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K. K. CHARI

v.

R. M. SESHADRI

March 16, 1973

B [A. ALAGIRISWAMI, I. D. DUA & C. A. VAIDIALINGAM, JJ.]

Madras Buildings (Lease and Rent Control) Act, 1960,—Section 10(3)(a)(i)—Bonafide requirement of landlord—Compromise decree—whether a separate enquiry and satisfaction apart from the compromise necessary for passing eviction order.

The appellant bought the suit premises and filed legal proceedings C against the respondent, who was a tenant in the suit premises, for eviction on the ground of appellant's bonafide requirements u/s 10(3) of the Madras Rent Control Act. The tenant contested the landlord's claim *inter alia*, on the ground that the appellant's claim was not *bona fide*. At the trial, the appellant examined himself, and produced voluminous documentary evidence. The appellant was not cross-examined. The appellant and the respondent then entered into a compromise in which the tenant gave up all his defences and was given D three months' time to vacate the premises. A decree for eviction was accordingly passed by the Small Causes Court. The respondent did not vacate the premises and when the decree was sought to be executed challenged the decree of eviction principally on the ground that the Small Causes Court had no jurisdiction to pass a decree only in terms of the compromise decree and that Court had a duty to independently satisfy itself about the *bona fide* requirement of the landlord. The High Court held E that the order of the Small Causes Court was without jurisdiction.

Allowing the appeal,

HELD : (i) The true position is that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact, namely, the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order.

F Satisfaction of the Court which is a pre-requisite for the order of eviction, need not be by the manifestation borne out by judicial findings. It at some stage, the Court was called upon to apply its mind to the question and there was sufficient material before it before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based. In the instant case, withdrawal of defences by the tenant expressly G amounts to the tenant admitting that the landlord has made out his case regarding his requirement requiring the premises for his own occupation being *bona fied*. [704E]

(ii) From the particular facts of this case, it can be said that the decree for eviction has not been solely passed on the basis of the compromise. The evidence adduced by the respondent upto the stage at which the compromise was entered into, was enough to establish the land- H lord's claim.

Bahadur Singh and another v. *Muni Subrat Das* [1969] 2 S.C.R. 432, *Kaushalya Devi* v. *K. L. Bansal* A.I.R. 1970 S.C. 838, and *Ferozi Lal* v. *Manmal and Others* A.I.R. 1970 S.C. 794, distinguished on facts.

Per Alagiriswami, J. An eviction order based on a compromise where the landlord has asked for possession on any one of the grounds on the basis of which he could ask for possession, is valid. [708D]

Barton v. *Fincham*, [1921] 2 K.B. 291, *Babu Ram Sharma* v. *Pal Singh*, [1959] P.L.R. 33, *Vyas Dev* v. *Nikhiram*, A.I.R. 1960 Punjab 514 cited with approval.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 447 of 1971.

Appeal by special leave from the judgment and order dated September 15, 1970 of the Madras High Court in C.R.P. No. 797 of 1970.

M. C. Setalvad, and *K. Jayaram,* for the appellant.

V. M. Tarkunde, E. C. Agarwala, A. T. M. Sampath and *M. M. L. Srivastava*, for the respondent.

The Judgment of I. D. DUA and C. A. VAIDIALINGAM, JJ. was delivered by VAIDIALINGAM, J. A. ALAGIRISWAMI, J. gave a separate opinion.

VAIDIALINGAM, J.—The short question that arises for consideration in this appeal, by special leave, is whether the order dated March 31, 1969, passed by the Court of Small Causes, Madras, in H.R.C. No. 983 of 1968 directing the eviction of the respondent-tenant is a nullity and as such not executable. The facts leading upto the passing of the order may be stated :

The appellant was occupying a premises in Madras as a tenant. His landlady filed an application H.R.C. No. 1924 of 1967 seeking eviction of the appellant on the ground that she *bona fide* required the premises for her own occupation. At that time the suit premises No. 64, Lloyds Road, Royaspettah, Madras-14 was advertised for sale. The appellant for purposes of his occupation purchased the premises on October 23, 1967, as per registered document No. 1633 of 1967 in Sub-Registrar's Office, Mylapore. The respondent was then a tenant of the suit premises under the vendor. After the purchase, he attorned in favour of the appellant and has been paying rent. An eviction order was passed by consent against the appellant in H.R.C. No. 1924 of 1967 on January 27, 1968. He was given time till January 27, 1969, to vacate the premises, of which he was in occupation as a tenant, by virtue of the said decree. On the same day *i.e.* January 27, 1968, the appellant issued two notices to the respondent, his tenant in respect of the suit premises, terminating tenancy of the Respondent under section 106 of the Transfer of Property Act and calling upon him to quit and deliver vacant possession on February 29, 1968. The two notices were given because of the fact that the first notice had

A asked for vacant possession on February 28, 1968 and to avoid any objection regarding the first notice probably the second notice was also given asking for possession on February 29, 1968. In both the notices, the appellant had referred to the purchase of the bungalow in question for his own occupation and also attributed knowledge of the said purpose to the tenant. There is a reference B to the appellant being a tenant of premises No. 2, Lakshmipuram, 1st street, Madras-14, and to his having no other house of his own in the city of Madras except the suit premises. It is further stated that in view of the fact that an eviction order against him has been passed on January 27, 1968, in H.R.C. 1924 of 1967, the appellant requires his own bungalow, namely, the suit premises in the C occupation of the respondent for his own *bona fide* use and occupation.

As the respondent did not surrender possession of the premises, the appellant filed H.R.C. No. 983 of 1968 in the court of Small Causes, Madras, under section 10(3)(a)(i) of the Madras Buildings (Lease & Rent Control) Act, 1960 (hereinafter referred to D as the Act). In this petition, after referring to the purchase of the suit premises, as well as the order of eviction passed against him in H.R.C. No. 1924 of 1967, the appellant has stated that he has no other house of his own any where in the city of Madras excepting the suit premises of which the respondent is the tenant. He has further averred that he has terminated the tenancy of the E respondent by issuing notices on January 27, 1968, and that the tenant has not vacated the premises though he has received the notice. There is also a reference to the fact that the respondent is not in essential service and that the suit premises is not exempt under section 30 of the Act. He has further stated that he requires the house for his *bona fide* use and occupation. Accordingly be prayed for eviction of the respondent and for possession F being delivered to him.

The respondent filed two counter-affidavits, one on July 19, 1968 and another on January 14, 1969. In the former he has raised the contention that he is not a tenant of the suit premises, either under the appellant or under the previous owner of the premises. According to him, the tenant of the premises was and G continues to be at the relevant time M/s. R. M. Seshadri, a partnership firm. He has further pleaded that as he was never a tenant, the claim made by the appellant of having terminated his tenancy is meaningless. Finally he has stated that the application is not maintained against him and prayed for its being dismissed. In the additional counter-affidavit, the respondent pleaded that the H appellant does not require the house for his occupation and that his claim is not *bona fide*. He has also controverted the claim of the appellant that an eviction order had been passed against him

in H.R.C. No. 1924 of 1967. In any event, the order of eviction against the appellant is a collusive one and is only a devise to evict the respondent. He further pleaded that the purchase by the appellant itself is not lawful. Finally he raised a contention that the tenant, M/s. R. M. Seshadri, has spent enormous amounts on the house acting on the assurance of its previous owner that the house would never be sold and the tenant of the premises would never be evicted. Finally there is a challenge also to the notices determining the tenancy not being in accordance with law.

The enquiry before the Court of Small Causes appears to have commenced on January 16, 1969. The appellant was examined on that day as PW 1 and his evidence appears to have spread over till February 20, 1969. In the course of his evidence, he has spoken to him being a tenant of a house of which one Seethalakshmi Ammal was the landlady and to her having filed an application for eviction against him, to his purchasing the present suit premises on October 23, 1967, for purposes of his own occupation, to the respondent having been a tenant against the original landlord at the time of purchase and later attorney to him, to the payment of rent by the respondent, subsequent to the purchase and to the notices issued to the respondent terminating his tenancy under section 106 of the Transfer of Property Act and requiring him to deliver possession of the property for purposes of his occupation. He has also filed a large volume of exhibits in respect of the matters spoken to by him before the court. He has particularly mentioned the fact that he purchased the said house for purposes of his occupation, as he was under orders of eviction in H.R.C. No. 1924 of 1967 and to his having no other house in the city of Madras. The last exhibit that was filed by him was Exhibit P. 45, which was a certified copy of the order in H.R.C. 1924 of 1967, which showed that an order of eviction had been passed against the appellant on January 27, 1968, and he was given time till January 27, 1969, for vacating the premises. It was no doubt a consent order. But all the exhibits filed by him clearly go to establish that his evidence that he required the suit premises *bona fide* for his own occupation, was true. The respondent had not chosen to cross-examine the appellant. On March 31, 1969, both parties entered into a compromise in the following terms :

"MEMO OF COMPROMISE

The Respondent hereby withdraws his defence in the aforesaid petition and submits to a decree for eviction unconditionally.

(2) The Respondent prays that time for vacating up to 5th June 1969 might please be given and the Petitioner agrees to the same.

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(3) The Respondent agrees to vacate the petition premises and hand over possession of the entire petition premises to the petitioner on or before the said date *viz.* 5th June 1969 without fail under any circumstances and undertakes not to apply for extension of time.

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(4) It is agreed by both the parties that this Memo of Compromise is executable as a Decree of Court.

Dated at Madras, this the 31st day of March, 1969".

The compromise petition was signed by both the appellant and the respondent as well as the advocate appearing for them. The court, after referring to the petition of the landlord being under section 10(3)(a)(i) of the Act on the ground of his own occupation, passed the following order :—

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"Compromise memo filed and recorded. By consent eviction is ordered granting time to vacate till 5-6-1969. No cost".

D The terms of compromise, which have been already set out, were also incorporated in the order.

It will be noted that the respondent had raised substantially the following defence to the application filed by the appellant, namely—

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(1) he was not a tenant of the premises and that on the other hand, the tenant of the premises was M/s. R. M. Seshadri, a partnership firm;

(2) the claim of the appellant that he requires the house for the occupation is not *bona fide;*

(3) the purchase of the premises by the appellant is

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not lawful;

(4) the tenant, M/s. R. M. Seshadri, has spent enormous amounts by way of repairs and improvements; and

(5) the notice determining the tenancy is not in accordance with law.

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It was to meet the above defence and also to establish his claim of requiring the premises *bona fide* for his own occupation, the landlord-appellant gave the evidence and also produced about 45 exhibits. It is needless to state that the respondent, who is a retired I.C.S. officer and an advocate, must have been fully aware

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of the averments made by the landlord, the pleas raised in defence as well as the nature of the evidence led by the landlord to meet his defence. The respondent, apart from not having cross-examined the landlord, when he gave evidence, has also by the com-

promise withdrawn all his defence to the application filed by the landlord and submitted to a decree for eviction unconditionally. It is with this background that one has to appreciate the nature of the decree passed by the Court on March 31, 1969.

It is also seen from the records that the appellant paid a sum of Rs. 20,000/- on March 31, 1969, to the respondent towards the cost of repairs and improvements effected by him during his occupation of the suit premises. On the same date, as the compromise *i.e.* March 31, 1969, the respondent passed a letter to the appellant. In this letter after referring to the compromise filed in the court as well as the order passed thereon, he gave an undertaking to vacate the premises on or before June 5, 1969. He also acknowledged the receipt of the sum of Rs. 20,000/- from the landlord towards the cost of repairs and improvements. The respondent has also further agreed to refund the sum of Rs. 20,000/- if he does not vacate the premises within time and he has also further agreed to pay an additional sum of Rs. 10,000/- as damages. We are not concerned with this sum of Rs. 20,000/- or the further agreement of the respondent to pay damages. The respondent has further stated in the said letter that in the event of his failure to vacate the premises within time, the landlord is at liberty to execute the decree of eviction without any further notice to him.

The assurance and the undertaking given by the respondent to abide by the compromise decree and to vacate the premises without raising any objection have proved to be of no avail, as will be seen from the events that followed. When the time for delivery of property was drawing near, the respondent's son, one S. M. Sundaram, filed a suit in the City Civil Court, Madras, for a declaration that the purchase by the appellant of the suit property was void. The son also obtained an interim injunction against the appellant from executing the order of eviction passed in H.R.C. No. 983 of 1968 and disturbing his possession. The suit was tried on merits and was ultimately dismissed by the City Civil Court on December 12, 1969 with costs of the appellant. According to the appellant, this suit was engineered by the respondent himself in order to put off his eviction from the suit property.

After the dismissal of the above suit, the appellant filed Execution Petition No. 953 of 1969 in the City Civil Court, Madras (which was the competent Court for purposes of execution) to execute the order of eviction against the respondent in H.R.C. No. 983 of 1968. The respondent filed E. A. No. 1314 of 1969 objecting to the execution of the decree on the ground that it was a nullity and inexecutable; and as such he prayed for the warrant of possession issued in Execution Petition to be recalled and to dismiss the Execution Petition itself. His main plea in this appli-

A cation was that the decree sought to be executed was one based on compromise or consent without the Rent Control Court having satisfied itself by an independent consideration regarding the *bona fide* requirement of the property by the landlord for his own occupation; and as such the decree contravened section 10 of the Act. This application was opposed by the appellant in a lengthy counter-
B affidavit. In this counter-affidavit, the landlord, after referring to the various items of evidence adduced before the court, which have been referred to earlier, has stated that it was when the respondent found that the pleas raised by him could not be sustained and that the landlord's case was true that he unconditionally withdrew his defence and submitted to a decree. He has further
C pleaded that the decree sought to be executed does not suffer any infirmity.

The learned City Civil Judge by his order dated March 18, 1970, over-ruled the objections raised by the respondent and dismissed E. A. No. 1314 of 1969 and gave time to the respondent till April 20, 1970, to vacate and deliver the possession of the
D property. The respondent carried the matter to the High Court in Civil Revision Petition No. 797 of 1970. The High Court by its judgment and order dated September 15, 1970, has reversed the order of the City Civil Court and accepted the contentions of the respondent. The learned Judge has held that the decree for eviction dated March 31, 1969, is solely passed on the basis of the
E compromise and the Rent Controller has not applied his mind to satisfy himself whether the *bona fide* requirement of the landlord has been established. It is the further view of the High Court that even if there was enough material before the Rent Control Court, when it passed the order of eviction by consent, the decree will, nevertheless, be void so long as the Rent Controller has not
F given his decision regarding the requirement of the landlord being *bona fide*. On this line of reasoning, the learned Judge held that the eviction order is a nullity and is not executable.

Mr. M. C. Setalvad, learned counsel for the appellant, has urged that the High Court has misunderstood and mis-interpreted the decisions of this Court bearing on the point. He pointed out
G that the appellant had specifically pleaded that he required the house *bona fide* for his own occupation, which is one of the circumstances under which a landlord can claim eviction of the tenant under the Act. The circumstances under which the house was required by him were also spoken to by the landlord when he gave evidence and he sought support by filing as many as forty-five
H exhibits before the court. The respondent had denied the plea of the landlord in his counter-affidavit. Nevertheless, when the entire evidence was placed before the court by th landlord, the tenant did not choose to cross-examine him, as he must have felt

that the landlord's claim would be accepted by the court and his defence rejected. It was under those circumstances that the respondent unconditionally withdrew his defence and submitted to a decree for eviction. That conduct of the respondent clearly establishes that he has accepted as true the claim of the landlord that he *bona fide* required the premises for his own use and occupation. The materials on record also show that the court was satisfied about the *bona fide* requirement of the landlord and hence it accepted the compromise and made it a decree of court. Under those circumstances, the counsel contended that it cannot be said that the decree is one passed only on the basis of the compromise so as to make it void.

Mr. Tarkunde, learned counsel for the respondent, urged that the decree for eviction has been passed exclusively on the basis of the compromise entered into by the parties. There is no indication that the court at any stage applied its mind and satisfied itself regarding the premises being required by the landlord *bona fide* for his own occupation. The relevant provision of the Act, the counsel pointed out, is quite clear and it makes it mandatory that the court must apply its mind and satisfy itself that the claim for eviction falls within one or other of the provisions which enables a landlord to get possession. He further pointed out that if the satisfaction of the court is not expressed in the decree, the executing Court has no option but to hold that the same is void, as laid down by this Court, and it cannot go into the question whether from the materials on record the Rent Control Court was satisfied or not. Such an enquiry, it is pointed out, will be asking the executing Court also to go into the question whether the landlord has made out a case for eviction—a question which falls within the exclusive jurisdiction of the Rent Control Court. Mr. Tarkunde finally pointed out that the decision of the High Court holding that the decree in question is void is correct, as it is in accordance with the decisions of this Court.

It is now necessary to refer to the material provisions of the Act. Section 10 deals with eviction of tenants. The relevant part of section 10, necessary for our purpose, is as follows :—

> *Eviction of tenants.* "10(1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16 :
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> x x x x x
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> 2(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order direct-

A ing 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 his son and if he or his son is not occupying a residential building of his own in the city, town or village
B concerned;

X X X X X

(a) The Controller shall, if he is satisfied that the claim of the landlord in *bona fide*, make an order directing the tenant to put the landlord in possession of the
C building on such date as may be specified by the Controller and if the Controller is not so satisfied he shall make an order rejecting the application :

X X X X X

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

Section 10(1) places an embargo on the right of a landlord to get a tenant evicted except in accordance with the provisions of that section or sections 14 to 16. We are not concerned with sections 14 to 16 in this case. Sub-section 2 enumerates certain
E circumstances under which a landlord can ask for eviction. We are not also concerned with that provision. Sub-section 3 again enumerates certain other circumstances under which a landlord, subject to the provisions of clause (d), can ask for possession of the building from the tenant. It is accepted by both parties that clause (d) has no application. Sub-clause (i), which deals
F with a residential building, enables a landlord to ask for possession of a building in the circumstances mentioned therein. Under subclause (e), if the Controller is satisfied that the claim of the landlord is *bona fide* he may pass an order of eviction.

In this case, the landlord has asked for eviction on the ground that he requires the premises for his own occupation. The Con-
G troller can pass an order in his favour only if he is satisfied that his claim is *bona fide*. The statute says so and that has to be given full effect. The question is whether in the case before us, it can be stated that the Controller was so satisfied when he passed the order of eviction on March 31, 1969.

Our attention has been drawn to certain English decisions
H rendered under the Rent Restrictions Act, wherein it has been held that though the court has jurisdiction to order possession in favour of a landlord only on one or other of the specified statutory

grounds, the court may act on an admission made by a tenant in that behalf and pass an order of eviction without being obliged to hear a case out. It is not necessary for us to refer to those decisions as, in our opinion, the case on hand will have to be decided in accordance with the principles laid down by this Court.

There are three decisions of this Court which require to be considered. In *Bahadur Singh & Anr.* v. *Muni Subrat Dass & Anr.*,(1) a decree for eviction passed on the basis of a compromise between the parties, was held, by this Court, to be a nullity as contravening section 13(1) of the Delhi and Ajmer Rent Control Act, 1952. The facts therein were as follows :—

The tenant and the son of the landlord referred the disputes between them to arbitration. The landlord was not a party to this agreement. The arbitrators passed an award whereunder the tenant was to give vacant possession of the premises in favour of the landlord within a particular time. This award was made a decree of court. The landlord, who was neither a party to the award nor to the proceedings, which resulted in the award being made a decree of court, applied for eviction of the tenant on the basis of the award. The tenant resisted execution by raising various objections under section 47 of the Code of Civil Procedure. One of the objections, was that the decree for eviction based upon the award was a nullity as being opposed to the Delhi and Ajmer Rent Control Act, 1952. This Court held that the decree directing the tenant to deliver possession of the premises to the landlord was a nullity, as it was passed in contravention of section 13(1) of the relevant statute. After quoting the sub-section, this Court further held that the decree for eviction passed according to an award, in a proceeding to which the landlord was not a party, and without the court satisfying itself that a statutory ground of eviction existed, was a nullity and cannot be enforced in execution. It will be seen from this decision that the decree was held to be a nullity because the landlord was not a party thereto, and also because the court had not satisfied itself that a ground for eviction, as required by the statute, existed. This decision is certainly an authority for the proposition that a court ordering eviction has to satisfy itself that a statutory ground of eviction has been made out by a landlord. How exactly that satisfaction is to be expressed by the court or gathered from the materials, has not been laid down in this decision, as this Court was not faced with such a problem.

In *Kaushalya Devi & Ors.* v. *Shri K. L. Bansal*,(2) the question again arose under the same Delhi statute regarding the validity

(1) [1969] 2 S.C.R. 432.

(2) [1969] 2 S.C.R. 1048.

A of a decree passed for eviction on compromise. The plaintiff therein filed a suit for eviction of the tenant on two grounds :—

(a) the premises were required for their own use; and

(b) the tenant had committed default in payment of rent.

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The tenant filed a written statement denying both these allegations. He disputed the claim of the landlord regarding his requiring the premises for his own use *bona fide* and also the fact of his being in arrears. When the pleadings of the landlord and the tenant were in this state, both parties filed a compromise memo in and C by which they agreed to the passing of a decree of eviction against the tenant. Representations to the same effect were also made by the counsel for both parties. The court passed the following order :—

"In view of the statement of the parties' counsel and the written compromise, a decree is passed in favour of D the plaintiff against the defendant".

The tenant did not vacate the premises within the time mentioned as per the compromise memo. On the other hand, he filed an application under section 47, Civil Procedure Code, pleading that the decree is void as being in contravention of section 13 of the E Delhi statute. The High Court held that the decree was a nullity, as the order was passed solely on the basis of the compromise without indicating that any of the statutory grounds mentioned in section 13 existed. Following the decision in *Bahadur Singh & Anr.*,(1) this Court upheld the order of the High Court. Here again, it will be seen that the manner in which the court's satisfaction is to be expressed or gathered has not been dealt with. F

A similar question came up again before this Court in *Ferozi Lal Jain* v. *Man Mal & Anr.*(2) The landlord filed an application for eviction of the tenant on the ground that he had sublet the premises without obtaining his consent in writing. Subletting, without the consent of the landlord in writing, was one of the G grounds under section 13(1) of the Delhi statute entitling a landlord to ask for eviction. The tenant denied the allegation that he had sublet the premises. Both the landlord and the tenant entered into a compromise and the court, after recording the same, passed the following order :—

"As per compromise, decree for ejectment and for H Rs. 165/- with proportionate costs is passed in favour of the plaintiff and against the defendant. The parties

(1) [1969] 2 S.C.R. 432. (2) A.I.R. 1970 S.C.794.

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shall be bound by the terms of the compromise. The terms of the compromise be incorporated in the decree-sheet....."

As the tenant did not surrender possession of the properties within the time mentioned in the compromise memo, the landlord levied execution. It was resisted by the tenant on various grounds one of which was that the decree for eviction was a nullity, being in contravention of section 13 of the Delhi statute. This contention was accepted by the execution Court, as well as by the High Court. This Court, after a reference to the provisions of section 13, held that a decree for recovery of possession can be passed only if the court concerned is satisfied that one or other of the grounds mentioned in the section is established. This Court, further observed :

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"From the facts mentioned earlier, it is seen that at no stage, the Court was called upon to apply its mind to the question whether the alleged subletting is true or not. Order made by it does not show that it was satisfied that the subletting complained of has taken place, nor is there any other material on record to show that it was so satisfied. It is clear from the record that the court had proceeded solely on the basis of the compromise arrived at between the parties. That being so there can be hardly any doubt that the court was not competent to pass the impugned decree. Hence the decree under execution must be held to be a nullity".

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Reference was also made to the two earlier decisions holding such decrees to be void. It is significant to note that this Court in the last mentioned decision referred to the facts leading upto the compromise decree, namely, the basis of the claim of the landlord, the denial by the tenant and both of them filing a memo of compromise without any reference to the plea of subletting made by the landlord. In the said decision this Court has held that the compromise decree is void, as there could have been no satisfaction of this Court regarding the statutory requirement in view of the following three circumstances :—

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(1) At no stage the Court was called upon to apply its mind to the question whether the plea of subletting is true or not.

(2) The order made by the Court does not show that it was satisfied that the subletting complained of has taken place.

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(3) There was no other material on record to show that the court was so satisfied.

A The view of this Court further is that the decree for eviction has been passed solely on the basis of the compromise arrived at between the parties.

In the last decision, in our opinion, there is an indication as to how the satisfaction of a court can be expressed or gathered in a particular case. If a stage had been reached in a particular proceeding for a court to apply its mind regarding the existence of a satutory condition, it may be held that it was so satisfied about the plea of the landlord. Again from other material on record, it can be inferred that the court was so satisfied.

We are not inclined to accept the contention of Mr. Tarkunde that the decree for eviction in the case before us has been passed solely on the basis of the compromise arrived at between the parties. No doubt a reading of the order of the court dated March 31, 1969, isolated from all other circumstances, may give the impression that the decree for eviction is passed because of the compromise between the parties. It is no doubt true that the order on the face of it does not show that the court has expressed its satisfaction that the requirement of the landlord is *bona fide*. If the court had expressed its satisfaction in the order itself, that will conclude the matter. That the court was so satisfied can also be considered from the point of view whether a stage had been reached in the proceedings for the court to apply its mind to the relevant question? Other materials on record can also be taken into account to find out if the court was so satisfied. The High Court has proceeded on the basis that even if there was material before the court, when it passed the order of eviction by consent, from which it can be shown that the court was satisfied about the requirement of the landlord being *bona fide*, nevertheless such an order will be a nullity unless the Rent Controller has given his decision in favour of the landlord. In our opinion, this view is erroneous.

We have very exhaustively referred to the plea of the landlord as well as the evidence let in by him regarding his requiring the building *bona fide* for his own occupation. There is no controversy that if such a plea is established, an order of eviction of the tenant can be obtained by the landlord under section 10 of the Act. The respondent no doubt at the initial stage denied the claim of the landlord. The landlord gave evidence on various matters with particular reference to his requiring the house *bona fide* for his own occupation. He had also filed, as referred by us earlier, as many as 45 exhibits, one of which was the order of eviction obtained against him, being Ext. 45. The respondent did not cross-examine the appellant. When the evidence of the landlord was before the court supported, as it was, by the innumerable exhibits filed by him, it can surely be stated that a stage had been

reached when the Controller was called upon to apply his mind to the question whether the plea of the landlord that he required the premises for his own occupation was *bona fide*. There is the further circumstance that the tenant did not cross-examine the plaintiff. On the other hand, he entered into a compromise in and by which he withdrew his defence and submitted to a decree for eviction unconditionally. His withdrawal of the defence, after the plaintiff had given evidence and filed exhibits in support of his plea, clearly shows that he accepted as true the claim of the landlord that he requires the premises *bona fide* for his own occupation. He has accepted the position that the landlord has made out the statutory requirement, entitling him to ask for possession of the premises. It is this unconditional withdrawal of the defence regarding the statutory condition pleaded by the landlord, and the compromise following it, that was accepted by the court and a decree for eviction passed thereon. Under those circumstances, when the tenant has accepted the plea of the landlord, in our opinion, it is futile to hold that the Rent Controller must again embark upon an enquiry regarding the requirement of the landlord being *bona fide* and adjudicate upon the same. Of course, if there is a dispute between the landlord and tenant, the court must decide the matter and adjudicate upon the plea of the landlord.

The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact *viz.* the existence of one or more of the conditions mentioned in section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a prerequisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based.

It is no doubt true that before making an order for possession the court is under a duty to satisfy itself as to the truth of the landlord's claim, if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for possession in favour of the landlord without further enquiry. It is no doubt true that each case will have to be decided on its own facts to find out whether there is any material to justify an inference that an admission, express or implied, has been made by the tenant about the existence of one or other of the

A statutory grounds. But in the case on hand, we have already referred to the specific claim of the landlord as well as the fact of the tenant withdrawing his defence. According to us, such withdrawal of the defence expressly amounts to the tenant admitting that the landlord has made out his case regarding his requiring the premises for his own occupation being *bona fide*. In the three B decisions of this Court, to which we have already referred, the position was entirely different. In none of those cases was there any material to show that the tenant had expressly or impliedly accepted the plea of the landlord as true. Therefore those decisions do not assist the respondent-tenant.

C For all the reasons mentioned above, it cannot be held, in the particular circumstances of this case, that the decree for eviction has been passed solely on the basis of the compromise entered into between the parties. On the other hand, it is clear from the various matters referred to, that the court was satisfied about the *bona fide* requirement of the landlord. Therefore, the decree for eviction is neither void nor inexecutable.

D

Mr. Tarkunde, learned counsel, contended that if the execution Court is to find out whether the court, which passed the decree, was satisfied about the statutory requirement in a particular case, it will have to conduct a very elaborate enquiry. We are not impressed with this contention. Once it is accepted that the ques- E tion about a decree being void and as such not executable on any ground available in law can be raised before the executing Court, it is needless to state that the executing Court will have to adjudicate upon that plea and for that purpose the relevant materials have to be considered. If that is so, there is no insurmountable difficulty, as envisaged by Mr. Tarkunde, in an executing Court considering whether a particular decree for eviction is void as F being contrary to the relevant section of the statute governing the matter.

Mr. Tarkunde, learned counsel, contended that the tenant had disputed the title of the landlord as well as the validity of the notice issued under section 106 of the Transfer of Property Act. As these matters have not been considered by the courts below, he G requested that the proceedings may be remanded for this purpose. We are not inclined to accede to this request. The tenant raised these objections also in his original plea, but he has unconditionally withdrawn all his defence. That means these pleas also no longer survive for consideration.

H In the result the appeal is allowed. The order and judgment dated September 15, 1970, of the High Court are set aside and the order dated March 18, 1970, of the City Civil Court, Madras, will stand restored with costs throughout.

ALAGIRISWAMI, J.—I agree with the order proposed by my learned brother, Vaidialingam, J. but I think it is necessary to add a few words of my own. The law on this subject has got into a labyrinth and I think it is time we took a hard look at it and laid down the correct position.

The learned Single Judge of the Madras High Court, who allowed the respondent's petition, was mainly influenced by the judgments of this Court in *Bahadur Singh* v. *Muni Subrat Dass*(1), *Ferozi Lal* v. *Man Mal*(2) and *Kaushalya Devi* v. *K. L. Bansal*(3). Before him the cases in *Remon* v. *City of London Real Property Co. Ltd.*,(4) *Thorone* v. *Smith*(5) and *Middleton* v. *Baldock* (T.W.)(6) were cited in support of the contention taken on behalf of the landlord, as also the decision in *Jagan Nath* v. *Jatinder Nath*(7) and *Vas Dev* v. *Milkhi Ram*(8). In spite of this he felt bound by the decisions of this Court and on the ground that the order of the Rent Controller on the face of it does not show that he had applied his mind and was satisfied that there was a *bona fide* requirement of the premises by the landlord for his personal occupation it was a nullity. He thought that even if there was enough material before the Court when it passed the order of eviction by consent so long as the Rent Controller had not applied his mind and given his decision in the matter as to whether the respondent was *bona fide* in requiring the premises for his own occupation, the eviction order cannot be held to be an order passed on merits under section 10(3) of the Act. He further thought that having due regard to the decisions of this Court it was not possible for him to accept the contention of the learned counsel for the appellant that a finding on merits in his favour had to be implied from the order of the Rent Controller in view of the existence of adequate material before him to support an implied finding. He also thought that even in case where the tenant *bona fide* admits that the ground of eviction existed, the Rent Controller must apply his mind and hold, basing himself on such admission by the tenant, that the ground for eviction put forward by the landlord existed and that he is entitled to an eviction order, without solely relying on the compromise.

I am of opinion that in this approach learned Judge relied more on the form than the substance of the matter. The true approach has been pointed out by our learned brother, Vaidialingam, J. He has pointed out that while the decision in *Bahadur Singh's*(1) case was an authority for the proposition that a court

(1) [1969] 2 S.C.R. 432.
(2) A.I.R. 1970 S.C. 794.
(3) A.I.R. 1970 S.C. 838.
(4) [1921] 1 K.B. 49.
(5) [1947] 1 K.B. 307.
(6) [1950] 1 K.B. 657.
(7) A.I.R. 1961 Punjab 574.
(8) A.I.R. 1960 Punjab 514.

A ordering eviction has to satisfy itself that a statutory ground of eviction has been made out by a landlord; how exactly that satisfaction was to be expressed by the court or gathered from the materials, has not been laid down in that decision; that in *Kaushalya Devi's* case also the manner in which the court's satisfaction was to be expressed or gathered has not been dealt with; B nor has the decision in *Ferozi Lal's* case given an indication as to how the satisfaction of a court could be expressed or gathered in a particular case. He has pointed out that "if a stage had been reached in a particular proceeding for a court to apply its mind regarding the existence of a statutory condition, it may be held that it was so satisfied about the plea of the landlord. Again, C from other material on record it can be inferred that the court was so satisfied." He has also pointed out how in the particular circumstances of the present case as the tenant had withdrawn his defence and submitted to a decree for eviction unconditionally, he had accepted the claim of the landlord that he required the premises *bona fide* for his own occupation; that he has accepted the D position that the landlord has made out the statutory requirement entitling him to ask for possession of the premises; that by this unconditional withdrawal of the defence regarding the statutory condition pleaded by the landlord, and the compromise following it that was accepted by the court, the tenant has accepted the plea of the landlord, and it is futile to hold that the Rent Controller must E again embark upon an enquiry regarding the requirement of the landlord being *bona fide* and adjudicate upon the same. He has also pointed out that the true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact, *viz.* the existence of one or more of the conditions mentioned in section 10 were shown to have existed when the court made the order; that the satisfaction of the court, F which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding; and that if at some stage the court was called upon to apply its mind to the question and there was sufficient material before it before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the court was satisfied about the G grounds on which the order of eviction was based. He has further pointed out that if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for possession in favour of the landlord without further enquiry. It is on these grounds that he has come H to the conclusion that the facts in this case satisfied these tests and, therefore, the order of the Madras High Court should be set aside. In so far as it is necessary for the purpose of this case this is a satisfactory conclusion.

Let us, however, consider this question based on principles. The Rent Controller is a quasi- judicial tribunal created for the purpose of discharging certain functions under the Act. Not being an ordinary civil court to which the provisions of section 9 of the Code of Civil Procedure applies the Rent Controller gets jurisdiction to order eviction of a tenant only in case one or other of the various circumstances laid down in the Act like the *bona fide* requirement of the landlord of the building for his own occupation, wilful default in the payment of rent by the tenant etc. are satisfied. But once these grounds are alleged and found to be established no further question of its jurisdiction arises. A quasi-judicial tribunal acting within jurisdiction may decide rightly or may decide wrongly. If it decides wrongly there are provisions in the Act itself for appeal, revision and ultimately even revision by the High Court under the provisions of section 115 of the C.P.C. or even under Article 227 of the Constitution. Of course, by a wrong decision on a jurisdictional fact a quasi-judicial tribunal with a limited jurisdiction cannot confer jurisdiction on itself. But in the case of a compromise such a question does not arise. Where as in this case the landlord has asked for possession of the building on the ground that he wants it for his own personal occupation which is one of grounds for eviction under the Act, the Rent Controller has, of course, to be satisfied that this requirement is real and *bona fide*. In regard to his decision on this point, as already pointed out, there are provisions for appeal, revision etc. The words in section 10 'if the Controller is satisfied' do not have any special significance. An ordinary civil court trying a suit either on a mortgage or on a promissory note has necessarily to be satisfied about the execution of the document, the passing of consideration etc. before it can pass a decree on the basis of either the mortgage or the promissory note. Therefore, the fact that under section 10 the Controller has to be satisfied that the ground for eviction exists does not mean that his satisfaction cannot be based on the same considerations on the basis of which the civil courts can be satisfied. Let us take a suit on a promissory note. The defendant can appear before the court and admit the plaintiffs The suit can be decreed on that basis. The defendant may be absent and the case may be set *ex-parte*. In such a case the plaintiff lets in the evidence and on the basis of that evidence the suit may be decreed. Or the defendant might appear and file a written statement denying the execution of the promissory note or denying the receipt of consideration or even putting forward a plea of discharge. Now in these circumstances the court will not pass a decree unless it is satisfied that the promissory note was executed, that consideration passed and that it had not been discharged. This does not prevent the defendant at any stage of the suit either submitting to a decree or entering into a compromise consenting to a decree. The fact that the consent to a decree takes

A the form of a compromise cannot make the consent any the less a consent. Under Order 23, Rule 3 of the Code of Civil Procedure all matters to be decided in a suit can be settled by means of a compromise. The application of Code of Civil Procedure is not excluded in proceedings before the Rent Controller and in any case there is no reason why the principle underlying Order 23, B Rule 3 should not apply to those proceedings. It is not clear why a tenant should be treated as a minor or as an imbecile. In the case of a minor the Order 32, Rule 7 of the Code of Civil Procedure specifically lays down that the court should be satisfied before it sanctions a compromise binding the minor. There is no such provision in the Rent Control Act. I think, therefore, the C time has come when a hard look must be taken on this point and it should be held that there is no objection to a compromise consenting to an order of eviction in rent control proceedings.

Of course, a compromise can be valid only if it is in accordance with the Act, *i.e.* only if the landlord has asked for possession of the building on one of the grounds laid down in the Act. For D instance, a landlord merely on the ground that he is the owner of the building cannot come to the Rent Controller and ask for possession of the property and the Rent Controller cannot pass a valid order merely because the tenant submits to an order of eviction. *Bahadur Singh's* case is an instance in point. In that case the landlord did not even apply for eviction. But where the E landlord specifically asks for possession on any one of the grounds on the basis of which he is entitled to ask for possession under the provisions of the Act there will be no objection to the tenant either submitting to an order of eviction or entering into a compromise submitting to an order of eviction. There is no magic in the words 'if the Controller is satisfied' in section 10(3)(e). The section would have been as effective even if those words were F not there and the section had read as follows :

> "If the claim of the landlord is *bona fide* the Controller shall make an order directing the tenant to put the landlord in possession of the building on such date as may be specified by the Controller; otherwise he shall make an order rejecting the application."

G

It is not necessary to refer to the three decisions of this Court which have been sufficiently discussed by our learned brother, Vaidialingam, J.

I may now refer to certain English decisions. In *Barton* v. *Fincham*(1) Lord Scrutton L.J. observed :

H

> "If the tenant is willing to go out, I do not see why any order is wanted; let him go; but at present

(1) [1921] 2 L.K.B. 291 at 298.

advised I do not see any reason why the judge on being satisfied that a tenant is then ready to go out (not that he was once willing but has changed his mind) should not make an order for possession." A

Lord Atkin L. J. observed :

"If the parties before the Court admit that one of the events has happened which give the Court jurisdiction, and there is no reason to doubt the *bona fides* of the admission, the Court is under no obligation to make further enquiry as to the question of fact." B

In *Thorne* v. *Smith* after referring to the observations of Atkin, L.J. and Scrutton, L.J. (supra), Lord Bucknill, L.J. pointed out : C

"But in the present case it is, I think, reasonably clear that the tenant, in effect, agreed to the order because at the time when the landlord asked the court to make the order the landlord by his own statements had satisfied the tenant that he intended to occupy the house himself and he, the tenant, could not hope successfully to resist the claim. If the tenant had stated this expressly in the court the judge would surely have had jurisdiction to make the order on that ground. I think in the events which happened here, the tenant being legally represented, the judge was entitled to proceed on the view that this was the true position. Before making an order for possession the judge is under a duty to satisfy himself as to the truth if there be a dispute between landlord and tenant, but if the tenant in effect agrees that the landlord has a good claim to an order under the Acts, I think the judge has jurisdiction to make the order for possession under the Acts, without further inquiry." D E F

Lord Justice Somervell referred to rule 18 of the rules made under the Act of 1920, there under consideration, to the following effect :

"Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant from any such premises, *the court shall, before making an order for the recovery of such rent or interest, or for the recovery of possession or ejectment, satisfy itself that such order may properly be made, regard* being had to the provisions of the Act." G H

A and observed :

> "Nothing in the decision that we are giving in any way, as it seems to me, diminishes the scope of that rule. We are deciding that on what happened in this case, the tenant being, as he was, legally represented, the county court judge was rightly "satisfied" that the order could properly be made.
>
> The other point arises from the use of the word "consent" as applied to the order made herein. The expression "a consent order" may suggest some compromise or arrangement which might be inconsistent with the provisions of the Acts. When the defendant is agreeing to submit to judgment because he is satisfied that the plaintiff can establish his right to an order under the Acts, it might be advisable to avoid the use of the word "consent", which may have a wider meaning and cover cases where the "consent" was the result of an arrangement which could not properly be made the basis of an order."

These observations very clearly show that the fact the Court had to satisfy itself did not prevent a consent order. It also shows clearly that a compromise or arrangement as long as it is not inconsistent with the provisions of the Act would not be objectionable.

In *Middleton* v. *Baldock* (supra) it was held :

> "that a landlord seeking to recover possession against a tenant protected by the Rent Restriction Acts must establish the right to possession on one of the grounds stated in the Acts, unless, after possession had been claimed on such a ground, the tenant admitted facts to support it, in which event the court need not itself investigate the matters of fact admitted."

In its decision in *Babu Ram Sharma* v. *Pal Singh*(1) the Division Bench of the Punjab High Court, of which our learned brother Dua, J. was a member, had this to say on the point at issue :

> "According to this section the landlord is entitled to seek eviction of his tenant on certain grounds, and the Rent Controller, after giving notice to the tenant, is empowered to give his own finding and then to pass the necessary order. In the present case the ground on which the landlord had sought eviction was non-payment of rent. Such a ground is within the express language of section 13 of the aforesaid Act. It was, therefore, open

(1) [1959] P.L.R. 33.

to the Rent Controller to determine whether or not the allegations of the landlord that the tenant had not paid the rent was correct. It appears that the tenant admitted that he had not paid the rent as alleged by the landlord. In this view of things, I do not understand how it was necessary for the Controller to hold any further enquiry.

After fully considering the matter I am definitely of the opinion that if the compromise decree is based on the grounds on which the landlord could claim a decree for eviction under section 13 of the East Punjab Urban Rent Restriction Act, then it is within the jurisdiction and competence of the Rent Controller to pass such a decree with a default clause; it is similarly competent for the civil court to execute such a decree when default has occurred. The proviso to sub-section 2 of section 13 of the Act is not attracted in such circumstances as no question of extending time granted to the tenant for putting the landlord in possession arises. In the result my answer to the two questions referred would be in the affirmative.

In *Vas Dev* v. *Milkhi Ram* (supra) Justice Grover of the Punjab High Court (as he then was) after referring to the three English cases, already referred to above, observed :

"From the above discussion of the English cases, the principle which has also been accepted by the Bench of this Court is quite clear that if the tenant admits after a suit for ejectment has been filed that the landlord is entitled to possession on one of the statutory grounds the court can make an appropriate order or if the landlord has made some representation within the terms of the statute to the tenant and which is one of the ingredients of a ground on which possession can be ordered and the tenant accepts that representation and submits to an order, then also the Court will be fully justified in making a valid order of eviction. Each case, therefore, will have to be decided on its own facts and it will have to be seen whether there is any material to justify an inference that an admission, be it express or implied, has been made by the tenant on the existence of one of the statutory grounds.

. . . . . .

There is a good deal of force in the submissions of the learned counsel for the landlord that enough material and evidence had come on the record to satisfy the Court as well as the tenant that the grounds on which ejectment had been sought would be ultimately established

A and when the tenant entered into the compromise, it was implicit in the aforesaid circumstances that he was admitting the correctness of the grounds which had been taken for his ejectment. I am, therefore, of the opinion that the tests which have been laid down by the authorities have been fully satisfied and it cannot be said that
B the decree which was passed on the basis of compromise was a nullity or could not be executed."

That is exactly the position here.

All these decisions amply support the proposition that I have put forward that an eviction order based on a compromise where
C the landlord has asked for possession on any one of the grounds on the basis of which he could ask for possession would be valid. This would, however, have to be considered when a proper occasion arises. The present appeal is allowed.

S.B.W. *Appeal allowed.*