

(1951) 07 MAD CK 0001
In the Madras High Court
Case No : O.S.A. No. 37 of 1948

J.H. Irani and Others

APPELLANT

Vs

T.S. Pl. P. Chidambaran Chettiar and Others

RESPONDENT

Date of Decision : 27-07-1951

Acts Referred:

Madras Buildings (Lease and Rent Control) Act, 1946 — Section 2(1), 7

Citation : (1952) 65 LW 713

Hon'ble Judges : Satyanarayana Rao, J;Raghava Rao, J

Bench : Division Bench

Advocate : T.V. Muthukrishna Iyer and C. Shrinivasachari, for the Appellant; S.T. Srinivasagopalachari, K.R. Rangaswami Iyengar, T. Aravamudha Iyengar, D. Narasaraju, T.T. Srinivasan and A.N. Rangaswami, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Rao, J.—This is an appeal by the plaintiff against the decision, dismissing his suit for recovery of possession of the property

specified in the schedule attached to the plaint and in the plan. The plaintiff died during the pendency of the appeal and his legal representatives,

appellants 2 to 7, are brought on record and the appeal is continued by them.

2. The dispute relates to a piece of land, on which the Gaiety Theatre stands besides other structures. The plan attached to the plaint is marked as

Ex. P. 1 and it contains the details of the properties sought to be recovered. The property in suit is B X Y A in the plan, bounded by Blacker's

Road on the south, Dams Road on the west, a street on the north and the land belonging to Casino Theatre on the east. The space reserved for the

parking of cars at the Gaiety Theatre is marked C X Y D. The Gaiety Theatre is in B C D A. The whole property B X Y A is enclosed by

compound walls on all sides with gates on the south. Besides the superstructure of the Gaiety Theatre in the portion marked B C D A, there is

what is described as a tiled shed P G H E, which contains a booking office and two rooms. Besides these structures, there are certain other sheds

in the north of the site and other modern conveniences for the benefit of those who witness cinema shows. There is also some open space on all

sides of the structure of the theatre.

3. All the property excluding the superstructure of the Gaiety Theatre belongs to the estate of late Sir Haji Ismail Salt and defendants 2 to 6 in the

action are the receivers appointed by this court in C. S. Nos. 280 and 286 of 1939 for the administration of that estate. The first defendant is the

owner of the superstructure of the theatre and he is also the lessee of the rest of the property, holding the same under a lease for seven years

commencing from 1-5-1940 obtained from the then receivers of the estate of Sir Haji Ismail Salt with the sanction of the court. The plaintiff is a

subsequent lessee who obtained a lease of the said property excluding the superstructure from the said receivers to come into effect after the

termination of the lease in favour of the first defendant, that is, from 1-5-1947. The plaintiff claimed vacant possession of the property after the

superstructure of the theatre is removed and mesne profits or damages from the first defendant; and he sought to make the receivers also liable for

damages or mesne profits as under the lease in favour of the first defendant three months' time to vacate the premises was given by their

predecessors after the termination of the period fixed in the lease. This contention, however, may not be very material in the view we take of the

case.

4. The main contesting defendant in the action was the first defendant who claimed that by virtue of the provisions of the Madras Buildings (Lease

and Rent Control) Act, 1946 (Madras Act XV of 1946), (hereinafter called the Act) the plaintiff was not entitled to evict him from the property as

what was leased to him was a "building" within the meaning of Section 2 (1) of the Act and that the Court had no jurisdiction to entertain and

dispose of the suit as the only remedy of the plaintiff, if any, was to take proceedings under the Act for eviction if proper grounds are made put for

such eviction. Though as many as eight issues were framed in the suit, the main

questions considered were the two questions above stated. The suit was tried by Subba Rao, J., and the parties adduced no oral evidence, but were content to have the suit disposed of on the documentary evidence in the case.

5. The learned Judge, after an elaborate consideration of the documentary evidence and the law bearing upon the subject, arrived at the conclusion that the property demised was a ""building"" within the meaning of the Act and that in view of the provisions of the Act, particularly, Section 7, the court had no jurisdiction to decide the suit.

6. The view taken by the learned Judge regarding the jurisdiction to entertain the suit is not correct in view of the subsequent decision of a Bench of

this court, consisting of the Chief Justice and Raghava Rao, J., in -- "Muhammadunny v. Melepurakkal Unniri", AIR 1949 Mad 765 (A) where it

was held the provisions of the Madras Non-residential Buildings Rent Control Order, 1942, Clause 8, did not take away the ordinary jurisdiction

of the Civil Court to entertain a suit by a landlord for recovery of possession of the property in occupation of a tenant and that it is open to a Civil

Court to pass a decree though it cannot execute the decree and the only remedy of the landlord would thereafter be to take appropriate steps

under the provisions of the Madras Non-residential Buildings Rent Control Order for eviction. The learned counsel appearing for the first

defendant respondent, Mr. Srinivasagopalachari, had necessarily to concede that in view of this decision of a Bench, he would not press the point,

and in this he is justified as the provisions of the Act of 1946 are "in pari materia".

7. The only question that remains for consideration is whether the finding of the learned Judge that the first defendant is a lessee of a ""building

within the meaning of the Act and that he could not be evicted in view of the provisions of the Act is correct. The conclusion of the learned Judge

on this point, to state in his own words, is as follows:

Having regard to the wide connotation that was given to the word "building", the purpose for which the Madras Buildings (Lease and Rent

Control) Act was enacted the nature of the structures in the suit premises and the manner in which the entire premises were being let out and used

for a number of years, at any rate, from 1914, and the purpose for which the

building was taken on rent by the lessee from time to time leave no doubt in my mind that the suit premises come within the meaning of the word "building" under the Madras Buildings (Lease and Rent Control) Act, 1946".

8. In order to better appreciate the contentions of the parties, it is necessary to state the facts leading up to this action. Late Sir Haji Ismail Sait was

the owner of the land and premises known as the Blacker's stables, also called Blacker's yard, near Harris Bridge, the particulars and the

boundaries of which can be gathered from Ex. P-3, the plan attached to Ex. P-2 of the year 1914. On that land, at that time (1914) there were

masonry stalls marked in the plan which were perhaps used as stables and there was also intervening vacant space between the stalls. All round the

property, there were masonry stalls excepting in the south, where there was an entrance to Blacker's Road. The property extended to Dams Road

on the west, Blacker's Road on the south, Meeran Saheb Street on the east and Narsingapuram on the north. In 1914, under Ex. P-2 dated 4-6-

1914, one R. Venkayya, the proprietor of R. Venkayya Bros., a well known firm of photographers, obtained a lease from the said Sir Haji Ismail

Sait of the western portion of the property for a period of six years commencing from 1-5-1914 with an option of renewal for a further term of six

years with a view to construct and build a superstructure on the said premises for carrying on cinema business. The lease, Ex. P-2, gives the

boundaries of the property demised and even then it included the stable and the stalls all round except on the south. It will be seen from Ex. P-3

that this property is to the west of the two parallel lines near the arrow where 95 feet width is marked in the plan. Liberty was given under the lease

not only to build a superstructure, perhaps with corrugated zinc sheets, but also to demolish, if necessary, the stalls to the extent needed. After the

expiration of the period of the lease, the lessee had to give vacant possession of the premises by removing all superstructures, plant, fittings,

fixtures, etc., belonging to the lessee. The schedule gives the description of the property as vacant land and premises being a portion of the

premises known as Backer's yard situate and bearing door No 1/1, Blacker's Road. Except for the stalls all round, the remaining space in the

middle was a vacant land at that time. The superstructure now known as Gaiety

Theatre was constructed by the said R. Venkayya who by 1927

became insolvent and his property became vested in the Official Assignee of Madras. There was a further lease (Ex. P-4) dated 4-5-1927 granted

by the representatives of Haji Ismail Salt's estate to the Official Assignee of Madras representing the estate of R. Venkayya Bros., whereunder a

lease for a further period of 9 years commencing from 1-3-1926 was granted to the Official Assignee. Ex. P-4 (a) is the plan attached to that

lease.

The Gaiety Theatre is marked red in the plan and the shed or stall belonging to the lessor was marked blue. It would be seen from that plan that the

shed on the west of the compound was removed by that time and there was only the motor garage in the north and the shed marked blue on the

east. The lease purports to demise the lands and the buildings standing thereon belonging to the lessor and reference is made to the fact that

Venkayya Bros, erected the buildings known as Gaiety Theatre. There were the usual covenants for repairs and for delivery of vacant possession

after removing the structures, etc., after the expiry of the period of lease. In this lease, it is significant that in the schedule the land is not described

as vacant, as under Ex. P-2, probably because by that time most of the land was built upon and was occupied by the superstructure of the Gaiety

Theatre. The schedule starts by saying, "All that piece or parcel of land together with the buildings marked A, B, C, D, being a portion, of premises

known as Blacker's yard situate and bearing door No. 1/1, Blacker's Road, together with the buildings belonging to the lessors and shown

coloured blue in the plan hereto annexed,

9. One Mrs. Piroja Fram Madan of Calcutta purchased the superstructure of the Gaiety Theatre and also obtained an assignment of the rights

under the lease, Ex. P-4, some time before 1935, and on 27-6-1935 under Ex. P-5 this lady obtained a lease for period of seven years of the

property from the executor appointed under the will of Sir Haji Ismail Sait. This again refers to the piece or parcel of land together with the said

buildings belonging to the lessor, which is described as the demised premises to distinguish it from the superstructure owned by the lessee. The

terms of the document are similar to the earlier leases and this again omits in the description of the property in the schedule the word "Vacant" and

describes the property as ""Ail that piece or parcel of land together with the buildings marked A, B, C and D, being a portion of premises known as

Slacker's yard situate and bearing door No. 1/1. Slacker's Road, etc."" From Mrs. Madan the present first defendant purchased the

superstructure and obtained an assignment of the rights under the lease, Ex. P-5, by document of 4-1-1937, Ex. P-6, for a sum of Rs. 36,000/- to

carry on cinema business which was then a running concern and known as the Gaiety Theatre.

10. The estate of Sir Haji Ismail Sait came under the administration of this court in C. S. No. 286 of 1939 and a renewal of the lease of the Gaiety

Theatre together with an extra vacant site of 35 feet "in width marked in the plaint plan as C X Y D was granted to the first defendant under the

directions of the High Court by the then receivers, M/S. V. Subramanyam and A. Bhujanga Rao. The order of the Court is Ex. P-7, dated 21-3-

1940. The permission granted is in these terms:

That the Receivers herein be and they are hereby permitted to execute forthwith a renewal of the present lease of the "Gaiety Theatre" and include

therein about 35 feet of vacant site next east of it and now comprised in the compound of the present English warehouse at a monthly rental of Rs.

750/- plus an additional rental for the vacant site now given and the period shall be not less then seven years from now.

The Receivers in obedience to these directions executed on 15-6-1941, Ex. P-9, a lease, in favour of the first defendant. Here again, in the

operative portion of the "deed it is stated

do hereby lease and demise unto the lessee all that piece or parcel of land together with the said buildings and compound walls belonging to the

estate, hereinafter called the "demised premises" and more particularly described in the schedule hereto.

The lease was to commence from 1-5-1940 and to be in force for a period of seven years, the rent fixed being Rs. 835/- a month. A distinction

was drawn in this lease as in the previous leases between demised premises, that is, the land and the buildings, the title to which was with the

lessor, and the superstructure of the Gaiety Theatre which was described as lessee's building's, for which the lessor had no title. Liberty was given

to the lessee to make additional constructions both in the vacant space of 35 feet

now included in this lease and also in the space round about the Gaiety Theatre and there were clauses for insuring the buildings and also to give vacant possession after the expiry of the terms of the lease. A further period of three months was granted for removing the structures, etc., failing which it was provided that if the excess buildings with the superstructure were not removed, they should belong to the lessors as part of the demised premises without any liability to pay compensation to the lessee. The same description "All that piece or parcel of land" is also repeated in this document. The land is not described as vacant land while the 35 feet site was described as vacant.

11. Even before the expiry of the period of lease in favour of the first defendant, under the directions of the court given in the administration suit, the plaintiff obtained a lease of the property on 17-2-1943, Ex P.10, for a period of 13 years and 11 1/2 months, commencing from 1-5-1947 at a monthly rental of Rs. 835/- the lease to come into operation, of course, after the termination of the previous lease in favour of the first defendant. The terms of this lease are also similar and this also included the vacant space of 35 feet on the east. The property is also described in similar terms. The terms of the lease in favour of the first defendant expired in 1947, by which time the Act came into force. He did not vacate the premises after the expiry of the three months' period even though he was called upon to do so and the plaintiff thereupon instituted the present suit for the reliefs already stated.

12. The short question for decision is whether the first defendant is a "tenant in possession of a building" within the meaning of the Act. He would be a tenant of a "building" if what was leased to him under Ex. P-9 was a building within the definition contained in the Act. A "building" is defined in the Act as meaning any building or hut or part of a building or hut let or to be let separately for residential or non-residential purposes and includes: (a) the garden, grounds and out-houses, if any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such building or hut, (b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut.

This definition is not very helpful in arriving at the meaning of the word

"building" as it states that a building means any building. But, what is a building? If we take the derivative meaning of the word "building", it means that which is built. It may be a wall; it may be a structure not fit for human habitation; it may be anything and not necessarily a house. The legislature could not have intended to use the word in its derivative sense as it is clear from the object of the Act, which was to prevent unreasonable eviction of tenants from residential and non-residential buildings and to control the rents. The inclusion of a hut in the definition and the other indications in Sub-clauses (a) and (b) point to the fact that the word is used to denote a structure of the nature of a house intended for human habitation or for using it for non-residential purposes such as carrying on a business.

The word "building" is used in several Acts, English and Indian, enacted for different objects and the learned counsel on both sides drew our attention to some of the decisions. Lord Esher, M. R., gives the definition of a building as an "inclosure of brick or stonework covered in by a roof". Having regard to the Indian conditions, the inclosure need not necessarily be of brick or stonework. It may consist of mud walls; but, it must, I think, be covered in by a roof. I think this definition accords with the ordinary conception of a building (see -- "Moir v. Williams", (1892) 1 QB 264 (B)). It is difficult to accept the view of Cozens Hardy, M. R. in --"Waite's Executors v. Inland Revenue Commissioners", (1914) 3 KB 198 (C), at p. 201 that there need not necessarily be a roof or cover in order to constitute a building. He said:

I do not doubt that there may be a building constructed of wood as well as of brick or stone, and that it is not necessary that there should be a roof or cover in order to constitute a building.

The observations of the learned Judge were obiter and the only question that had to be considered in that case was whether an embankment was a building or a structure used in connection with a building within the meaning of Section 25(2) of the Finance Act of 1910 for the purpose of valuation. Dealing with the same word under the Calcutta Municipal Act, Section 151, the Calcutta High Court held in -- "Corporation of Calcutta v. Binoy Krishna", 15 CWN 84 (D) that a boundary or compound wall was not a "building" and that the word was not used in the Act and should not be interpreted in its derivative sense. In this decision, the decisions of the

English Courts were exhaustively considered and the view expressed in -- "*Tresdell V. Gay*", (1859) 13 Grey 311 (E) that the term "building" "cannot always be held to include every species of erection on land, and that, taken in its broadest sense, it very often means only an erection intended for use and occupation as a habitation, or for some purpose of trade, manufacture or ornament, constituting a fabric or edifice, and not merely a wall, a fence, a gate, or the like," was accepted and it was further stated that "in this view, a structure can hardly be called a building unless it is capable of occupation as falling within the residential class or within the class connected with commercial industry or in some way or other." The preponderance of authority, therefore, in England is in favour of the view taken by Lord Esher, M. R., already stated, and the observations of Cozens-Hardy, M. R., do not seem to be acceptable. Earle, C. J., in -- "*Powell v. Boraston*", (1865) 144 ER 408 (P) also laid down as follows:

We are also aware of the immense variety of structures which are sufficient buildings, considering the locality and the use for which they are adapted in that locality. Still, we are of opinion that the intention of the legislature would be defeated, and the words indicating the class of buildings which qualify would be without any effect, if everything which would be called a building. was held sufficient. It ought to be in some degree adapted both to be used by man either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of a building.

The facts of that case are somewhat interesting. The respondent was in possession of a farm of which a few acres, worth more than ₹1½10/- were within a borough; but there was no building on it. In order to acquire a qualification to vote, an electioneering-agent erected on that land a shed, made of wood, with four boarded sides and a boarded roof, all of which were supported by four posts. The question was whether it was a building" so as to confer a qualification to vote within the meaning of Section 27 of the Reform Act. The revising-barrister held that it was; but the court reversed that decision. It was merely a ruse to defeat the provisions of the Act and to acquire a qualification to vote. Such devices are not uncommon in this country. The shed in question was not intended for the occupation of any person and was made of such frail stuff that it could be

destroyed at any moment. There was therefore no sort of permanency or it was wholly unfit for residence. It has been held in -- Baladin Vs.

Lakhan Singh, that a house in ruins was not a building or a house. Mere compound wall with a gate enclosing a space cannot, in view of the

accepted interpretation, of the word "building" in the decisions above cited, be considered as a building within the meaning of the Act. The extreme

contention of Mr. Srinivasagopalachari for the respondent was that apart from other considerations which ought to enter into the decision of the

question, even if we take into consideration the compound wall with the gates, that would itself constitute a ""building"" within the meaning of the Act.

It is impossible to accept such an extreme view in the light of the decisions above cited.

13. The definition in the Act includes in it not only a building, but even a part of it. A building consists of not only the superstructure but also the site

on which the superstructure stands and in which the foundation for the superstructure is erected. A mere superstructure dissociated from the site on

which it stands cannot in law, in my opinion, be considered to be a building. The letting, in the present case, of a piece of land apart from the

buildings belonging to the lessor was not a letting of a vacant land at the time it was let to the first defendant. In 1914, no doubt, the land was

vacant land and it was so expressly described in the lease. But in the subsequent leases, the word ""vacant"" was significantly omitted. So, in

substance and in effect, what was let to the first defendant under the lease, Ex. P-9, with which alone we are now concerned, was besides the

building of the lessor the entire property with the compound walls and the gate. There was also the land occupied by the superstructure of the

Gaiety Theatre besides the vacant land round about it. This land, on which the structure stands, undoubtedly both in the physical and in the

ordinary sense, forms part of the building, namely, the Gaiety Theatre.

14. Lord Atkinson in -- "Victoria City v. Bishop of Vancouver Island", (1921) 2 AC 384 (H) pointed out that the word "building" in ordinary

parlance ""comprises not only the fabric of the building, but the land upon which it stands."" The point became important in that case, because u/s

197(1) of the Municipal Act of British Columbia, every building set apart and in use for the public worship of God was exempt from municipal

rates and taxes while it was permissible to impose a tax upon lands or upon any real property. The question was whether the land occupied by a

building, St. Andrew's Cathedral, dedicated and set apart for the public worship of God was exempt from taxation. On behalf of the municipality,

the contention was that the exemption u/s 197 extended only to the superstructure and not to the land on which the superstructure was built and as

the land was taxable, the municipality was entitled to levy rates and taxes on the land occupied by the Cathedral. It was pointed out in the course

of the judgment by the learned Lord: --

It is impossible to conceive the public worship of God being carried on in a building without the use of the land which it embraces within its walls,

as it is impossible to conceive walls existing without the support, direct or indirect, of the soil of the earth. The conception of such things is not the

less impossible because the Legislature has by statute made the attempt fancifully to divide for the purpose of taxation concrete entities notionally

into sections or portions which are presumably mutually exclusive and independent of each other. Their attempt will be abortive unless the language

used be clear and plain. Should it not be so, one must Judge by the meaning of the ordinary language used what is the nature of the thing to be

dealt with as it is described in that language.

It was therefore held that the ordinary and natural meaning of the word "building" included the fabric and the ground on which it stood and

therefore the exemption of the building extended as well to the site on which it stood. This decision, in my opinion, is very helpful to the respondent.

Obviously, the letting of the land was for the purpose of carrying on cinema business and it was well known to the parties that the structure of the

theatre owned by the "first defendant was already there and what was being granted in substance and in effect under the lease was the right to

continue the structure on the land as a building, as without the land the structure cannot stand. Taking all the facts into consideration, what was

leased under Ex. P-9 was the entire property with its compound walls and with the buildings of the lessor shown in the plaint plan, Ex. P-1,

together with the site on which the superstructure was erected and which gave continuous support to the building and the other vacant space round

it. This undoubtedly is part of the building known as the Gaiety Theatre. So, the

lessor leased not only his building but also part of the building of the Gaiety Theatre under the document. What was leased therefore was not merely a vacant land, the small shed in the east of the site belonging to the lessor being only an insignificant portion to be left out of consideration altogether, as contended on behalf of the appellant. The object of the lease was to run the cinema business in the buildings then in existence together with the other buildings used as booking office, office rooms, garages, latrines and so on. It is impossible therefore to escape the conclusion that what was let to the first defendant under Ex. P-9 was a building". As pointed out by the learned Judge in his findings already extracted, the nature of the structures in the suit premises and the manner in which the entire premises were being let out and used for a number of years undoubtedly indicate that it was a building that was leased to the defendant.

15. In the above view, it is unnecessary to consider the argument of Mr. Muthukrishna Ayyar, the learned Advocate for the appellant, whether the site, Irrespective of the structure of the Gaiety Theatre, could be rightly considered as appurtenant to the sheds belonging to the lessor. He drew our attention to the decisions which have considered the meaning of the word "appurtenant" in other contexts. The meaning of the word "appurtenant" given in the Oxford Dictionary is Belonging as a property or legal right; constituting a property or right subsidiary to one which is more important; appertaining as if by right to; proper, suited or appropriate to; relating to, pertinent.

That is the primary meaning of the word "appurtenant". In -- "Budhi Mal v. Bhati", AIR 1915 All 459 (I) AN APPURTENANCE is defined as an appendage, an adjunct, or something belonging to another thing as principal and passing as an incident to it. In -- Trim v. Sturminster. Rural Council", (1938) 2 KB 508 (J), the learned Judge considered the meaning of the word, "appurtenance" at pages 515 and 516 and observed that the word "appurtenance" had never been extended to include land, as meaning a corporeal hereditament, which does not fall within the curtilage of the yard of the house itself, that is, not within the parcel of the demise of the house. That may be so. In the definition contained in the Act, the grounds & outhouses, if any, appurtenant to such building are included in the

definition. As pointed out in --"Thomas v. Owen", (1888) 20 QBD

225 (K), the word "appurtenance" has also a secondary meaning as equivalent to "usually occupied" and this was cited with approval in woodfall

on Landlord and Tenant. If from 1914 this entire ground, was occupied for the purpose of continuing the superstructure along with the building

belonging to the lessor and the whole of it is treated as one unit, the site may be treated as an appurtenance in the secondary sense of the word.

16. Lastly, there is an argument of Mr. Srinivasagopalachari for the respondent which was raised by him for the first time in this court viz., that

apart from these considerations, on the date of the suit the terms fixed under the lease had expired & that the first defendant was only a tenant

holding over and as the building was not removed as provided by the lease under Clause 6 of Ex. P-9, the building became part of the demised

premises retrospectively and belonged to the lessors and therefore on the date of the suit the building was part of the lease. From this point of

view, undoubtedly, the eviction of the tenant in possession of a building included by the operation of Clause 6 in the demised premises, would not

be warranted. The answer attempted by Mr. Muthukrishna Ayyar for the appellant was that the words "excess buildings" in Clause 6 did not take

in the lessee's buildings already in existence, that is, the Gaiety Theatre, but only excess buildings constructed after the lease either in the 35 feet

vacant space newly added or in the other vacant space available. He invited our attention to Clause 9 and also Clauses 4 and 6 of the lease. The

scheme of this lease as well as the earlier leases was to draw a distinction between demised premises which consisted of all the property belonging

to the lessor, the land, and the other buildings. The lessee's property, that is superstructure, was always described as lessee's building and the

provision even in the earlier leases was that if the building was not removed within three months, it. should belong to the lessor. In Ex. P-9, under

Clause 8, if buildings were constructed on the 35 feet space, they should not be removed but should become the property of the lessor after the

expiration of the lease without any compensation. As. regards all other buildings, they have to be removed" after the expiration of the lease at least

within three months thereafter. If not, they become the property of the lessor. The excess buildings, in my opinion, include not only the existing

building but also buildings that may come into existence thereafter in the space outside the 35 feet ground granted under the lease. It must e

interpreted in the light of the clauses in the earlier leases. It cannot be suggested that if within three months the superstructure is not removed, the

lessor is under a liability to pay compensation for it as seems to be implied by clause 6 of the lease of the interpretation put by Mr. Muthukrishna

Ayyar were to be accepted.

17. Our attention was drawn in the course of the arguments to a decision of the Calcutta High Court in -- "Prafulla Chandra Ghosh v. Shaik

Shamsuddin", ILR (1946) 2 Cal 326. But that decision would not materially help either side as the land there was specifically let for the purpose of

building and there was no building in existence on the date of the lease on the demised premises, the superstructure of which was owned &

possessed by the lessee. The decision, assuming it was correctly cited, may properly apply to the situation under the lease of 1914, where for the

first time R. Venkayya was permitted to construct a theatre. It is unnecessary therefore to consider some of the propositions therein laid down and

to express an opinion.

18. The claim against the receivers, defendants 2 to 7, was that the three months" period granted under Ex. P. 9 after the termination of the lease

for removing the superstructure was not within the competence of the receivers to grant and therefore they should also be made liable for damages.

There is no substance in this contention as under the order of the court itself the receivers were authorised to grant a new lease in terms of the old

lease which undoubtedly contained a clause granting a further period of three months to vacate the premises. The plaintiff was undoubtedly aware

of the lease of the first defendant when he obtained his lease in 1943. He cannot therefore complain that the extension of three months" period

contained in Ex. P-9 was unauthorised or unlawful. The decision of the learned Judge, in my opinion, is correct. This appeal fails and is dismissed

with costs of Respondent 1 (D. 1). The appellants will pay costs of the receivers also. Separate sets (calculated on the amount of damages.)

Raghava Rao, J.

19. In this rather arguable case for the appellant, on the principal point debated, which I have carefully considered since reservation of judgment, in

the light of the learned argument of counsel on both sides. I have on the whole made up my mind that we in appeal ought not to disturb the view of

the court below for which there is enough of sound and rational basis in its judgment. It is true that this is not a case of oral evidence in which a trial

Judge's conclusion must be respected on the ground of the special opportunities which he enjoys of hearing the evidence directly from the box.

The case no doubt depends primarily upon a construction of the lease, Exhibit P-9 and incidentally too upon a consideration of the prior leases.

There was, in fact, no oral evidence adduced, and it cannot be said that we sitting in appeal do not command the same advantage as the learned

Judge below or construing the relevant documents and arriving at our own conclusion in reversal of his view, if necessary. At the same time we

cannot overlook the fact that if in the process of such construction we feel ourselves in the position that all that we can say is that the view pressed

for the appellant is just as possible as the view adopted by the learned Judge the reasonable course for us in appeal to adopt is to confirm the

judgment appealed against. The burden alter all lies upon the appellant before he can succeed to demonstrate the positive error of the judgment

under appeal, especially where the question raised is one of construction of a document with reference to surrounding circumstances on which the

court of first instance has arrived at one possible conclusion which is prima facie reasonable. And this certainly he cannot be said to have done

merely by making out nicely balance calculations pointing to the equal possibility of the judgment being wrong as well as right. In fact I may go a

step further and remark that whatever the state of my mind at the close of the argument I have since arrived at the clear and distinct conclusion that

the view taken by the Judge below is the only correct conclusion which can be reached in the case.

20. In answer to the argument of the learned counsel for the appellant which confined itself to the point as dealt with by the court below the learned

advocate for the respondent has raised another point as well with which it is, in my opinion, unnecessary to deal in the view that we are taking on

the former point in concurrence with the court below. The point for discussion is really Issue No. 1 in the suit which runs thus:

Does Madras Act XV of 1946 apply to the property leased to 1st defendant and is he entitled to claim the benefit of its provisions?

The learned Judge below has answered the issue in favour of the defendant, and the plaintiff appeals. The learned Judge sums up the reasoning

employed by him in support of his conclusion thus:

Having regard to the wide connotation that was given to the word "building", the purpose for which the Madras Buildings (Lease and Rent

Control) Act was enacted, the nature of the structures in the suit premises and the manner in which the entire premises were being let out and used

for a number of years, at any rate from 1914 and the purpose for which the building was taken on rent by the lessee from time to time leave no

doubt in my mind that the suit premises came within the meaning of the word "Building" under the Madras Buildings (Lease and Rent Control) Act,

1946. I am also of opinion that the grounds enclosed within the boundaries are appurtenant to the buildings owned by the lessor situated

within the boundaries.

21. Before discussing the soundness of the reasoning and of the conclusion of the learned Judge it is as well that I set out so far as material to the

present case, the terms of the definition of "building" in Madras Act XV of 1946;

"building" means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes, and includes-

-

(a) the garden, grounds and out-houses. If any, appurtenant to such building, hut or part of such building or hut and let or to be let along with such

building or hut.

22. Learned counsel for the appellant has assailed the conclusion of the learned Judge on the basis firstly that the subject matter of the demise has

not been correctly appreciated by the learned Judge below, and secondly and consequently that the language of the definition has not been

accurately applied by him to such subject matter. The first basis depends upon whether as contended by learned counsel for the appellant what

was leased out is vacant land essentially with the buildings on it as appurtenant thereto. The contention for the respondent is that what was leased

out is a building in terms of the statutory definition including the vacant grounds appurtenant thereto. Argument for the appellant in this respect has

proceeded to a large extent upon the contents of prior leases which it is not, in my opinion, necessary to look into. What is really relevant is the

lease, Exhibit P-9, on the expiry of which the present suit for eviction was laid. The contents of Exhibit P-9 were doubtful and ambiguous may

well have to be understood by reference to the contents of prior leases to the extent that these latter threw light upon the construction of Exhibit P-

9, looking at all the relevant evidentiary material it is beyond dispute--in fact, there has been no dispute before us in that respect between counsel--

that the subject matter of the lease consists of (1) the site underneath the actual building known as "Gaiety Theatre" which belonged to the lessee;

(2) the small sheds at one end of the premises and (3) all the vacant space within, exclusive of the theatre and the sheds. The entire premises

embracing the three portions demised as well as the lessee's own structure known as "Gaiety Theatre" are described in the record as "Blacker's

stables", and at the time of Exhibit P-9 the Gaiety Theatre having become the property of the lessee himself it was the rest of Blacker's stables

consisting of the three portions just referred to that was let out to the defendant. The question therefore is whether what was so let out is a

building" within the definition of the statute.

23. It is common ground that as the preamble to the statute shows the object of the legislature is to regulate the letting out of residential and non-

residential buildings alike and to control the rent of such buildings and to prevent unreasonable eviction of tenants therefrom in the state of Madras.

It is common ground too that the preamble which is said to be a good means of finding out the meaning of the statute and, as it were, a key to the

understanding of it may legitimately be consulted to solve any ambiguity or to find the meaning of words which may have more than one, or to keep

the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt, (vide Maxwell on the Interpretation

of Statutes Ninth Edition by Sir Gilbert page 46.)

For the appellant it is contended that the description of the premises in Exhibit P-9 as well as in prior leases points to land principally as the

subject-matter of the letting and that since the sheds occupy only an inconsequential part of the entire premises, there is no reason to suppose that

what was let out is a building. The dominant part of the premises let, it is urged, is the vacant space around the sheds and not the sheds or the site

under the Gaiety Theatre. The argument for the respondent has been "firstly"

that the site under the Gaiety Theatre is itself part of that building let separately from that building itself together with the vacant space adjoining that site, that building and the sheds, with the sheds themselves. The purpose of the letting, it is emphasised, was to help the lessee to run his theatre with greater facilities than before by means of the vacant space and the sheds. In support of this branch of the argument, reliance has been placed on the ruling of the Privy Council in -- (1921) 2 AC 384 (H), as showing that land underneath a superstructure must normally be regarded as part of the building.

Secondly it is argued for the respondent that the sheds which are undoubtedly part of the property demised are within the expression ""building"" in the Act. The vacant space let along with the site under the Gaiety Theatre and with the sheds, it is argued, must be regarded as grounds appurtenant to the buildings constituted by the site under the Gaiety Theatre and the sheds, as contemplated by Clause (a) of Sub-section (1) of Section 2 of the Act.

Thirdly, and lastly the argument for the respondent has proceeded on the basis that as the premises let are enclosed by a compound wall the site inside the wall obviously taken on lease for further facilities for the running of the theatre by way of providing for parking of cars and making further structures if necessary must together with the wall be regarded as a ""building"" within the definition of the Act, although the space inside the wall is not one covered with a roof. That in such circumstances a roof is not necessary to constitute the premises inside the wall a building for the purpose of the statute has been urged. With reference to -- (1914) 3 KB 193 (C), I am of opinion that the test propounded by the learned advocate for the appellant--whether in a composite lease the dominant part of the demise is a building or land--does not really arise for consideration in the present case. I am also of opinion that the three limbs of the argument of the advocate for the respondent are correct.

24. The description of the premises in Exhibit P-9 as the preamble thereto shows is ""that piece or parcel of land lying at and in No. 1/1 Blacker's road more particularly described in the schedule hereto annexed and the compound wall and certain buildings standing thereon"". The description in the schedule is ""that piece or parcel of land together with the buildings being a

portion of the premises known as Blacker's road situate and bearing door No. 1/1, Blacker's road etc.,". It is urged by Mr. Muthukrishna Ayyar that the order in which the different parts of the premises demised as described--land and compound wall and buildings, as in the preamble, land together with the buildings as in the schedule--is significant as indicating the relative importance attached by the parties to the different parts. I am not prepared to say that the argument is altogether without force, "prima facie". At the same time it seems to me that that is a matter of detail of the form of conveyancing, while what has to be regarded on the whole is the substance of the subject matter demised. As observed by the learned Judge below, there is no evidence as regards the condition, nature and extent of the buildings belonging to the lessor within the compound wall, and it is difficult for us to say in what proportion of importance on a splitting up of the premises demised into land and buildings the land and the buildings would stand in relation to each other. As further observed by the learned Judge, it is sufficient to say that there are some buildings within the premises and that from the year 1914 down to Exhibit P-9 the land and the buildings enclosed in the compound wall have been treated as one unit and have always been leased out as one property. These are considerations sufficient in my opinion to entail failure of the argument for the appellant as presented to us.

25. The force of these considerations is however sought to be whittled down by Mr. Muthukrishna Ayyar by citation of two cases, one reported in -- (1938) 2 K B 508 (J) and the other reported in -- AIR 1915 All 459 (I) on the basis of which he urges that the land around the sheds cannot be regarded as strictly within the meaning of the expression "'grounds appurtenant to such building'" occurring in the definition of the word "'building' in the Act. The English case was concerned with the construction of Section 188 of the Housing Act, which provides that "House" includes "'any yard, garden, out houses, and appurtenances belonging thereto or usually enjoyed therewith'". In that case there were a cottage and 10 acres of land adjoining it which it was contended together constituted a house within the statutory definition. It was held that it was not the cottage together with the whole of the 10 acres of land but only the cottage with its out houses, yards, curtilage and gardens that constituted "'house'" within the

definition inasmuch as the term "appurtenance" was there used in its well established legal sense as including such matters as outhouses, yards and gardens and not land as meaning a corporeal hereditament.

In the Allahabad case the question was whether a house which was in the occupation of a person long before he became an ex-proprietary tenant

or acquired an occupancy tenancy in the village in which the house was situate was, under the Agra Tenancy Act an "appurtenance" to the holdings

in his possession so as to render any mortgage of such house illegal. The learned Judge who decided the case (Tudballj) answered the question in

the negative and in so doing observed thus;

An "appurtenance" in common parlance and legal acceptation" is something belonging to another thing as principal and passing as an incident to it.

It is an appendage, an adjunct, an accessory or something annexed to another thing more worthy. I quote this from Webster's International

Dictionary

It will be seen that in these two cases having regard to the object and purpose of the statute the stricter and primary legal sense of the word

appurtenance" was adopted by the court. It must be remembered that the expression bears a primary as well as a secondary sense, and whether

one or the other is to be applied to the expression as it occurs in a particular statute depends upon the circumstances connected with the object of

the enactment and with the context in which the expression occurs. Etymologically "appurtenance" means "pertaining" or relating to", and that is the

wider sense in which the word may sometimes have to be understood and applied apart from the stricter sense of "belonging to". Ordinary

Dictionaries, Law Lexicons as well as cases in the books do refer to both the senses, and the question which sense should be adopted depends

upon the circumstances of the particular case in which it arises.

Apart from the passage in Woodfall on the Law of Landlord and Tenant and the passage in --(1888) 20 Q B D 225, (K) relied upon before us by

learned counsel for the respondent, I may advert in this connection to what Eouvier, Wharton and Stroud say on this subject in their Lexicons.

According to the first of these authors, "appurtenant" means "belonging to, pertaining to; the thing appurtenant must be of an inferior nature to the

thing to which it is appurtenant". Vide Baldwin's Edition of the work (1928) at page 81.

Wharton's Law Lexicon at page 63 of the 13th Edition annotates the word thus: "pertaining" r "belonging to", (see appendant); and of "appendant

at pages 59 and 60, this is what we get;

A thing of inheritance belonging to another inheritance which is more worthy as an advowson, common etc., which may be appendant to a manor,

common of fishing to a freehold; a seat in a church to a house etc"., Further, the work illustrates appurtenances belonging to another thing thus: "as

hamlets to a manor and common of pasture, turbary etc., liberties and services, outhouses, yards, orchards and gardens are appurtenant, to a

messuage",

and says further: "But lands cannot properly be said to be appurtenant to a messuage". It is further observed by the author; "The word

"appurtenances" should be construed strictly; (Re Peck) and the School Board for London -- (1893) 2 C H 315 (M)", but it has a secondary

meaning, equivalent to "usually occupied with". (see -- "Roe v. Siddons", (1838) 22 Q B D 224 (N). In Stroud's Judicial Dictionary, Second

Edition, page 108 under the term "appurtenances" it is said:

And therefore if there be a messuage or dwelling house and diverse acres of land thereunto belonging called altogether by the name of Hedges

and a grant is made by these words of, all that messuage with the appurtenances commonly called by the name "Hedges", by this grant nothing

shall pass but the messuage, garden, curtilage and yet if a manor or farm be commonly called by the name of a messuage-there by the grant of a

messuage the whole manor or farm may pass" (Touch 94)

It is further said at page 109: "But the word "appurtenant" may be used in a secondary sense as equivalent to such phrase as "usually enjoyed

with". (Elph 188; -- "Bayley v. Great Western, Railway", (1885) 26 Ch D 434 (O).

In this context I may notice the case in--"Hasker v. Sutton", (1824) 130 E B 199 (P) in which the court construed a devise of the rectory or

parsonage of with the messuages, lands etc "Thereunto belonging" as including lands usually occupied with the rectory. At page 199 of the report

the rule as laid down by Eyre C. J. in an earlier case is thus stated

Lands will not pass under the word "appurtenances" in its strict technical sense; they will pass if it appears that a larger sense was intended to be given to it".

The Law Lexicon of British India by Ramanatha Iyer at page 80 says of the expression "appurtenance" or "appurtenant" quoting from Abbot's

Law Dictionary

belonging to another thing as principal, as hamlet to another village, garden to a home; that which passes as incident to the principal thing, a thing

used with and related to or dependent upon another thing more worthy and agreeing in its nature and quality with the thing whereunto it is

appendant or appurtenant; that which belongs to something else, an adjunct, an appendage".

The author proceeds to observe: "It is sometimes used in the non-technical sense of "adjoining".

26. In my opinion the word "appurtenant" occurring in the definition of "building" in the Act with which we are concerned is used in the broad,

secondary and non-technical sense of "relating to", "usually enjoyed or occupied with" and "adjoining" just noticed by me. The idea of the

legislature seems to be that if grounds appurtenant to the building in this sense are let along with the building they should stand attracted to the

operation of the Act. That the grounds should also be let along with the building would not be a matter of specific provision in the definition of the

statute, if the primary or legal sense of the word "appurtenant" were intended, as in that case any thing appurtenant to another in that sense would

pass with it under the demise whether specifically let or not along with it. It is settled law that where a word admits of more senses than one that

sense is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The

paramount object in construing statutes is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words

to have their full meaning, or the more extensive of two meanings best effectuating the intention. They are indeed frequently taken in the widest

sense, sometimes in a sense more wide than etymologically belongs or is popularly attached to them in order to carry out effectively the legislative

intent, or to use Lord Coke's words "to suppress the mischief and advance the

remedy""'. (vide Maxwell on Interpretation of Statutes, 9th Edition

by Sir Gilbert Jackson. 230). Bearing the several considerations adverted to in the foregoing, I have no hesitation in repelling the argument of Mr.

Muthukrishna Ayyar based upon -- (1938) 2 KB 508 (J) and -- AIR 1915 All 459 (I).

27. Now to turn to the three limbs of the respondent's argument, I may dispose of the second first, admitting as it does of a treatment brief and

simple. The sheds are certainly within the statutory definition of ""building"". So much was not disputed; nor indeed could it be. Whether the land,

included in Exhibit P-9 is to be regarded as appurtenant to the sheds or the sheds being a comparatively inconsequential part of the premises

demised are to be regarded as appurtenant to the lease was the matter seriously debated. With this I have already dealt rejecting the appellant's

contention for the reasons indicated in the foregoing. So I need say no more on this part of the case.

28. The first limb of the argument too needs no elaborate treatment. It is amply supported by the case in -- (1921) 2 A C 384 (H)", cited by Mr.

Srinivasa Gopalachari. It cannot be doubted too that the site underneath the theatre which would be part of that building was let out "separately"

from superstructure according to the meaning of the word ""separately"" which I shall refer to later. It must also be remembered whether with

reference to this limb of the respondent's argument or the third one with which I shall hereafter deal that a word like ""building"" as shown by the

several cases, English and Indian, cited to us must be understood in different senses in different statutes & contexts according to the purpose and

object of the statute and the context. In the context of Sub-section (1) of Section 197 of the Municipal Act (British Columbia) it was held by the

Privy council applying the golden rule of adherence to the grammatical and ordinary sense of words laid down by Lord Wensleydale in --"Grey .v.

Pearson", (1857) 6 HL Cas 61 (Q) that the exemption from tax extended not only to the fabric of the building in question but to the land upon

which it stood. It was observed that

the thing most necessary for the use of the cathedral as a place of worship which is the ground of exemption from taxation is that the congregation

which frequents it should be able to stand or kneel upon the ground embraced

within its walls and forming the floor of it, or sit upon chairs resting upon that floor.

We have in the present case to see whether the ordinary meaning of "building" which includes the site underneath as applied in that decision is applicable to the present case. I find nothing in the considerations connected with the purpose of the statute with which we are concerned or in the language to be found in its several provisions which excludes the application of the ordinary meaning of the word. The purpose of the lease was admittedly to help the lessee to run the theatre of which he was the owner with greater facilities than before by the use of the vacant space, and it cannot be suggested that the theatre could have been at the time contemplated by the parties without relation to the site underneath which would be an integral part of the building as constituting its very foundation without which it could not possibly stand,

As pointed out by Davis J. in -- "Benedict v. Ocean Ins. Co.", 31 NY 369 (R) the word "building" necessarily embraces the foundation on which

it rests; and the cellar if there be one under the edifice is also included in the term. The latter part of the quotation I may mention, is also supported

by the Privy Council decision in --"Rector and Churchwardens of the Parish of St. Nicholas Acons v. London County Council", (1928) AC 469

(S) to which our attention has been drawn by Mr. Srinivasa Gorialachari. It was held in that case that the prohibition of section 3 of Disused Burial

Grounds Act 1884 (47 and 48 Vict. C. 72) that it shall not be lawful to erect any buildings upon any disused burial ground except for the purpose

of enlarging a church, chapel, meeting house, or other places of worship would extend to an underground chamber sought to be built under the

surface of a churchyard.

29. Turning to the third and last branch of the argument for the respondent I have come to the conclusion that it is also well founded and must be

accepted. Before dealing with it in detail it is worthwhile considering certain features of the provisions of Section 2 of Madras Act XV of 1946.

That "building" should be defined by the use of that very word as meaning "any building" seems indeed curious. That only suggests, in my opinion,

that the ordinary meaning of the word "building" is what is intended by the legislature. The epithet "any" attached to the word "building" in the

definition is designed to suggest that if there are more senses than one in which the word can be understood, the more extensive of the meanings

should be adopted, and if there are more kinds of buildings than one conceivable, any kind of building must be treated as within the contemplation

of the legislature. ""Building"" as observed in Halsbury's laws of England, Hailsham's Edition, Volume XXVI, page 335 ""is a term of wide

significance."" The structure need not be fastened to the ground or be above the surface of a street.

30. In the Concise Oxford Dictionary the word ""building"" is annotated at page 144 of the Third Edition as equivalent to ""house, edifice."" And

Edifice"" is at page 363 annotated as equivalent to ""building (especially a large one)"". In Baldwin's Edition (1928) of Bouvier's Law Dictionary at

page 141 ""building"" is annotated as meaning ""an edifice erected by art & fixed upon or over the soil composed of stone, brick, marble or wood or

other proper substance connected together and designed for use in the position in which it is so fixed."" This, it will be seen, is a very comprehensive

annotation which does not insist on a roof for the structure or on brick or stone in its composition. Then in Wharton's Law Lexicon at page 130 of

the 13th Edition, although it is first stated that the word has been ""defined by Lord Esher in ""(1892) 1 QB 264 (B)"" as an enclosure of brick or

stone covered by a roof and said by Parke 3. in -- ""Rex v. Gregory", (1833) 5 B and Ad 555 (T) not to include a wall"", it is further pointed out

that the ""definition depends on circumstances and may include a reservoir (--""Moran 6 Son Ltd. v. Marsland", (1909) 1 KB 744 (U). The

definition of Lord Esher M. B. is only a working definition and not, in my opinion, intended to exclude in all cases structures other than those made

of brick or stone or covered by a roof whether in England or in India. The learned Lord himself observes, that what is a building must always be a

question of degree and circumstances and then proceeds to state that its ""ordinary and usual meaning is a block of brick or stonework covered in

by a roof. This definition of Lord Esher M. B. has come up for adverse criticism in England in (1914) 3 KB 196 (C)"" where in addition to the

passage from the judgment of Cozens Hardy M. It. quoted by my learned brother, we have the following passage in the judgment of Swinfen Eady

L. J. at page 204 of the Report:

The solicitor-General contended that the word was restricted to erections of brick or stone covered by a roof; See (1892) 1 QB 2C4 (B)". In my

opinion, such a construction is too narrow. "A" building is not necessarily limited to a structure of bricks and mortar." (Per Collins M. R. in --

"Long Eaton Recreation grounds Co. v. Midland Ry. Co.", (1902) 2 KB 574 (V). Cottages built of wood would certainly be included as

"buildings", so also would be barn and stables of a farm though built only of wood and thatched with straw.

31. In my opinion the word "building" is a more generic word than house. A building need have no roof while a house must have. A house is,

according to Tomins" Law Dictionary, a place of dwelling or habitation which means ordinarily that there must be a roof for it which provides

shelter. Of course neither building nor house need be of brick or stone as I have already remarked. It seems to me that even if ""building"" generally

indicated a structure of brick or stone and with a roof, as defined by Lord Esher M. R. it may be that definitions under special Acts contemplate a

building without a roof & a building not made of brick or stone. Such was the case for instance so far as the need of a roof is concerned in the

decision reported in -- "Public Prosecutor v. Kalia Perumal Naidu", 8 Mad LT 431 (W) wherein it was pointed out that by section 3 of the

Madras District Municipalities Act, Act IV of 1884 ""building"" was defined as including a wall. So it was held that the word ""building"" in Clause (5)

of Section 180 of the Act included mere walls built for the purpose of erecting a house and the construction of such walls without the license of the

municipality rendered persons constructing them liable to the penalty prescribed in section 263, even though the house to support which the walls

were designed had not been built. ""Building"" in the etymological sense means ""any thing built"", and there is no reason why if that is the intendment of

the legislature in connection with a particular enactment, compound walls with the space inside may not be regarded as a building.

32. Then so far as the need of brick or stone about the structure is concerned there is the case in -- "Nandu Mal v. Municipal Committee Simla",

AIR 1925 Lah 252 (X) which is rather instructive. There the facts were as follows:

The petitioner constructed a wooden shed on a piece of ground belonging to him within the limits of the Simla Municipality. The shed was roofed

by tin sheeting, was mounted on wheels, and was used for sleeping purposes at night. No notice of intention to erect it was given to the Municipal

committee. The committee served the petitioner with notice u/s 195 of the Punjab Municipal Act, demanding demolition of the shed. The petitioner

thereupon moved the shed a distance of six feet, but did not demolish it. The petitioner was prosecuted u/s 219 of the Act, and fined Rs. 10/-.

It was held that

a wooden shed mounted on wheels and intended to be a permanent fixture to the site is a "building" within the meaning of Section 3(2) of the

Punjab Municipal Act, and that the fact that its construction permits it to be moved from one part of that site to another does not render

inapplicable to it the description "any hut or shed" "".

Reference is made at page 646 of the Report to two English cases, --"Stevens v. Gourlay", (1859) 29 LJCP I (Y) and -- "Richardson v. Brown",

49 JP 661 (Z) where structures have been held to be buildings, although made only of wood and not of masonry.

33. The case of -- "Richard Powell v. John George Boraston", (1865) 144 EP 408 (Z1) which was cited before me for the appellant is one of a

shed made of wood and improvised for the occasion of an election as a ruse to avoid disqualification as to voting which might otherwise result,

such a case is obviously one of fraud upon the statute which required a certain house qualification for a borough election.

34. That any building in the definition of Mad. Act XV of 46 must also refer to a building of any size whatsoever of course goes without saying.

The inclusion of hut in the statutory definition indeed emphasises this view of the matter. One wonders whether such inclusion was necessary at all

after the expression ""any building"". Apparently it has come in by way of abundant caution and serves only to further emphasise the implications of

the expression. ""Hut"" according to the concise Oxford Dictionary, page 556 means ""small mean house of rude construction.

35. Then in regard to the expression ""part of a building or hut"" it may be worthwhile noticing what Jessel M. R. has said of houses in --"Yorkshire

Insurance v. Clayton", (1881) 8 QBD 421 which Halsbury L. C. & Lord Brampton have cited with approval in -- "Grant v. Langston", (1900)

AC 383 (Z3).

Formerly houses were built so that each house occupied a separate site, but in modern times a practice has grown up of putting separate houses

one above the other. They are built in separate flats or storeys; but for legal and ordinary purposes they are separate houses. Each is separately let

and separately occupied, and has no connection with those above or below, except in so far as it may derive support from those below instead of

from the ground as in the case of ordinary houses.

The idea of the legislature seems to have been to go a step further and to include within the definition any part of even an ordinary house or hut not

built in flats, if let separately from the rest of house or hut. "Separately" in the context must mean, as is indeed its ordinary Dictionary meaning,

distinctly from the rest of the building or hut.

36. Bearing these considerations in mind and the purpose of the statute as declared by preamble as being to control non-residential as well as

residential accommodation it seems to me perfectly clear that, having regard to the compound walls and the space inside, which although not built

upon with a roof might well be used for non-residential purposes connected with the Gaiety Theatre, there is nothing unreasonable about the view

of the learned Judge below that the whole of the property demised can be regarded as a "building" within the scope of the statutory definition.

37. In this view it is unnecessary to consider the further point raised for the respondent that on account of the provision in Exhibit P-9 that "if the

excess buildings are not removed within the three months" period above mentioned they shall at the expiration of the period of three months

mentioned above belonging to the lessors as part of the demised premises without any liability to pay any compensation to the lessee", the Gaiety

Theatre must be regarded as at least part of the demised premises in his possession so as to entitle him to a continuing tenancy in respect of it

notwithstanding the expiry of the term. The point was not raised before the learned Judge in the court below, and although, to use the language of

Lord Watson in -- "Connecticut Insurance Co. v. Kavanagh", (1892) AC 473 (Z4), the question being one of construction it is not only

competent but expedient in the interests of justice for the appellate court to entertain the plea, I must say I am not satisfied" on the merits of the

question that the intention of the parties in providing as aforesaid was to create

a tenancy in respect of the Gaiety Theatre as contended by the learned advocate for the respondent. It seems to me that there is considerable force in the argument for the appellant that the expression "'excess building occurring in the provision has reference to the additional constructions which may come into existence after the lease in the space outside the 35 feet ground granted under the lease and not to the lessee's buildings adverted to in Clause (4) of the later set of covenants in the document between the lessor and the lessee. It may still be a question at the same time, if Mr. Muthu Krishna Ayer's construction is to be accepted whether the effect of the failure on the part of the lessee to remove the building in accordance with the liberty given to him by Clause (4) of the later set of covenants will be to make of the lessee's building property of the lessor and that too without any liability to pay any compensation. As already stated, I do not feel called upon to express any final opinion upon this aspect of the matter in view of the conclusion that we have reached on the main point argued in concurrence with the court below.

38. I agree that the appeal must be dismissed with costs.