CASE NO.:
Appeal (civil) 2657-2658 of 20

PETITIONER:
KANNIAMMAL

Vs.

RESPONDENT:
CHELLARAM

DATE OF JUDGMENT: 12/04/2002

BENCH:
R.C. Lahoti & Bisheshwar Prasad Singh

JUDGMENT:

R.C. Lahoti, J.

Leave granted.

The suit property is a building described as door No.21, 7th Avenue, Ashok Nagar, Madras-83. It is owned by the landlady-appellant. A portion of the building is occupied by the appellant alongwith her three sons for the residence of the family. Another portion of the same building is held by the respondent as tenant for non-residential purpose on a monthly rent of Rs.400/-. The appellant initiated proceedings for eviction of the tenant under Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 (hereinafter 'the Act', for short) by alleging that her third son Venkatesh required the premises in occupation of tenant for commencing his own business of car air-conditioning. The Rent Controller directed the tenant-respondent to be evicted. The order of the Rent Controller was upheld in appeal. However, the same has been set aside by the High Court in the revision preferred by the tenant. The landlady sought for a review which was declined by the High Court. The aggrieved landlady has filed these appeals by special leave.

The Rent Controller has held that Venkatesh, the third son of the appellant, is having a Diploma in Air-Conditioning and Refrigeration and has also undergone training in automobile air-conditioning. He has, thus, experience to run a workshop in air-conditioning of cars. The landlady bona fide needs the tenancy premises for the business of her son and for that purpose she is not in possession of any other non-residential building of her own. This finding has been upheld in appeal as also in revision by the High Court. However, the High Court formed an opinion that inasmuch as the landlady was occupying a part of the same building in which tenancy premises are situated, she could have sought for eviction of the tenant only under Section 10(3)(c) of the Act. But as the landlady had filed the petition seeking eviction under Section 10(3)(a)(iii) of the Act, it was not maintainable and, therefore, the order of eviction was liable to be set aside.

The short question which arises for decision in these appeals is whether on the facts as found proved, the applicability of Section

10(3)(c) was attracted and, therefore, availability of Section 10(3)(a)(iii) as a ground for eviction was excluded for the appellant landlady.

The relevant part of Section 10 of the Act reads as under:-

"10(3)(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building__

(i) in case it is a residential building, if the landlord requires it for his own occupation or for the occupation of any member of his family and if he or any member of his family is not occupying a residential building of his own in the city, town or village concerned;

(ii) xxx xxx xxx

(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:

(b) xxx xxx xxx

(c) 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:

Provided that, in the case of an application under clause (c), the Controller shall reject the application if he is satisfied that the hardship which may be caused to the tenant by granting it will outweigh the advantage of the landlord:

Provided further that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building and may extend such time so as not to exceed three months in the aggregate."

Section 10(3)(c) came up for the consideration of this Court in Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty & Ors., (1987) 2 SCC 707. The provision was dealt with in-depth, analysed and made clear. This Court held that Clause (c) makes provision enabling a landlord to seek the eviction of any tenant occupying the whole or any portion of the remaining part of the building for residential or non-residential purposes for satisfying the additional need of the landlord irrespective of whether the need is for residential or business purpose. The phraseology employed by the Legislature in

framing Section 10(3)(c) and the use of non obstante clause therein make it clear that Section 10(3)(c) overrides the provisions of Section 10(3)(a)(i) and (iii). The latter provisions, i.e. 10(3)(a)(i) and (iii) have two in-built restrictions, viz. the landlord seeking eviction of a tenant thereunder should not be occupying a building of his own, and secondly, the nature of user of the leased property by the tenant must correspond to the nature of the requirement of the landlord. The use of the words "requires additional accommodation", as qualifying "for residential purpose or for purpose of a business which he is carrying on" indicates that under Section 10(3)(c) the requirement for additional accommodation must be for the same purpose for which the part of the building in occupation of the landlord is being used. If a landlord is occupying only a part of a residential building he may seek ejectment of tenant for his requirement of additional accommodation for residential purpose though the tenancy premises are being used by tenant for non-residential purpose. Similarly, a landlord who is occupying only a part of a building for non-residential purpose may have the tenant evicted if he requires additional accommodation for non-residential purpose it being immaterial that the tenant is occupying a part of the premises for residential purpose. Since the requirement of additional accommodation by the landlord is with reference to the manner of his user of that part of the building which is in his occupation it is the nature of that requirement that should prevail over the manner of user of the tenant of the portion leased out to him. In other words, the need for additional accommodation is for extending the user of the building by the landlord to the leased portion for the same purpose for which the portion not leased out is being used. It is not the requirement of Section 10(3)(c) that the nature of the requirement of the landlord and the nature of the user of the leased portion by the tenant should coalesce. That being the position of law, Section 10(3)(c) would not cover the present case where the landlady is occupying the not leased out portion of the building for residential purpose and the requirement for additional accommodation in another part of the building is for a non-residential purpose. The appellant-landlady rightly did not seek eviction of the tenant under Section 10(3)(c) and the High Court is not right in forming an opinion that the landlady could have maintained the application for eviction only under Section 10(3)(c) of the Act.

The facts set out in the application for an order for recovery of possession filed by the landlady attract applicability of Section 10(3)(a)(iii). The averments have been found substantiated entitling the landlady for an order under Section 10(3)(a)(iii). The High Court has clearly erred in setting aside the orders of the Rent Controller and the appellate authority.

The appeals are allowed. The impugned orders of the High Court are set aside and the order of the Rent Controller, as maintained by the appellate authority, is restored. However, the respondent is allowed four months' time from today for vacating the premises and putting the landlady in possession of the tenancy premises subject to his clearing all the arrears of rent and filing an usual undertaking within four weeks from today to deliver vacant and peaceful possession over the tenancy premises to the landlady. The respondent shall bear his costs and also of the appellant throughout.

....J
(R.C. LAHOTI)

.....J.
(BISHESHWAR PRASAD SINGH)

April 12, 2002.

JUDIS