

(1972) 09 MAD CK 0031

In the Madras High Court

Case No : Original Side App. No. 40 of 1972

Pals Theaters and Others

APPELLANT

Vs

B. Abdul Gafoor Sahib and Others

RESPONDENT

Date of Decision : 08-09-1972

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226

Madras Buildings (Lease and Rent Control) Rules, 1961 — Rule 10, 13

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 14, 14(2) , 15, 16, 3(5)

Citation : AIR 1974 Mad 135 : (1973) 86 LW 65

Hon'ble Judges : Palaniswamy, J;Ismail, J

Bench : Division Bench

Judgement

Palaniswamy, J.—The only point that arises for determination in this appeal filed by the defendants (the first defendant being a firm of which

the partners are defendants 2 and 3) is whether the suit properties which the appellants took on lease under Ex. P-1 on 18-10-1960 are

"buildings" within the meaning of the Madras Buildings (Lease and Rent Control) Act. 1960, (Madras Act 18 of 1960) (hereinafter referred to as

the Act). The suit properties consist of two theatres. One is called Noorjahan Talkies situated in Saidapet and the other is called Janata Talkies

situated in Pallavaram. These two theatres originally belonged to one Batcha Sahib, who died on 25-8-1960, leaving his widow Amina Bi, son

Abdul Gafoor (first plaintiff) and two daughters Noorjahan Begum and Bibi Jan (plaintiffs 4 and 5). Batcha Sahib was using the theatres for

exhibiting films and after his death his heirs continued to use them likewise. The defendants obtained a lease of the suit properties from the

aforesaid heirs of Batcha Sahib on 18-10-1960. The period of lease was five

years with option for lessees to obtain a renewal for three years.

After the death of Amina Bi, disputes arose between the other heirs of Batcha Sahib which led to the institution of C.S. 1 of 1961 on the file of this

court. That suit ended in a compromise decree under which the first plaintiff is given Noorjahan Talkies and plaintiffs 4 and 5 have been given

Janata Talkies for their shares. In that suit, the present first plaintiff and the husbands of plaintiffs 4 and 5, who are respectively plaintiffs 3 and 2 in

the suit, were appointed joint receivers. Alleging that the period of lease had expired and that in spite of notice demanding possession, the

defendants were continuing in possession and were refusing to surrender possession and were refusing to surrender possession, the plaintiffs laid

the suit for possession and other reliefs. The defendants contended inter alia that the lease was in respect of a building within the meaning of the Act

and that even though the period of lease had expired, they were not liable to be evicted. That was the substantial defence which the trial court was

called upon to decide. The trial Judge found that the transaction between the parties was a lease in respect of going concerns of the cinema

theatres and was not in respect of buildings and that, as such, the plaintiffs were entitled to a decree for possession. In that view, the trial Judge

granted a decree for possession with a further direction for determination of the quantum of damages for use and occupation from the date of the

termination of the lease in a separate application. Hence this appeal.

2. Mr. Venkatramani, appearing for the appellants, contended that the view of the trial Judge that the lease was not in respect of properties which

have been described as premises with machineries, fittings, fixtures, etc. and that, as such, the lease is in respect of buildings within the meaning of

the Act. His further argument was that the reference in the lease deed to projectors, amplifiers and other cinema equipments does not make the

lease any the less a lease of the buildings, that those items, though specifically described in the lease deed, are mere fittings and fixtures which form

part of the buildings and that, therefore, the lease was only in respect of buildings. This argument did not find favour with the trial Judge, who, on a

consideration of the terms of the lease deed, held that the lease was in respect of going concerns. In coming to that conclusion, the trial Judge relied

on the decision of a Bench of this Court in *S. Raja Ghetty and Others Vs.*

Jagannathadas Govindas and Others, in which it was held that a lease of a talkie house with everything that is to be a lease in respect of a building. Mr. Venkatramani, appearing for the appellants, contended that the said decision is not applicable to the facts of this case and that decision was given with reference to the definition of "building" occurring in the Madras Buildings (Lease and Rent Control) Act 1946 (Madras Act 15 of 1946) and that different considerations arise in examining the nature of the lease in the instant case, which, according to the counsel, should be determined with reference to the relevant provisions of the present Act.

3. Before advertng to the question whether the decision in S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others, , applies to the

facts of this case, it is necessary to refer to the relevant provisions of the lease deed, Ex. P. 1, dated 18-10-1960. The lessors are declared as the

absolute owners of ""the entire property known as Noorjahan talkies with a cinema theatre, superstructure with machineries and fittings and fixtures,

more particularly described as item I in the schedule hereunder...."". With regard to the other theatre, the lease deed says that the lessors are the

absolute owners of ""the cinema theatre superstructure thereon known as Janatha talkies together with the machineries fittings and fixtures more

particularly described as item 2 in the schedule hereunder."" ""The lease deed states that the lessors had been carrying on the business of

cinematograph exhibition under the names of Noorjahan and Janatha talkies in items 1 and 2 respectively. It is further declared that the lessors had

agreed to grant lease of the suit properties to the lessees ""for the purpose of the lessees carrying on cinematograph exhibition business therein

declaring and assuring that the said properties are free from any encumbrance....."" In the operative portion, it is declared that the lessors leased

unto the lessees the two properties, namely--

1. the theatre, superstructure, ground and premises known as Noorjahan talkies situate at Saidapet, Madras with the machinery, fittings, fixtures

and all materials, more particularly described as item No. 1 in the schedule hereunder.....

2. the theatre, superstructure, leasehold ground and premises known as Janatha talkies situate at Pallavaram, Chingleput Dist. together with

machinery, fittings fixtures and all materials more particularly described as item

No. 2 in the schedule hereunder.

Item 1 of schedule I describes Noorjahan talkies as consisting of all the piece or parcel of land and buildings, cinema constructions, etc. Similar

description is found as regards Janatha talkies described as item 2. The lease deed stipulates inter alia that the lessees should pay the monthly rent

of Rs. 5850 irrespective of the fact whether they carry on the business of suspend or altogether stop it for any reason whatsoever and irrespective

of the fact whether the lessees continue to occupy the premises or not or make use of the equipment or not for the entire period of the lease for

whatever reasons except the termination of the lease as provided in the lease deed. The lessees undertook to bear, pay and discharge electric

current charges and licence fees relating to the business of the lessees. They also undertook to perform and observe rules and regulations of the

local bodies, municipal corporation, police, health, fire and other authorities and also to observe and comply with all statutory provisions relating to

the cinematograph exhibition. They further undertook not to use the properties for any purpose other than cinematograph exhibition and incidental

and allied business. The lease deed further provides that the lessees should not remove any fixtures or other fittings from the leased premises

except for the purpose of necessary repairs or re-arrangement for theatrical performances. Right was conferred upon the lessees to assign, sublet,

or underlet the leased premises of both or either one of them either in whole or in part with the consent of the first plaintiff in addition to being

entitled to allow screening of pictures at the theatres, on the basis of payment of rental for the premises during the period of such screening besides

the usual screening on percentage basis.

The lessees undertook to surrender possession of the leased premises together with all superstructures, fixtures and fittings forming part thereof as

per the schedule on the expiry of the lease. The lessees undertook to pay an advance of Rs. 1,75,000/-, which was agreed to be repaid by

adjustment as provided therein. The terms of the agreement were that (1) Rs. 25,000/- to be paid on the execution of the lease deed and (2) Rs.

1,50,000/- to be paid on or before 1st November, 1960 after the transfer of the licences of both the talkies in favour of the lessees. The advance

was agreed to be adjusted and recovered by the lessees out of the monthly

rental throughout the lease period as provided therein. In the first four years the amount to be adjusted out of the above advance towards the rental was stipulated at Rs. 3,000/- per month totaling to Rs. 1,44,000/-.

During the remaining period of the lease, the amount was stipulated as Rs. 2,500/- per month totaling to Rupees 30,000/-. The balance of Rs.

1,000/- was agreed to be paid by the lessors to the lessees upon the expiry of the lease period. The lessors further undertook to get the transfer of

the licence issued by the Collector to the lessors in favour of the lessees in respect of both the talkies. They further undertook to have the leased

premises, machineries and fittings insured to cover risks. Liability was cast upon the lessors to carry out annual distempering and white-washing

and repairing the leased premises. Right was conferred upon the lessees, at any time if it became necessary, to do any repair to the projectors,

machineries, fittings, furniture, screen and equipments after giving intimation to the lessors and at the cost of the lessors. The lease deed also

provided that on the expiry of the lease period, the lessors shall be entitled to take possession of the equipments and materials covered by the

document on payment of the balance of the advance amount due to the lessees.

4. We have referred in detail to the relevant provisions in the lease deed, as the essential question that arises for consideration is, what exactly was

the subject-matter of the lease? In other words, the question is, was the subject-matter of the lease a building with other things considered as mere

incidental to the use of the building or was the subject-matter of the lease the going cinema theatres as such, with all the necessary equipments with

the buildings for continuing the business as was being done at the time of the lease? On a consideration of all the relevant terms of the lease deed,

we have no doubt in holding, agreeing with the trial Judge, that the lease was in respect of going concerns of two fully equipped theaters. Here are

our reasons:

(i) At the time of the lease, the two theatres were being used as exhibition of films;

(ii) The licences in respect of the two theatres were in force and the lessors agreed to get a transfer of the licences in favour of the lessees;

(iii) Out of the advance of Rs. 1,75,000/-, a sum of Rs. 1,50,000/- was agreed to be paid by the lessees only after the transfer of the licences in

their names;

(iv) The express purpose of the lease was to enable the lessees to carry on the business of cinematograph exhibition;

(v) The subject-matter of the demise consisted of the buildings, projectors, amplifiers, speakers, monitors, screens, furnitures and all other things

necessary for carrying on the cinematograph exhibition;

(vi) The lessees undertook to pay the rent even if they did not carry on the business of cinematograph exhibition;

(vii) The lessees undertook to pay the licence fees relating to the business of cinematograph exhibition;

(viii) The lessees undertook to perform and observe all rules and regulations relating to cinematograph exhibition;

(ix) The lessees undertook not to use the properties for any purpose other than cinematograph exhibition and incidental and allied business;

(x) The lessees were given right to repair the projectors, machines etc., at the cost of the lessors after notice to them. The broad features, in our

opinion, establish beyond any doubt that the subject-matter of the lease was the cinema business as a going concern and it was not merely the

building.

5. Mr. Venkataramani, appearing for the defendants-appellants, contended that, after the defendants obtained the lease, they were at liberty to

employ persons of their own choice in running the cinematograph exhibition and that, therefore, it cannot be said that the lease is in respect of a

going concern. He further contended that the lease deed does not state in express terms that what was leased was a going concern. Relying upon

the foregoing circumstances, the counsel contended that the finding should be that what was leased was a building. We are unable to attach any

significance to any of the circumstances, either taken singly or cumulatively.

The fact that the lessees were entitled to employ men of their own choice for running the business does not in any way militate against the view that

the lease was in respect of a going concern. It is true that after the expiry of the licences which were current at the time of the lease, the lessees

were to obtain licences for continuing the business. The circumstance cannot militate against the view that the lease was in respect of a going

concern, for, under the Madras Cinemas (Regulation) Act, 1955, the licence is

personal to the person to whom it is granted and no transfer or assignment thereof, whether absolute or by way of security or otherwise, shall be valid unless approved in writing by the licencing authority. It is because of this that the lease deed in question expressly stated that the lessors should get the licences that were then current, transferred to the names of the lessee. After the lessees entered upon possession and commenced business, it was their duty to get the licences which could be only in their names. But from that circumstance, it cannot be said that the subject-matter of the lease was not the going concern. The fact that the lease deed does not expressly say that the lease was in respect of a going concern is of little significance, for, we have to find out the terms of the contract from the document read as a whole and the absence of a specific recital that the lease was in respect of a going concern would not take away the inference which legitimately flows from a reading of all the terms.

6. The counsel for the appellants contended that the trial Judge was wrong in relying upon the decision of a Bench of this court in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, . In that case, as in the instant case, the subject-matter of the lease consisted of all the machineries required for running the cinematograph exhibition along with the building in which they were located. The lessors took out an application before the Rent Controller for eviction on the ground that the lessees had committed default in payment of rent. The lessees contended that the petition was not maintainable and that they were not liable to be evicted. The Rent Controller dismissed the application on the ground that there was no default. But the appellate authority held that there was default and that the application was maintainable, and allowed the appeal. The lessees moved this court under Article 226 of the Constitution to quash the order of that authority. *Rajamannar, C. J.*, speaking for the court analysed the relevant provisions of the lease deed and observed--

Here is a lease of a talkie house with everything that is necessary to run cinema shows. To split up such a composite lease as this into separate contracts of lease and hire is to destroy it altogether.

In that case, much stress was laid upon the provisions of the lease deed which split up the monthly rent, certain amount for the ground and certain amount for furniture and yet certain amount for talkie equipment, machinery etc.

It was contended that from the provision it followed that the lease was in respect of a building. Rejecting this argument, the learned Chief Justice observed--

We have no hesitation in holding that this splitting is purely notional and nominal and intended probably for purposes relating to the Municipal assessment and other extraneous considerations.

In the result, the writ petitions were allowed holding that the lease was not merely in respect of the building but was in respect of the cinema theatre with all equipments for the exhibition of films and as such the transaction would fall outside the purview of the Rent Control Act.

7. Mr. Venkatramani, appearing for the appellants, contends that the said decision of the Bench was given with reference to the definition of

"building" as found in the Madras Buildings (Lease and Rent Control) Act, 1946 (Madras Act 15 of 1946), that what we are concerned with in

this case in the 1960 Act and that, therefore, different considerations arise. The decision in *S. Raja Ghetty and Others Vs. Jagannathadas*

Govindas and Others, , was given on 16-9-1949 at the time when Madras Act 15 of 1946 was in force. This Act was repealed by the Madras

Buildings (Lease and Rent Control) Act, 1949 (Madras Act 25 of 1949 which came into force on 14-12-1949). The definition of the word

"building" in the 1946 Act and in the 1949 Act and in the present Act is the same, and it reads--

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

includes--(a) the garden, grounds, and out-house if any appurtenant to such buildings, 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, but does not include a room in a hotel or

boarding house.

Though the definition continues to be the same right through, Mr. Venkatramani relied upon sub-section (5) of Section 3 of the 1960 Act which

deals with notice of vacancy. That sub-section reads (omitting unnecessary portions):--

If the building is required for any of the purposes, or for occupation by any of the

officers specified in sub-section (3), the landlord shall deliver possession of the building and the fixtures and fittings in or on the buildings, in good tenantable repair and condition, to the authorised officer.....

Placing considerable reliance upon the expression "the fixtures and fittings in or on the buildings" Mr. Venkatramani contended that a similar expression was not found in the earlier enactments and that, therefore, while the Legislature enacted the 1960 Act, it should be deemed that it intended to enlarge the scope of the definition of the word "building", though the definition as such, was allowed to remain as before, and that therefore, we should draw the inference that the building should be taken as including all kinds of fixtures and fittings in or on the building.

To support this argument he referred to the Madras Buildings (Lease and Rent Control) Rules, 1961, framed by the State Government by virtue of the powers conferred upon them u/s 34 of the Act. The learned counsel drew our attention to Rule 10 dealing with allowances to be made for amenities in respect of residential buildings, and Rule 13 dealing with allowances to be made for amenities in respect of non-residential buildings.

Under these rules, various items are set out such as air-conditioning, lifts, electric fans, ventilators, flush outs, tube lights etc. etc. The counsel wanted us to hold that reading these rules along with sub-section (5) of Section 3 it would reasonably follow that the building as defined in the Act includes all fixtures and fittings in or on the buildings, irrespective of their nature. For two reasons we are unable to accept this argument. Firstly, the rules were framed by the State Government by virtue of the rule-making power conferred on them by the Act. A subordinate legislation made by an authority to whom power is delegated under a statute for the purpose cannot be applied either to enlarge or restrict the scope of any provision of the statute itself. Secondly, the rules in question were framed in 1961, whereas the lease in the instant case came into existence even in 1960. Such rules cannot be invoked to construe the nature of the lease.

Mr. Venkatramani relied on the decision of Ramamurti, J., in *Isherdas Sahni and Brothers by Partner V.N. Sahni Vs. Rajah V. Rajeswara Rao and Others*, . In that case, the lease deed inter alia stated that the lessees took a talkie equipment belonging to the lessors so that they could use it as a "standby". In other words, the intention was that the lessees could use the

talkie equipments if they wanted. The learned Judge, after an elaborate reference to the rules framed under the Act and certain decision, held that the lease was only in respect of a building notwithstanding that the lease included talkie equipment, belonging to the lessors. This decision, which was taken in appeal, has been set aside by consent of the parties, and we are told that the matter was remanded for fresh trial. In that view, it is unnecessary for us to consider the correctness or otherwise of the decision of the learned Judge. Moreover, it may also be pointed out that even this decision does not hold that the decision in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, is no longer good law under the 1960 Act.

Mr. Venkatramani next drew out attention to a decision of Venkataraman and Ramamurti, JJ., in W.P. Nos. 1640 and 1641 of 1968 (Mad), K.

Kuppuswami Gounder v. Board of Revenue, represented by the Commissioner of Land Revenue and Food Production, Madras, in which the

learned Judges have rendered separate judgments. No doubt, there are certain observations by the learned Judges which support the contention of

Mr. Venkatramani. But in that case, lease deed did not provide that the talkie equipments belonging to the lessors were also the subject-matter of

the lease. On the other hand, the lease deed expressly stipulated that the projector and all other connected machineries should be provided only by

the lessees. Therefore, that was a case of a lease of a theatre building without the talkie equipments. Venkatraman, J., after referring to this aspect,

observed--

Even if the projector and the connected machinery had belonged to the lessor and was part of the lease, the question may still remain whether it

would make any difference to the dominant intention and I, for my part, reserve consideration of the question till a concrete case arises.

Notwithstanding this caution, the learned Judge proceeded to consider as if the case before him called for examination of the question which the

learned Judge reserved for consideration in an appropriate case, and after exhausting reference to case law, and certain provisions in the rules,

observed that the definition of the word "building" was only an inclusive definition and not an exclusive definition and that therefore, even though

the fixtures and fittings are not expressly referred to in the definition, it should

be taken that they also form part of the definition of the word

"building" Ramamurti, J., also has expressed a similar view.

But, as we have already pointed out, that question did not arise for consideration before the learned Judges, as in that case the projector and

connected machineries did not belong to the lessors. Therefore, the question as to whether the word "building" included projector and connected

machineries did not arise for consideration. We may also point out that Venkataraman, J., after referring to S. Raja Ghetty and Others Vs.

Jagannathadas Govindas and Others, , did not express his view that it was no longer good law. Ramamurthi, J., for his part, also has not said that

Raja Chetty's case, is no longer good law. On the other hand, the learned Judge has attempted to distinguish that case from the facts of the case

before him. The decision in Raja Chetty's case was a Bench decision and it was binding upon the learned Judges. The observations of the two

learned Judges on the question whether the word "building" would include fixtures and fittings irrespective of the question whether they are in the

nature of amenities or not are only obiter.

8. What was the intention of the Legislature in referring to ""fixtures and fittings in or on the building"" in sub-section (5) of Section 3 of the 1960

Act? Did the legislature intend to enlarge the scope of the definition by use of that expression so as to mean that building would include all fixtures

and fittings irrespective of their nature? As we have already pointed out, a similar expression was not found in the earlier Acts. In the notes on

clauses appended to L. A. Bill 20 of 1959, which later became the present 1960 Act, it is observed--

Some practical difficulties have occurred in the administration of the provisions of the said sub-section owing to the dilatory and preventive tactics

which certain landlords employ to circumvent the provisions of the Act. Therefore, provision has also been made for--" (1) the landlord to deliver

possession of the building with fixtures and fittings thereon and in good tenantable repair and condition to the authorised officer or the allottee.

It is important to note in this connection that we do not find a similar reference to fixtures and fittings in any other section of the Act. Section 15

confers right upon the tenant to reoccupy the buildings after repairs are carried out to the building taken possession of by the landlord u/s 14. That

section enables the tenant to recover possession of the "building" on the original terms and conditions. It does not refer to fixture and fittings which

should have been in the building at the time when the landlord took possession from the tenant for the purpose of carrying out repairs. Section 16

confers right upon the tenant to occupy a building taken possession of by the landlord for the purpose of demolition and construction of a building

upon the site. If the landlord does not carry out the undertaking given as required under sub-section (2) of Section 14, in that case also, the tenant

is entitled to be put in possession of the "building" on the original terms and conditions. As in the case of Section 15, Section 16 also does not

make any reference to fixtures and fittings which should have been in the building at the time when the landlord took possession.

The solitary reference to fixtures and fittings found in sub-section (5) of Section 3 was obviously intended to avoid a possible contention of an

unwilling landlord that ordinary amenities such as electric fittings sanitary fittings etc., found in the building do not form part of the building as they

are not expressly referred to in the definition of the word "building". We are of the opinion that the word "building" as defined in the Act does not

merely mean the four walls and the roof. A building is one that is capable of being separately let for residential or non-residential purposes.

Ordinary amenities, such as, electric fittings, and sanitary fixtures, are essential for the use of the residential building. Likewise, electric fitting is an

amenity necessary even for a non-residential purpose.

Section 4 of the Act lays down the criteria for fixation of fair rent. Among other things that sub-section says that in calculating the total cost, the

cost of such other amenities as may be prescribed should also be included. It is in pursuance of this power that the State Government have

enumerated the amenities that should be taken into consideration in calculating the cost of the building. But the Legislature has fixed a maximum

upon the cost of such amenities. In the case of residential buildings such allowances shall not exceed ten per cent of the cost of the construction,

whereas in the case of non-residential buildings, such allowances shall not exceed 25 per cent of the cost of the construction. We can easily

imagine a case where the cost of the construction of a mere cinema theatre may be in terms of a few thousand rupees, whereas the cost of

projectors, speakers etc., would be in the region of several thousands.

It could not have been the intention of the Legislature that even such costly things should be classified under the category of amenities, for the

legislature has fixed a maximum that could be allowed in the calculation of the total cost of the construction. That is, in our view, a sure indication of

the intention of the Legislature that where the lease consists of machineries, they cannot be taken as amenities for the purpose of calculating the fair

rent. In our view, the Legislature, while referring to "fixtures and fittings in or on the buildings" occurring in sub-section (5) of Section 3 obviously

meant only the fittings and fixtures in the nature of amenities, and not all types of fixtures and fittings, irrespective of their nature. In this connection,

we may point out that Natesan, J., has taken a similar view in B.S. Nanda Rao and Others Vs. V.M. Lakshmanaswami Mudaliar, , whereas

learned Judge has observed at p. 159:

As the cost of amenities, which include fittings and fixtures, forms a constituent of and makes up the total cost of a controlled building, it is a proper

inference that a building as contemplated under the Act would include fittings and fixtures of the type referred to as amenities.

In that case, the lease did not include the cinema equipment. After referring to certain authorities, the learned Judge observed at page 162--

In the case of a composite lease, where a substantial part of the rent goes in hire of machinery and plant and act cannot apply what is thereby

leased is not a theatre, simpliciter, but a running cinema business with all its accessories. The Act controls and regulates only the business concerns

and running business, for periods together with the buildings. The question for consideration in each case would be whether what is leased is a

theatre building with its normal adjuncts as a building constructed to serve as a theatre, or something more than a building-an equipped cinema

house.

We may point out in this connection that Ramamurti, J., in 1968-2 Mad LJ 233, concurred with the above decision of Natesan, J., and stated that

the said decision laid down the correct law and ought to be followed. He affirmed the concurrence further with that view in W.P. Nos. 1640 and

1641 of 1968 (Mad) already referred to.

9. In this connection, we may also deal with the contention urged by Mr.

Venkataramani, that the definition of "building" as found in the Act should be construed to be an inclusive definition and not an exhaustive definition. To support this argument, he referred to the decision of Venkataraman and Ramamurti, JJ., in W.P. Nos. 1640 and 1641 of 1968 (Mad), in which the learned Judges have no doubt expressed the above view. But as pointed out earlier, that observation is an obiter and the point did not actually arise for consideration on the facts of that case. The contention that the definition of the word "building" as we now find, is only an inclusive definition is not warranted by the language of the definition. The definition uses the words both "means" and "includes". How exactly should these words be interpreted in understanding the meaning of the word "building"?

The following passages in Maxwell on the Interpretation of Statutes, 12th Edn. page 270 is useful--

Sometimes, it is provided that a word shall "mean" what the definition section says it shall mean; in this case, the word is restricted to the scope indicated in the definition section. Sometimes, however, the word "include" is used "in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declared that they shall include. In other words, the word in respect of which "includes" is used bears both its extended statutory meaning and "its ordinary, popular and natural sense whenever that would be properly applicable.

In Craies on Statute Law, 7th Edn. at page 213, it is observed:

There are two forms of interpretation clause. In one, where the word defined is declared to "mean" so and so, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declared to "include" so and so, the definition is extensive e.g. "sheriff" includes "under-sheriff". Sometimes the definition contains the words "mean and include" which inevitable raises a doubt as to interpretation".

In this case, as we have already pointed out, we find both the words "means" and "includes". Applying the above interpretation, it would follow

that so far as the portion of the definition of the word "building" to which the word "means" is applicable is concerned, it is restrictive with regard

to the scope of the meaning. So far as that portion of the definition covering the word "includes" is concerned, it is extensive in the sense that it

includes not only those things, which are building according to the natural import but also those things which are declared as included in the

definition of the word "building", it includes such of those fittings and fixtures as are in the nature of amenities.

10. We have already pointed out that the definition of the word "buildings" in the present Act is a mere reproduction of the definition found in the

1946 Act, and 1949 Act. The necessity for imposing a control on rents and prevention of unreasonable eviction of tenants arose during the war

period when the State Government issued Rent Control Orders in the year 1941. Such orders were renewed from time to time with regard to

residential buildings and non-residential buildings and ultimately the Legislature itself stepped in and enacted Madras Act 15 of 1946. That Act,

which came into force on 1-10-1946, was intended to remain in force for two years. But its life was extended from time to time by issuing

notifications by the State Government by virtue of the power conferred on them by the Act itself. That Act was replaced by Madras Act 25 of

1949 which, as originally enacted was to remain in force upto 30-9-1951. But by subsequent amendments, its life was extended from time to time

and ultimately the present Act was passed, which itself was declared to be in force for a period of five years. But even the life of this Act is being

extended from time to time. The Legislature framed the definition of the word "building; in the 1946 Act and the same definition was repeated in

the 1949 Act.

The question arose before this Court in S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others, , as to whether the lease of a cinema

theatre as such with all equipments necessary for running the cinema business inclusive of the building, would be a lease of the building the meaning

of the Act. This court in that case categorically held that such a lease is not a lease of a building and is not governed by the provisions of the Act.

Another Bench of this court affirmed the correctness of the decision in S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others, in Om

Prakash Gupta Vs. The Commissioner of Police, Madras and Others, . It is reasonable to presume that the Legislature was fully aware of these

two decisions when the present Act was enacted. The Legislature has not thought it necessary to make any change in the definition of the word

"building". If it was the intention of the Legislature that a fully equipped cinema theatre, even if leased as a theatre, should come within the purview

of the Act because a building is also an item of the lease, there was no obstacle for the Legislature to give effect to that intention by making suitable

change in the definition. But the Legislature has not thought it necessary to do so. The only inference possible, in the circumstances, is that the

Legislature has accepted the interpretation put by this court upon the definition of "building" as not including the lease of going concern of a cinema

house which may incidentally include the theatre building as such. This accepted view has been followed by the citizens from 1949 and has not

been dissented from or doubted by any other High Court or Supreme Court. Our attention has not been brought to any circumstance to warrant

the taking of a different view.

11. In *Uttamchand Vs. S.M. Lalwani*, , the Supreme Court had to deal with certain provisions of the Madhya Pradesh Accommodation Control

Act, 1956. The question was whether the transaction in question in that case was a lease of "accommodation" within the meaning of that Act.

Section 3(a) of that Act describes "accommodation" as meaning--

(x) any land which is not being used for cultivation;

(y) any building or part of a building and it includes--

(1) garden, open land and out-houses, if any, appurtenant to such building or part of a building;

(2) any furniture supplied by the landlord for use in such building or part of a building; and

(3) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof.

12. The subject-matter of the lease in that case was a Dal Mill building with fixed machinery in sound working order and all accessories. On a

consideration of the terms of the lease, the Supreme Court held that the factory was not an accommodation within the meaning of the aforesaid

definition and was, therefore, outside the purview of the Act. The findings of the machinery were held not to be fittings which had been affixed for

the more beneficial enjoyment of the building. The Supreme Court has pointed

out that the fittings, to which the definition refers, are obviously fittings made in the building to afford incidental amenities for the person occupying the building and that the fittings in the nature of machinery and accessories were therefore, not fittings within the meaning of the said definition. After arriving at this position, the Supreme Court posed this question, namely, what then was the dominant intention of the parties when they entered into the transaction? Their Lordships held that the dominant intention was the use of the building as a Dal Mill and that the description of the property as a Dal Mill building was not decisive of the matter, because even if the intention of the parties was to let out the mill, the building would still have to be described as Dal Mill building. Their Lordships observed at page 719--

It is not a case where the subject-matter of the lease in the building, and along with the leased building incidentally passes the fixture of the machinery in regard to the mill; in truth, it is the mill which is the subject-matter of the lease, and it was because the mills was intended to be let out that the building had inevitably to be let out along with the mill.

13. Mr. Venkatramani, counsel appearing for the appellants, when specifically asked by us, stated that he was not relying upon the aforesaid

decision of the Supreme Court to find out the intention. The counsel took up this position obviously for the reason that the lease deed in question

clearly shows that the intention of the parties was to use the property only as a going cinema concern and the buildings described in the lease deed

had to be inevitable let out along with the projectors, speakers, etc. In our view, the question of intention of the parties will become relevant only if

the terms of the transaction are not clear. Where the terms are clear and unambiguous, it is needless to examine the intention of the parties,

because, the intention, once thus expressed in clear terms, cannot be otherwise. Even if we apply the test of intention to the instant case, we have

no doubt in holding that the intention of the parties was to enter into a transaction of a lease of going concerns of two theatres, though inevitably the buildings concerned also form part of the transaction.

14. Mr. Venkatramani, appearing for the appellants, drew our attention to certain decisions of the High Courts in support of his argument that

fixtures and fittings like projectors, speakers etc, should be deemed to be part of

the building and that over emphasis should not be laid upon such aspects. In *Karsandas v. Karsanji*, AIR 1953 Sau 113, the question that arose for consideration was regarding the interpretation of Section 5(8) (b) of the Bombay Rents and Hotel and Lodging House Rates (Control) Act, 1947. There, the word "premises" was defined as meaning any building or part of a building let separately other than a farm building, including among other things any furniture supplied by the landlord for use in such building or part of a building and also including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. It was with reference to that language the Court held that the lease of a cinema theatre together with furnitures, electric fittings, and electric generator, amounted to a lease of premises. A Full Bench of the Kerala High Court in *K. Kungu Govindan and Others Vs. Parakkat Kunhilekshmi Amma and Others*, , had to consider the provisions of Section 2(1) of the Kerala Buildings (Lease and Rent Control) Act, 1959, as amended by the Act 29 of 1961. The amendment was made with the declared object of including cinema theatre also within the ambit of the Act. Having regard to that declared object, it was held that the transaction in question relating to a cinema theatre amounted to a lease of a building within the meaning of Section 2(1).

The Andhra Pradesh High Court had to deal with a similar question of a lease of a cinema theatre fully equipped with projector and sound equipments, in *Mohammad Jaffer Ali Vs. S. Rajeswara Rao and Others*, , and the question was whether such a lease was a lease of a building within the meaning of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. Under the definition of the Word "building" in that Act, among other things, the word "building" includes any furniture supplied or any fittings affixed by the landlord for use in such houses. Having regard to that definition, the Full Bench held that the lease was in respect of a building. Construing a similar provision in West Bengal Premises Rent Control (Temporary Provision) Act, 1950, the Calcutta High Court took the view in *Kali Prosad Vs. Jagadish Pada*, , that where the letting is of a furnished and well-equipped cinema show house, it would be a lease of premises. The same view was taken by that High Court in *D. S. Jain v. Neghmela Roy*, (1964) 68 CWN 1136 in construing a similar

provision in West Bengal Premises Tenancy Act, 1956.

15. It would be seen that the aforesaid decisions were based upon the peculiar language of the definition of the word either "building" or

"premises" or "accommodation" as the case may be, in which it was explicitly provided that those words included furniture, fittings and affixtures

affixed by the landlord for use of such building. Even on the plain language of the provision it follows that if a cinema projector along with the

equipments is fixed to a building and the building is let out, the fixtures or fittings, are for the beneficial enjoyment of the buildings and naturally such

a letting would be a letting of a building. But, so far as the Madras Act is concerned, such a position does not arise, as the language of the definition

of the word "building" does not give room to such interpretation. Therefore, none of the foregoing decisions, on which Mr. Venkatramani relied, is

of any help to the appellants.

16. After the institution of this suit, the plaintiffs approached this court with a petition under Article 226 of the Constitution questioning the

correctness of the grant of renewal of C form licences in favour of the defendants by the Board of Revenue in spite of their objections. The Board

of Revenue set aside the order of the collector of Chingleput, who refused to grant the renewal as in his view the defendants had failed to prove

lawful possession of the cinema theatre. The Board, for some reasons, which need not be adverted to took a different view and granted renewal.

In W.P. No. 3219 of 1970 (Mad), Abdul Gaffoor Sahib v. M/s. Pales Theatres, Lessees of Janatha Talkies, Madras the plaintiffs questioned the

validity of that grant. Ramaprasad Rao, J., held that inasmuch as the plaintiffs had already availed of an alternative remedy, it would not be proper

for the court to interfere with the grant in exercise of its jurisdiction under Article 226 of the Constitution. In that view, the learned Judge dismissed

the writ petition, but at the same time went into the question as to whether the defendants were in lawful possession or in other words whether the

lease in question was a lease of a building within the meaning of the Act or was a composite lease falling outside the purview of the Act. The

learned Judge held that the lease was a composite lease and that as such the lease was outside the purview of the Act. This decision was sought to

be put against the defendants as operating as res judicata. We do not think it

necessary to go into that question, as we have held on merits that the lease is in respect of a going concern of a cinema business and is not in respect of a building.

17. Mr. Parasaran, appearing for the plaintiffs, brought to our notice that the plaintiffs had also taken up the contention the plaintiff that if, for any

reason, it should be held that the provisions of the Constitution. His submission is that if the provisions of the Act are so construed as to bring

within its ambit the transaction in question, the Act should be held to be unconstitutional as offending Article 19(1)(f) and (g) of the Constitution.

The argument was that the owner of a cinema house is entitled to hold and dispose of his property as he likes and that the owner is entitled to carry

on his business in a way, which according to him, would be to his best advantage and that to make an enactment which would compel a person

carrying on a cinema business never to be able to evict a person inducted into possession by a owner for a particular period would be an

unreasonable restriction of his right to carry on his trade or business and cannot be justified as a reasonable restriction in the interest of the public.

In the view we have taken about the nature of the transaction we think it unnecessary to go into this question.

18. In the result, the appeal fails and is dismissed with costs. The defendants are given two months' time to vacate.

19. Appeal dismissed.