

(1959) 04 MAD CK 0024

In the Madras High Court

Case No : Letter Patent Appeal No. 75 of 1958

N. Vajrapuri Naidu and Another

APPELLANT

Vs

The New Theatres Carnatic Talkies Ltd.

RESPONDENT

Date of Decision : 24-04-1959

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(5), 31(2)

Madras City Tenants Protection Act, 1922 — Section 12, 3, 9, 9(1)

Citation : AIR 1960 Mad 108 : (1959) ILR (Mad) 997

Hon'ble Judges : P.V. Rajamannar, C.J;Ganapatia Pillai, J

Bench : Division Bench

Judgement

Ganapatia Pillai, J.

(1) This Letters Patent Appeal is directed against the judgment and order of Panchapakesa Aiyar J. in C. M. P. No. 1835 of 1958 in A. S. No. 255 of 1957 on the file of this court. The appellants before us were the respondents in the petition, and the New Theatres Carnatic Talkies Ltd., the respondent before us, was the petitioner in that proceeding. That was an application made under S. 9(1) of the Madras City Tenants Protection Act, Act III of 1922, as amended by Madras Act, 19 of 1955, to direct the appellants before us to sell to the respondent the land on which the theatre constructed by the respondent stands.

(2) The facts which led up to the appeal in the High Court and the application for a direction to sell the land are the following. A piece of vacant land situate within the limits of the Coimbatore Municipality belongs to the appellants, who are mother and son. They granted a lease of the property to me Abhirama Chettiar by a registered lease deed dated 19-9-1934, for a period of 20 years. It was provided in the lease deed that, on the expiry of the 20 years period, the lease could be renewed for a further term of 20 years if the parties were so agreeable.

It was also provided in the lease deed that, on the expiry of the lease period, vacant possession of the land should be given to the lessor after removing any buildings which the lessee might construct thereon. On 17-4-1937, Abhirama

Chettiar assigned his interest in the leasehold for the un-expired portion of the lease period to the respondent before us, the New Theatres Carnatic Talkies Ltd. Even before that, there was a partnership between Abhirama chettiar and the Managing director of the Company, in pursuance of which a pucca cinema theatre was put up on the site in 1934-35, at a cost of over 11½ lakhs.

In March 1954, the respondents issued a notice to the company, asking them to quit the property and deliver vacant possession of the land. On receipt of this notice, the managing director of the company started negotiations with the owners for the grant of a further lease for a period of 20 years. The case of the respondents is that a draft agreement for the proposed lease was drawn up, and the first appellant agreed to execute a fresh lease deed in consultation with his mother. Subsequently he backed out of this agreement and filed a suit O. S. No. 76 of 1956, for recovering possession of the leased property with damages and future mesne profits. The company, in its turn, instituted O. S. No. 264 of 1955, for specific performance of the contract to grant a further lease.

(3) The first Additional Subordinate Judge of Coimbatore, who tried both these suits together, dismissed the suit for specific performance, but granted a decree in the suit for eviction. The company has preferred appeals against both decrees.

(4) Against the decree for eviction, the company preferred A. S. No. 255 of 1957, in this court during the pendency of which, by G. O. No. 608 Revenue dated 10-2-1958, the Government of Madras extended the Madras City Tenants Protection Act to the Municipal town of Coimbatore. Within the period of 30 days provided in the Act, the company applied before Panchapakesa Aiyar J. for an order under S. 9(1) of the said Act to compel the landlord to sell the site to the company for a price to be fixed by the Court and offered to pay the full market-value.

(5) Numerous objections were raised before Panchapakesa Aiyar J., but he overruled all of them and held that the respondent company was entitled to purchase the site under S. 9 of the Act on paying the full market value, as undertaken by them. He directed the Subordinate Judge, Coimbatore, to appoint a Commissioner to fix the value of the site based on the market value prevalent on 28-7-1958, the date of his order; and he also gave an order, directing the appellants before us to execute a sale deed for the site in favour of the respondent company on payment of the market value of the site fixed by the lower Court. He further directed that, as soon as his order became final, the appeals preferred against the two decrees in the two suits mentioned above will stand dismissed.

(6) Two questions have been raised by Mr. G. R. Jagadisa Aiyar, learned counsel for the appellants in this appeal. First, he attacks the constitutional validity of the provision in S. 9(1) of the Madras City Tenants Protection Act, hereinafter referred to as the Act, as infringing Art. 19(5) and violating Art. 19(1)(f) and Art. 31(2) of the Constitution. Before discussing the merits of this contention, we

would set out in brief the provisions of the Act. Sections 3, 9 and 12 are the important sections which matter.

Sections 3 and 12 of the Act provide that, except in cases where a tenant of land has first bound himself by stipulations in writing registered as to the erection of buildings and then erected the building on the land taken on lease by him, every tenant who has erected such building shall have the right to recover compensation equal to the value of the building when the landlord seeks to eject him from the land. By S. 9, the tenant is given an option to acquire the land from its owner for the lowest market value prevailing within the next proceeding 7 years.

This provision as to the lowest market value prevalent within the 7 years preceding the date of the order of court enabling the tenant to purchase the land was introduced by an amending Act, Act 6 of 1926. The time fixed for the tenant to apply for the purchase of the landlord's interest is one month after the date when the original Act or amending Act as the case may be, came into force or within one month after the service on him of summons in a suit by the landlord for the eviction of the tenant. By the amending Act, Act 6 of 1926, the period of one month after the date of the original Act coming into force was substituted by the same period after the date when the amending Act was extended to a Municipality by Government Order.

Sub-section (2) of S. 9 gives power to the court to extend the time for payment of the price fixed by it for the land and also to make an order for payment of the amount in instalments. Sub-section (3) of that section enables the court to pass a final order, directing the conveyance of the land by the landlord to the tenant on payment of the price fixed. The consequence of this order is that the suit for ejectment instituted by the landlord should stand dismissed, or that any decree or order in a judgment that might have been made in such a suit already obtained by the landlord should be vacated.

It will be seen from the provisions of the Act summarised above that the right given to the tenant to acquire the land is irrespective of any considerations like the area of the land, the period or the purpose of the lease or the size or character of the building put up by the tenant. Indeed, even if the tenant had erected the building without or against the consent of the landlord, the Act would appear to permit the tenant to acquire the land. The contractual rights between the landlord and the tenant are not interfered with by the provisions of the Act till either a suit for ejectment is instituted by the landlord or a decree for that purpose is obtained.

On the happening of this contingency, two rights are conferred upon the tenant; first, payment of compensation for the building under S. 3 and, second, the right to get an order from the Court, directing the landlord to sell the land to him on payment of its price under S. 9.

(7) The attack upon the validity of the impugned Act is not based upon the right

to compensation. It is directed only against the right of compulsory acquisition of the eland through the instrumentality of the court. It is said that this right conferred upon the tenant is a restriction upon the right of the landlord to recover possession of his land. Incidentally, this restriction is said to be an infringement of the right of ownership of the landlord. Secondly and alternatively, it is contended that the provision for compulsory sale of the eland to the tenant when the landlord seeks to evict the tenant is a deprivation of the property of the landlord and it is not valid under Art. 31(2) of the Constitution, since there is no public purpose involved.

(8) We will take up first the argument based upon Art. 19 of the Constitution. It is said that S. 9 violates Art. 19(1)(f) when it restricts the right of the owner to evict the tenant and infringes Art. 19(5) in that this restriction is not a reasonable restriction. The argument was that, even if the acquisition by the tenant was lawful and was not hit by Art. 31(2) of the Constitution, the landlord is entitled to rely on Art. 19(1)(f). The relative scope of Art. 19 and Art. 31 of the Constitution is now well settled according to the decisions of the Supreme Court in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, , and *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, .

In the former case, the question arose thus. A purchaser of an entire touzi at a revenue sale held by the Collector acquired, under S. 97 of the Bengal Revenue Sales Act, 1859, the right to avoid and annual undertenures and forthwith to eject all under-tenants with certain exceptions. This right was sought to be taken away from the purchaser by the West Bengal Amendment Act, 1950, on the ground that the exercise of this right caused great hardship in the urban areas of Calcutta and its suburbs. The constitutional validity of the West Bengal Amendment Act was questioned on the ground that it violated the fundamental right of the citizen to hold property under Art. 19(1)(f) and this objection was upheld by the Calcutta High Court.

In rejecting this contention, the Supreme Court held that the provisions of Art. 19 could only apply where the citizen continues to hold the property. They pointed out the correlation between Art. 19(1)(f) and Art. 31 in the following manner. If a person loses his property by reason of its having been compulsorily acquired under Art. 31, he loses his right to hold that property and could not complain that his fundamental right under Art. 19(1)(f) has been infringed. In other words, the rights enumerated in Art. 19(1) subsist only when the citizen has the legal capacity to exercise them.

The Supreme Court referred to the decision in *A.K. Gopalan Vs. The State of Madras*, , in support of the conclusion in that case that the fundamental right to personal liberty could only be enjoyed by a free citizen and not by one who was subject to lawful duress. This conclusion as to the relative scope of Art. 19(1)(f) and Art. 31 was reiterated by the Supreme Court in *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, . The

result is that, if the application of the impugned Act deprives the landlord of the property by compulsorily acquiring it from him for the benefit of the tenant, Art. 19(1)(f) cannot come into play.

(9) Mr. Jagadisa Aiyar sought to counter this conclusion by contending that the right of optional acquisition of the landlord's interest conferred upon the tenant is really a restriction upon the right of the landlord to recover possession of his land. This right, though optional with the tenant, comes in play as soon as the tenant applies under S. 9(1) to the court for an order for acquisition. It is true that, at this point of time, the landlord had only asserted his right to recover possession of his land.

But, in judging the effect of the provisions of S. 9 of the impugned Act, one has to take into account the result of the application made by the tenant for acquisition. So viewed, we do not find any justification for holding that the order for acquisition made under S. 9 is only restriction upon the right of the landlord to recover possession of his land and not deprivation of the title of the landlord to the land.

(10) What amounts to deprivation of property has been the subject of determination by the Supreme Court in many cases arising under Art. 31 of the Constitution. It is enough for our present purpose to refer to the observations of the Supreme Court in *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, . There, power was taken by the provisions of the Sholapur Spinning and Weaving Co., Emergency Provisions Act, 1950, for appointing directors to take over the assets and management of the company, and, when this power was exercised by the Government, objection was taken to the validity of the Act.

One of the arguments advanced by the learned Attorney General as a reply to this objection is that the title of the company to its assets was left intact and was not taken over by the Government under the Act, and therefore, the Act did not authorise any acquisition of the company of its assets. In repelling this argument, Mahajan J., as he then was, made the following observations:

"In this situation, it is not possible to subscribe to the contention of the learned Attorney General that the effect of the Ordinance is that the Central Government has taken over the superintendence of the affairs of the company and that the impugned legislation is merely regulative in character. In the present case, practically, all incidents of ownership have been taken over by the State and all that has been left with the company is mere paper ownership."

Even on that hypothesis, the Supreme Court held that the provisions of the impugned Act deprived the company of its property. What is substantial deprivation of property that would come under Art. 31 was also considered by the Supreme Court in *The State of Bombay Vs. Bhanji Munji and Another*, . There, the following quotation from *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , was reproduced for

reinforcing the conclusion that, when a right to occupy the premises by a tenant is taken away, as also the right to transfer, assign, let or sublet, what is left to him is merely the husk of title in the leasehold interest, and the law which authorises such taking away of the right of the tenant (The Bombay Land Acquisition Act, 1948) effected a substantial deprivation of the right of the tenant, namely, his right to property:

"By substantial deprivation is meant the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that one must seek."

In view of all this, we are unable to countenance the argument that the acquisition of the landlord's title under S. 9 of the impugned Act does not amount to deprivation. Indeed, not even paper title is left with him. He parts with ownership in return for payment of a market price. Under the circumstances, Art. 19(1)(f) cannot have any application to this case. In this view, it is really unnecessary for us to discuss the further question whether the provisions of the impugned Act exceed the limit of reasonable restrictions indicated in Art. 19(5) and whether the object of the Legislature could not have been achieved by making the tenancy permanent or making the eviction of the tenant impossible for a period till housing condition improved.

The further argument that the provisions of the Act are really in excess of the necessities of the situation and that the remedy proposed by the impugned Act is not commensurate with the evil sought to be avoided does not also arise for our consideration.

(11) The first argument addressed to us by Mr. G. R. Jagadisa Aiyar relating to Art. 31(2) is that Art. 31 relates only to acquisition made by the State in the sense that the property taken belongs to the State or that the State takes it in the first instance and, acting as a conduit pipe, transfers it to some of its citizens. In the present case, the State does not take the property of the landlord. The impugned Act merely directs the landlord to convey his land to the tenant who has built a building upon it.

Not only is there no authority for this contention of Mr. Jagadisa Aiyar, but the Supreme court has laid down that Art. 31 applies not only to acquisition by the State in the sense of the property becoming thereafter State property, but also to acquisitions made under the provisions of any law for any class of persons. In *The State of Bombay Vs. Bhanji Munji and Another*, the acquisition was not for the benefit of the State, though after acquisition, the State took power to allot the premises either to its servants or to others.

In the various laws enacted by the States after 1948 for acquisition for Zamindari estates, acquisition was not made by the State itself for its benefit, but was made really for the benefit of the tenants of the Zamindars. None of these laws was held by the Supreme Court to fall outside Art. 31.

(12) In support of his argument that Art. 31 applied only to acquisitions by the State and not on behalf of any section of the public, Mr. Jagadisa Aiyar referred to S. 31(2A) as indicating the class of acquisitions, to which S. 31 would apply. He really used this argument to buttress up his plea that Art. 19(1)(f) alone would apply to this case. Article 312A was introduced by the fourth amendment to the Constitution which was made in 1955, in order to nullify the effect of the decision of the Supreme Court in *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, (Second Sholapur case).

This new clause provides, that when the State takes private property, no compensation need be paid unless ownership also is transferred to the State. No more need be said about the merits of this contention in view of the decisions of the Supreme Court regarding the applicability of Art. 31 of the Constitution to all kinds of deprivation of property, whether the property is taken over by the State or is acquired for the benefit of a section of the public.

(13) The next contention of Mr. Jagadisa Aiyar was that the taking in this case was not for a public purpose and therefore was not protected by Art. 31. The learned Advocate General appearing for the respondent did not dispute that any acquisition to be protected by Art. 31 should be for a public purpose. The narrow question for our consideration, therefore, is whether the purpose for which the acquisition is provided under the impugned Act is a public purpose.

(14) In *The State of Bombay Vs. Ali Gulshan*, , the Supreme Court had to consider whether a public purpose was involved in the taking contemplated under the Bombay Land Acquisition Act, 1948. Under that Act, the State of Bombay was empowered to requisition premises for certain purposes. The premises in question in that case was requisitioned for housing a member of the staff of a foreign consulate. In discussing the question whether this was a public purpose, the Supreme Court pointed out that a purpose may not be a "state purpose" or a "Union purpose" and yet fall under the category of general public purpose. It upheld the validity of the Act on the ground that the requisition of the premises for the purpose of housing a member of a foreign consulate was a general public purpose.

(15) This question had also been considered in a number of decisions both of this Court and of the Supreme Court. In *P. Thambiran Padayachi and Others Vs. The State of Madras and Others*, , to which one of us was a party, there is an exhaustive review of all the case-law on the subject. There, land was acquired by the State on behalf of a co-operative society for building houses for the members of the society. The contention urged was that such a purpose would not be a public purpose. The Bench summed up the result of the authorities thus:

"Acquisition of property for public purpose under Act. 31(2) includes whatever results in an advantage to the public. It is not necessary that it should be available to the public as such. It might be in favour of individuals, provided they are benefited, not as individuals, but in furtherance of a scheme of public utility.

Schemes for the construction of houses, for clearing slum areas, relieving congestion and housing poor people are for a public purpose, as they tend to promote social welfare and prosperity."

In *The State of Bombay Vs. Bhanji Munji and Another*, , the Supreme Court held that the powers vested in the State of Bombay under the Bombay Land Acquisition Act, 1948, authorised acquisition of premises for a public purpose, namely, finding accommodation for the homeless. The fact that the term "public purpose" has not been defined in the Constitution has enabled Mr. Jagadisa Aiyar to cover a wide field during his arguments on this point and he has also referred to the old American view of the law of eminent domain, which authorised the State to take private property for public use.

Indeed, that view which imposed the condition that the public must actually have an interest in the property acquired and that the terms and manner of enjoyment must be within the control of the State has been very much modified in modern times even in America, as would be seen from the following quotation from Rottshaeffer's Constitutional law, 1939 Edn. at pages 700-701:

"The principle has considerably modified the scope of the well established rule that the power of eminent domain may not be used, primarily to transfer private property from one owner to another for the private use of the latter. But it has not completely abolished that rule. Every condemnation of property by a private party for use by him, necessarily involves its exercise for his private benefit. It is only where his use of it either involves, as well as its use by the general public, that the property is deemed taken for a proper public use. It is invariably a question of degree whether the public benefits resulting from a private use of condemned property, are sufficiently important to outweigh the private benefits derived therefrom by the condemnor."

(16) As early as 1914 in *Hamabai Framjee Petit v. Secy. of State for India*, 42 Ind App 44 : AIR 1914 PC 20, the Privy Council had to consider this question with reference to a sanad granted by the East India Co., by way of lease of a land situate in the Island of Bombay. The terms of this lease granted power to the company, their successors or assigns to resume the land for any public purpose. The Government of Bombay purported to exercise this power in order to erect dwelling houses for Government officials.

This was challenged on the ground that the purpose was not a public purpose. The Privy Council overruled this objection on the ground that the provision of houses for Government officials, would redound to public benefit by helping the Government to maintain the efficiency of its servants. On this ground, they held the purpose to be a public purpose.

(17) Mr. Jagadisa Aiyar cited the decision of the Orissa High Court in *Satrughna Sahu Vs. The State of Orissa and Others*, , on this point. By the provisions of the Orissa Act 18 of 1948, the Government took powers to acquire land for certain purposes which were designated as Development of Industries, Irrigation,

Agriculture, Capital Construction and Resettlement of displaced persons. By virtue of these powers, the Orissa Government notified the establishment of a paper mill in the district of Cuttack by a private limited company as falling within the development of industries as defined in the said Act.

Thereafter, the Land Acquisition Officer took steps to acquire lands for this company. This acquisition was impugned on the ground that it was not for a public purpose and the acquisition would offend Art. 31(2) of the Constitution. The Bench of the Orissa High Court which heard the case, held that, even in its extended meaning of the term, "public purpose" it was not intended to apply where the land is required for an industrial concern working purely for its own gain, even though the goods produced by the concern may be of use to the general public.

On this analogy, Mr. Jagadisa Aiyar contended that the acquisitions under the impugned Act, with which we are concerned, are really for the benefit of the private individuals who have constructed houses upon lands belonging to others and could not be held to be for a public purpose. In rejecting this argument, we rely upon the principle laid down by a Bench of this Court, to which one of us was a party, in *Belegal Gundachar and Another Vs. The State of Madras and Others*, . There a land was acquired under the Land Acquisition Act for excavating a field distributory channel to irrigate an adjoining dry land belonging to a private owner.

The objection taken to the acquisition was that the land was acquired solely for the benefit of a private owner and could not therefore be deemed an acquisition for a public purpose. The Bench repelled this argument, following the decision in *P. Thambiran Padayachi and Others Vs. The State of Madras and Others*, . The following quotation from *The State of Bihar Vs. Sir Kameshwar Singh*, , was relied on as being apposite:

"The definition of the expression "public purpose" is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs."

The Bench pointed out the principle of American Constitutional law that there was a public use if a thing taken is useful to the public. They further point out that under the rule applicable under the American Constitutional law it was not necessary for the benefit to be for the whole community, but it should be for a considerable number and the fact that the benefit also enures to a private individual was no objection. The acquisition in that case was justified on the ground that its object was extension of irrigation, though incidentally it benefited only one private individual.

On this state of the law, the following propositions cannot be questioned; an acquisition can be for a public purpose, even though all the numbers of the public do not take the benefit, but only a section of it takes the benefit; public purpose in an acquisition may be served even though the acquisition is for the benefit of

particular members of the public, provided the object of acquisition advances a public purpose. In this category may be included advancement of public prosperity, public welfare and the convenience of the public.

(18) Having these principles in mind, we shall examine the purpose for which the acquisition is made under the impugned Act. The preamble to the Act states that it was found necessary to give protection to tenants who had constructed buildings on lands belonging to the other people in the hope that they would not be evicted so long as they paid a fair rent for the land. It is well known that in 1921, at the time when the impugned Act was placed in the statute book, quite a number of citizens of the City of Madras had put up buildings on lands belonging to others obtained on lease, and attempts were made by the landlords to evict those tenants by demolition of such buildings for the purpose of taking vacant possession of the land.

This created a problem of finding accommodation for the displaced tenants and also of abating the inconvenience caused to such tenants by the destruction of the valuable buildings put up by them. A situation was thus created in which a section of the public were in danger of being rendered homeless, and the State had the duty of finding homes for them. This being the history of the object behind the legislation, there can be no doubt that public benefit and convenience were advanced by the impugned Act.

No exception could therefore be taken on the ground that the impugned Act benefited only a section of the public, because, indirectly, the general public also was benefited by easing the situation of housing conditions in the city. The same conditions had developed in the municipal towns of this State by 1955 when the amending Act 19 of 1955 was enacted, extending the provisions of the impugned Act to municipal towns and adjoining areas in the State of Madras. No exception could therefore be taken to the validity of the Act on the ground that the taking of private property authorised by the Act did not serve a public purpose.

(19) An attempt was made by Mr. Jagadisa Aiyar to draw an analogy between pre-emption laws in force in the various States of India, which have been held in a decision of the Hyderabad High Court and another decision of the Rajasthan High Court as invalid. There is no decision of the Supreme Court on the validity of the pre-emption laws of the various States; but different High Courts like the Nagpur High Court, the Punjab High Court and the Allahabad High Court have had to deal with this question.

In *Panch Gujar Gaur Brahmans v. Amarsing*, AIR 1954 Raj 100, *Siremal and Others Vs. Kantilal*, and *Shankerlala v. Poonamchand*, AIR 1954 Raj 231, three Benches of the Rajasthan High Court had to deal with the validity of the laws of pre-emption prevailing in that State. Articles 14 and 19(1)(f) of the Constitution were relied on for holding that the laws were invalid. In our opinion, no useful purpose will be served by canvassing the reasons given in those decisions as there is no similarity between the incidence of the law of pre-emption and the

acquisition of property under the impugned Act.

Indeed, a different view has been taken in *Ramachandra v. Janardan*, (S) AIR 1955 Nag 225 (FB), *Uttam Singh Vs. Kartar Singh and Others*, and *Punjab State Vs. Inder Singh and Others*. In all these cases, the law of pre-emption was upheld as the restriction was held to be a reasonable restriction within the meaning of Art. 19(5) of the Constitution. Both on the ground that there is no parity between the law of pre-emption and the impugned Act and on the ground that there is no decision of the Supreme Court which is binding on us, we consider there is no substance in this contention.

(20) The next argument of Mr. Jagadisa Aiyar related to the proviso to S. 12 of the impugned Act. That section reads:

"Nothing in any contract made by a tenant shall take away or limit his rights under this Act, provided that nothing herein contained shall affect any stipulation made by the tenant in writing registered as to the erection of buildings in so far as they relate to buildings erected after the date of the contract."

The argument based upon the Proviso to this section is that the contract in this case stipulated that, at the end of the lease period, the tenant should give vacant possession to the landlord after removing the building constructed by him upon the land. The effect of this stipulation in the contract, according to the learned counsel, was that the tenant impliedly contracted himself out of the rights conferred upon him by the impugned Act. The effect of this proviso has been considered by Pandrang Row J. in *Pamidi Vedavalli Thayarammal Vs. Junus Chettiar*, .

The point for decision in that case was whether a tenant, against whom a suit for ejectment was laid, was entitled to plead want of notice stipulated by S. 11 of the impugned Act as a bar to the claim for eviction. For this purpose, it was assumed that the buildings in occupation of the tenant did not belong to him, but were in existence even before the date of the tenancy. It became necessary to find out if a person in the position of the defendant in that case fell within the definition of the "tenant" contained in the impugned Act.

The tenancy in that case came into existence before the date of the Act. The land was used for carrying on the business of a firewood depot. The plaintiff claimed the building as per own on the strength of a rental agreement of 1922, which provided that the tenant should, at the end of the lease period, vacate the building and the ground, and deliver the same to the landlord. This stipulation was relied on as a bar to the claim of the tenant for taking benefits under the Act. In considering the scope of the proviso in S. 12 of the Act, Pandrang Row J. observed thus:

"This proviso cannot possibly apply to the present case. In the first place, though the stipulation purports to relate to buildings to be erected after the date of the contract, there can be no doubt that the buildings were already in existence and

that the stipulation is now being attempted to be applied to buildings in existence before the date of the contract relied on. Secondly, the proviso applies, in my opinion, only to stipulations regarding the erection of buildings, that is to say, stipulations, restricting the right of the tenant to building such buildings as he likes either as regards the size, their cost, their situation and so on, and it certainly cannot relate to stipulations cutting down or extinguishing altogether the right of the tenant to get compensation in respect of buildings built by him, which is given to him by the Act."

(21) The learned Judge concluded that the stipulation in the contract did not deprive the tenants of anything, which, but for that agreement, they would have been entitled to under the Act. The first conclusion of the learned Judge that the stipulations in the contract as regards buildings applied to buildings already in existence is not relevant for our present purpose. It is his second conclusion which is canvassed by Mr. Jagadisa Aiyar as incorrect.

The tenancy agreement in this case recites that the tenant obtained the leasehold right for the purpose of erecting a theatre thereon. Of course, there is also the agreement, that, at the end of the leasehold period, the tenant should surrender possession of the land to the landlord after vacating the building erected by him. The first part of S. 12 is in absolute terms. It categorically states that nothing contained in any contract made by a tenant shall have the effect of taking away or limiting his rights under the impugned Act.

The proviso is in the nature of a qualification to the first part of the section. The proviso, no doubt, states that, notwithstanding the first part of the section, a tenant shall be bound by stipulations made by him as to the erection of buildings in so far as they relate to buildings erected after the date of the contract. To construe this proviso in the manner suggested by learned counsel for the appellants would lead to the result of abrogating the protection given to the tenant by the first part of this section.

We are not concerned here with a case of erection of buildings contrary to the stipulations contained in the written contract, to which the tenant was a party. How far, in such a case, the tenant would be protected from forfeiting his rights under the impugned Act, does not arise for our consideration. For example, we may point out that, in a case, a tenant might have agreed to erect a building of a certain size and of a certain value, and he might, in contravention of this undertaking erect a building of another size or of a higher value.

Whether in such a case he could claim a compensation for the entire building or whether he should restrict his right to compensation to the permitted building under the language of the contract is not the question which arises for our consideration now. It is true that S. 9 says that a tenant entitled to compensation could alone purchase the land belonging to the landlord. But the question is whether in the hypothetical case pointed by us now, the tenant could put up an unauthorised building in the sense that the building contravened the

stipulations contained in the contract and whether a tenant who had so put up an unauthorised building in terms of the stipulation in the contract would fall within the definition of a "tenant" entitled to compensation as that term is used in Ss. 3 and 9 and whether such a tenant could acquire the landlord's title in the land. These questions do not, however, arise for our consideration now. The limited question we are called upon to decide is whether, when the building put up conforms to the stipulations contained in the registered contract between the parties as to the erection of the building, the tenant would forfeit his right of acquiring the landlord's title under the Act by reason of the term in the contract as to surrender of vacant possession.

For thus construing S. 12, the words "any stipulation made by the tenant in writing registered as to the erection of building" must be held to include not only the size and nature of the building, but the very question of the tenant's right to erect the building. Such a construction of the proviso would exceed the purpose of the proviso. The object and purpose of every proviso in an enactment is not to destroy the general proposition to which it is a qualification, but to limit the operation of the general proposition.

The general proposition in this case contained in S. 12 is that no term in any contract contained made by a tenant shall take away his rights or limit his rights under the Act. We are not concerned with a right to compensation in this case. We are only concerned with the right of acquisition of the land by the tenant. Such a right could not be taken away or limited by the stipulation made by the tenant in the contract that he would give vacant possession of the land at the expiry of the lease period. This condition in the contract cannot be regarded as a condition or stipulation as to the erection of buildings.

Mr. Jagadisa Aiyar contended that this stipulation impliedly trench upon the erection of a building, because, the tenant agreed to remove the building at the end of the lease period. Not only is this construction far-fetched, but it is also opposed to the plain grammatical meaning of the proviso. In our opinion, the application of the proviso should be limited to those cases where the stipulations in the contract relate to erection of building such as the size of the building, the cost of the building and the design of the building or other cognate matters.

This construction was characterised by Mr. Jagadisa Aiyar as one which involved introduction of words which are not found in the section. We do not agree. To accede to the contention of Mr. Jagadisa Aiyar would amount to abrogation of the valuable rights secured to the tenant under S. 12. We therefore overrule this contention.

(22) Getting inspiration from an observation which fell from one of us, Mr. Jagadisa Aiyar lastly contended that the cinema theatre, with which we are concerned in this case, would not fall under the definition of "building contained in S. 2(1) of the Act. The definition reads thus;

"Building includes a house, outhouse, stable, latrine, shed, hut and any other

such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever."

This argument is answered by the decision in Pamidi Vedavalli Thayarammal Vs. Junus Chettiar, , with which we are in respectful agreement. There, the building in question was used as a firewood depot, and was not a dwelling house. Pandrang Row J. held that the definition of the word "building" found in the Act, was sufficient to include both business premises as well as dwelling house. Besides, the use of the word "includes" in the definition in S. 2(1) of the Act, shows that it is not an exhaustive definition. It could not be construed as a word of restriction. It should be properly construed as a word of enlargement. The term "includes" is defined in Stroud's Judicial Dictionary, Vol. 2 as a phrase of extension and not of restrictive definition. We would therefore agree with Pandrang Row J., that the definition of a "building" in S. 2(1) of the Act includes a building like the cinema theatre in the present case.

(23) All the objections raised by the appellant, therefore, fail, and the appeal is dismissed. No costs.

(24) Appeal dismissed.