

landlord to seek eviction of the tenant which he might have under any other law and the right of eviction is made subject to the overriding provision of S.12. It is thus an enabling section. In order to avail the benefit conferred by S.12 to seek eviction of the tenant the landlord must satisfy the essential ingredients of the section. The landlord in this case seeks eviction of the tenant under S.12 (1)(f). He must therefore, establish (i) that he requires bonafide possession of a building let for non-residential purpose for continuing or starting his business; and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned. The burden to establish both the requirements of S.12 (1)(f) is squarely on the landlord. And before an allegation of fact to obtain the relief required is permitted to be proved, the law of leadings requires that such facts have to be alleged and must be put in issue. Ordinarily,

therefore, when a landlord seeks eviction under S12(1)(f) the court after satisfying itself that there are proper pleadings must frame two issues namely (i) whether the plaintiff-landlord proves that he bonafide requires possession of a building let to the tenant for non-residential purpose for continuing or starting his business; and (ii) whether he proves that he has no other reasonably suitable non-residential accommodation of his own in his in the city or town concerned. Without elaborating, we must notice a well-established proposition that any amount of proof offered without pleadings is generally of no relevance."

...

14. In 1989-1 LW 123 (*supra*), Srinivasan J., has held that the burden of proving that landlord owns another building in the city is on the tenant, and the landlord cannot be expected to prove a negative. But the point is clear that there must be pleading first, and then only the question of proof

arises. In the absence of any pleading, the question of proof does not arise.

...

18. As I am of the view that the absence of necessary pleadings and clear evidence is fatal to the petition for eviction filed by the landlords the petitioners/ tenants are entitled to succeed on that ground. Accordingly, the Civil Revision Petition is allowed. However, there will be no order as to costs."

The aforesaid observation has been followed in the decision of this Court in the case of ***Kathan vs. Scaw Manak Chand Shohaji*** reported in ***2004 (1) CTC 668***.

12. In paragraph 11 of the judgment, in the case of ***N.Mohambaram vs. M/s. C.K.C.M. Kader Shah & Brothers*** reported in ***1995 (1) MLJ 67***, this Court has held as follows :-

" 11. In order to obtain possession under Sec.10(3)(a)(iii) of the Act, the landlord must show that he is carrying on his business in a rented premises on the date of filing the petition. He must further show that he is not having or in occupation

of any other non-residential permises of his own or in the city of Madras. Apart from that the landlord must also prove the element of bonafide as contemplated under Sec. 10 (3)(e) of the Act. "

The case of ***M. Rajagopala Iyer vs. Top in Town Dry Cleaners, Madras -24*** reported in ***1992 (1) MLJ 167***, has been relied upon for concurrent finding of fact, based on evidence cannot be touched under Section 25 of the Act. The relevant paragraphs 11 & 12 of the order, are extracted below :

"11. After going through the arguments, I am of the view that the argument of the learned Counsel for the respondent that the finding of the Authorities below on the question of bona fides being a concurrent one, cannot be interfered with in the light of the ratio laid down by the Supreme Court in [Sri Rajalakshmi Dyeing Works and Ors. v. Rangaswamy Chettiar](#) , is well founded and if that be so other question need not be gone into. We have seen that both the learned Rent Controller and the appellate authority have concurrently held that the requirement of the landlord was not bona fide

on the ground that the petition under Section 10(3)(a)(iii) of the Act was filed with an oblique motive of getting enhanced rent and also a fabulous advance. It is now beyond doubt that even for the purpose of a petition under Section 10(3)(a)(iii) of the Act; the question of bona fides plays an important role. Vide the decision in [Hameedia Hardware Stores v. B. Mohan Lal Sowcar](#).

12. *[In Sri Rajalakshmi Dyeing Works and Ors. v. Ranagaswamy Chettiar](#) , the Supreme Court, while interpreting the scope and ambit of Section 25 of the Act, has categorically held as follows:*

"...The language of Section 25 is indeed very wide. But we must attach some significance to the circumstance that both the expressions 'appeal' and 'revision' are employed in the1 statute. Quite obviously, the expression 'revision' is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression 'appeal'. In fact, it has to be noticed that under [Section 25](#) the

High Court calls for and examines the record of the appellate authority in order to satisfy itself. The dominant idea conveyed by the incorporation of the words to satisfy itself under [Section 25](#) appears to be that the power conferred on the High Court under [Section 25](#) is essentially a power of superintendence. Therefore despite the wide language employed in [Section 25](#) the High Court quite obviously should not interfere with findings of fact merely because it does not agree with the findings of the subordinate authority. The power conferred on the High Court under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act may not be as narrow as the revisional power of the High Court under Section 115 of the Code of Civil Procedure but in the, words of Untwalia, J., in Dattondant Gopalvarao v. Vithalrao Marutirao . "It is not wide enough to make the High Court a second Court of first appeal."

Some argument was advanced whether a finding as to the bona fide requirement of a landlord is not a mixed question of fact and law. Reference was made to [Madan Lal v. Sain Dass Berry](#) , and *Kamla Soni v. Rup Lal Mehra* A.I.R. 1969 S.C. 186, on the one hand and [T.B. Garvate v. Nemi Chand](#) 1966 M.P.L.J. 28, and [Mattulal v. Radhe Lal](#) , on the other hand. We do not think it is necessary for the purposes of this case to enter into a discussion of this question. Merely to hold that a question is a mixed question of fact and law is not sufficient to warrant the exercise of revisional power. It must, however, be shown that there was a taint of such unreasonableness resulting in a miscarriage of justice. A concurrent finding, based on evidence, that the landlord did not bona fide require the premises for his own use and occupation is not in our view a finding which can be touched by the High Court exercising jurisdiction under Section 25

of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960.”

In the case of ***Hindustan Petroleum Corporation Limited vs. Dilbahar Singh*** reported in **(2014) 9 SCC 78**, the Hon'ble Supreme Court in paragraph 24, has observed as follows :-

"24.In Ramdoss v. K. Thangavelu (2000) 2 SCC 135, this Court again had an occasion to consider the scope of Section 25 of the Tamil Nadu Rent Control Act. Relying upon D. Sankaranarayanan v. Punjab National Bank, 1995 Supp (4) SCC 675, the Court held that the revisional power of the 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. The Court did not accept the argument that in exercise of its revisional jurisdiction, the High Court can interfere with incorrect finding or fact recorded by the courts below."

Therefore, the orders passed by the courts below cannot be termed as perverse or illegal and that there is no procedural illegality or

irregularity warranting interference under Section 25 of the Act.

13. Against the concurrent findings of both the Rent Control Authorities, the present appeal has been filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act 18 of 1960 as amended by Tamil Nadu Act 23 of 1973 and by Act 1 of 1980, to re-appreciate the evidence, on the basis of the settled law of this Court as well as the Hon'ble Supreme Court. It is contended by learned counsel for the petitioner that the aforesaid decisions relied on by the respondents, does not apply to the facts and circumstances of this case.

14. The point for consideration is mainly, on the ground of eviction for personal use and occupation, under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, (18 of 1960), which reads as follows :-

" 10(3)(a)(iii): 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 his own :

Under the provisions of the above said Act, the petitioner has to prove the aforesaid ingredients. On perusal of the typeset of papers filed by the petitioner, PW-1, the revision petitioner has deposed as follows :-

" ehd; vf;!;nghu;l; fk;bgdpapy; ntiy bra;fpnwd;.
ehd; gps!; 2 gh!; bra;Js;nsd;/ kw;Wk; bla;yup';fpy;
og;snkh nju;r;rp bgw;Ws;nsd;/ vdf;F brhe;jkhf bjhHpy;
bjhl';f Mu;tk; cs;sJ/ kD brhj;J ehd; bjhHpy; elj;j jFe;j
,lk;jhd;/ kD brhj;J vd; brhe;j cgnahfj;jpw;F njit vd;W
nfl;fpnwd; "

On perusal of the deposition made by the learned counsel for the respondents, it is clear that the evidence of the petitioner about his qualification, was not cross examined. It is also brought to the notice of this Court, the deposition of RW-1, Bir Mohammed, recorded as follows :

" v';fSf;F mDg;gpa nehl;O!py; mtu; mtu; kfDf;F
me;j njitgLtjhf brhy;ypapUf;fpwhu; vd;why; rupjhd;/ mtu; kfd;
xU epue;ju bjhHpy; ,y;yhjhy; eh';fs; filapy; jhd; xU ijay; fil
itf;fntz;Lk; vd;W TwpapUf;fpwhu; vd;why; rupjhd; "

In support of his contention, learned counsel for the respondents have relied on the decisions of this Court and Hon'ble Supreme Court, cited supra.

15. The contention of the petitioner is that the premises is required for opening a Tailor shop. During the cross examination, the petitioner has categorically stated that he is qualified and working in an export company. As contended by the petitioner, when the landlord specifically pleaded for eviction of the premises, there was no denial by the respondents either by the original tenant Mr.Sikkandar or in the counter statement. The evidence of the petitioner has not been properly considered by both the Rent Control Authorities. Learned counsel for the respondents had submitted that both the authorities have rejected the contention of the petitioner and have come to a concurrent findings and so this Court cannot interfere with the judgment, in this Civil Revision Petition, since it is neither perverse nor illegal.

16. The Original Authority had reason for rejection, that the petitioner is a salaried employee and that the bonafide is not proved for evicting the respondents from the premises. It is found that the

Rent Control Authorities have not appreciated the fact that there is no denial on the part of the respondents, disputing the petitioner's qualification in the counter statement. Further, when the petitioner was examined as PW-1, he has specifically deposed that he is qualified to run a Tailor Shop but there is no cross examination by the respondents regarding the said statement deposed by the petitioner. Therefore, there is no contradiction with regard to the question whether the petitioner possess the requisite qualification to run a Tailor shop. The Courts below had lost its sight to consider the case of the petitioner, when there is no denial in the counter statement and when the evidence was not cross examined. So, disproving the said qualification of the petitioner, cannot be countenanced. To his support, learned counsel for the petitioner has relied on the following judgments :-

This Court has held in ***R. Murugan vs. M.O.M. Abubucker reported in 2005 (5) CTC 473***, as follows :-

"17. OWN USE AND OCCUPATION:

Case of the petitioner/landlord is that he is an unemployed person and he is assisting his brother in running his provision shop and that he has decided to start a provision shop for himself. The petitioner/P.W. 1 has stated that the demised

premises is in a suitable place to start a Provision Shop and that he has Rs. 15,000 in Fixed Deposit to start the shop of his own and that he has made all arrangements to start the Provision Shop. In his evidence, P.W. 1 has clearly spoken about his intention and arrangement to start provision shop. For running a grocery shop, not much business expertise is necessary and hence there is no reason to disbelieve the version of the petitioner.

18. The claim of the petitioner/landlord on own use and occupation is resisted by the tenant on three fold contentions:

(i) the amount of Rs. 15,000 which the petitioner/landlord has in the Fixed Deposit may not be sufficient for doing Maligai Shop;

(ii) the petitioner landlord has two vacant buildings and if the landlord wants to do business, he could very well run the grocery shop in those buildings; and;

(iii) the demised premises is not suitable for running the grocery shop since it is located in

the midst of schools, hardware shops and marriage hall.

The above contentions of the tenant, either cumulatively or individually, are not sufficient to discard the petitioner's claim for own use and occupation."

In the case of ***T. Sivasubramaniam & Ors. vs. Kasinath Pujari & Ors. , reported in (2000) 1 MLJ 25 (SC)***, the Hon'ble Supreme Court has held as follows :-

In the case of ***A.S. Venkataraman vs. A.V.Harikrishnan Naidu, reported in 2013 (3) LW 845***, it is held as follows :-

"14.No doubt, an adjacent shop became vacant subsequent to the filing of the present RCOP. According to the landlord, the petition mentioned premises is the first shop in which alone they wanted to start the business. Therefore, the factum of the adjacent shop became vacant during the pendency of the present RCOP, is in no way has any relevance or affect the right of the landlord in seeking eviction against the petitioner/tenant. It is

well settled that the landlord is the person who has every right to choose which of the portion or shop is fit for his own occupation either for residential or non residential purpose and the tenant cannot dictate terms on this aspect. Being the owner of the premises and having satisfied his bonafide requirement, his wish and say are final in choosing the premises and the tenant has got no say in this.

15. In a case reported in 2004 (5) CTC 675, T.SIVAKUMAR Vs. K.PRABHAKARAN, the learned single Judge of this Court has considered similar issue almost on similar set of facts and found that though the landlord or the person for whom the eviction sought for, is not already carrying on business the requirement on the ground of own use and occupation can be ordered, if steps have been taken by the landlord for commencement of the business. At this juncture, it is to be noted that it is not necessary that in all the cases the landlord has to prove or show some materials that he has taken steps to commence the business. Such requirement depends upon the nature of each business. What is

required to be seen most importantly is that as to whether the requirement is a bona fide requirement and if such bona fide is proved by material documents the landlord should succeed in his attempt. The bona fide may be proved even by showing the intention and the qualification or eligibility to start the business. When such intention coupled with eligibility is established, then the bona fide of the landlord has to be held proved and mere non preparation for commencement of the business cannot be put against such person in all the cases. In certain business, even the pre-commencement preparation could be done only after occupying the premises. Some would intend to do petty business. Whether pre- commencement preparation is required or not is to be considered and decided based on the facts and circumstances of each case and there cannot be any universal formula for all the cases. Therefore, in this case when the landlord has proved the bona fide with sufficient materials by marking Exs.P3 to P7 and also by examining P.W.2 which evidence having not been rebutted by

adducing any contra evidence by the tenant, I find that the landlord is entitled to an order of eviction.?

In **2007 (2) CTC 797, B.Kishore Auto Spares vs. D. Maragathavalli**, it is held that,

"8. So far as the other non-residential portion is concerned, which is vacant, the Act does not say that if Landlord owns more than one non-residential building, he would be disentitled to an order of eviction. It is naturally open to the Landlady to choose which building she would require for occupation of business of P.W.2. Contention of Learned Counsel for the Revision Petitioner that the Landlady has other portion vacant and the Landlady's Son could occupy anyone of those premises cannot be countenanced both factually and legally. According to Landlady, the other portion is insufficient to run Automobile business. Even assuming that other premises is available, choice is left to the Landlady as to which non-residential premises she should occupy and the Tenant cannot dictate terms in this matter. Adverting to this

aspect, the Appellate Authority has observed even the Tenant is running Automobile business and his business requires three rooms, it would be unjust on his part to contend that in one single room, P.W.2 can commence his business."

...

13. *It is well settled that to invoke Section 10(3)(a)(iii) of the Act, it is enough that the Landlord makes bonafide preparations to commence business and it is not necessary that Landlord / Member of the family should be actually carrying on business on the date of the Petition. Some of the decisions for this proposition are:- [Arumugam Chettiar v. Jayaraman](#) 1995 (2) M.L.J. 282; [Thirunavukkarasu v. Vasantha Ammal](#) 1997 (2) L.W. 607; [Velmurugan Engineers Proprietor Ravendran v. Kaliappan](#) 1998 (2) M.L.J. 472; [Sivanraj v. Essakki Muthu and Jagathrakshagan and Ors. v. N. Futaree Bai and Ors.](#) 1993 (3) M.L.J. 303.*

14. *Petitioner's Husband has retired from MRL and he has retiral benefits. On behalf of Revision petitioner, it was contended that the*

Landlady has not adduced any evidence showing the means of P.W.2 to start business. Petitioner / Landlady need not produce currencies before the Court to prove the means for commencement of the business. In these days of encouragement of entrepreneurs, it would not be difficulty for availing loans from Financial Institutions and Banks. That apart, P.W.2 can very well utilise the experience of his retired Father and seeking his assistance. Contention that evidence is wanting as to how P.W.2 would mobilise the fund is unsustainable. "

In Laxmibai vs. Bhagwanthuva, reported in 2013 (4) SCC 97, it is held as follows :-

"31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to

impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in [Section 138](#) of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination Patna High Court CR. APP (SJ) No.1163 of 2010 dt.11-08-2015 15 in chief, and the scope of this provision stands enlarged by [Section 146](#) of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is

essential to ensure fair play and fairness in dealing with witnesses."

17. Further, confirming the plea of the respondents, the Appellate Court has given its finding on the reasoning that the petitioner has not produced any documents to show that there is sufficient income to run a tailor shop in the demised premises.

18. Therefore, in the light of the decisions relied above, eventhough there is a concurrent decision of the courts below, in the light of the decision of the Hon'ble Supreme Court in **SARLA AHUJA VS. UNITED INDIA INSURANCE COMPANY LTD reported in 1998 (III) C.T.C. 679**, held that while exercising the power under the revisional jurisdiction, which is ordinary power of supervision and is intended to ensure that the authorities under the Act confirms the law when they pass orders. If the finding arrived at by the Rent Controller is so unreasonable, that no Rent Controller could have reached such finding on the materials available, while exercising the revisional jurisdiction, the High Court could interfere with the Order of the Rent Control Authority even if it is a concurrent finding.

19. In the case of **S.V. Janardanam vs. D. Kivraj Sowkar in C.R.P No. 1008 of 1998 and C.R.P No. 1041 of 1998**, this Court

has set aside the order of the Rent Control Appellate Authority stating that this Court is conscious of the exercise of the revisional power under the Act. Since this court is of the view that the conclusion of the Appellate Authority is based on no evidence and perverse, the order impugned has to be necessarily interfered with. Also, in the case of **M.S. Hohammed Jahabar Kadiri & Ors, vs. G. Govindaraju & Ors. in C.R.P NPD No. 1317 of 1995**, the relevant paragraph 10 and 17 is extracted below :-

"10. Thus, the legal principle which could be culled out from the aforementioned decision are that if the findings of the authorities below though concurrent, if had been rendered without looking into the evidence, such decision can never be said as in accordance with law and this Court is fully justified in interfering with the concurrent findings.

17. For all the above reasons, it has to be held that the Courts below misread the evidence and over looked the law declared by the Courts on the ground of subletting and what are the tests to decide a case of subletting and therefore, this Court is convinced that the findings rendered by the Courts below being perverse and legally unsustainable, deserves to be interfered with. "

20. Taking into consideration all the above submissions, the fair and decretal order in R.C.A. No.5 of 2005 passed by the Sub Court, Poonamallee dated 27.02.2007, confirming the order in R.C.O.P No.5 of 2001 on the file of District Munsif cum Rent Control Authority, Poonamallee dated 12.08.2004, is hereby set aside and the R.C.O.P No.5 of 2001 is allowed. The respondents are directed to evict the premises within a period of three months from the date of receipt of a copy of this order.

21. In the result, the Civil Revision Petition is allowed. The M.P. No.1 of 2013 for impleading, is closed, with liberty to approach the appropriate forum. No order as to costs.

28.04.2017

Index : yes / no

avr

To

1. The Sub Court, Poonamallee.
2. The District Munsif cum Rent Control Authority ,
Poonamallee.

D.KRISHNAKUMAR, J.

(avr)

C.R.P.(NPD) No.2323 of 2007
and
M.P.No.1 of 2013

28.04.2017

**Pre-delivery order
in**

C.R.P.(NPD) No.2323 of 2007
and
M.P.No.1 of 2007

To

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

Respectfully submitted

C.R. Asha Viji Rani
P.A. to Hon'ble Judges