

(1973) 01 MAD CK 0011
In the Madras High Court
Case No : O.S. Appeal No. 58 of 1971

R. Kapanipathi Rao and Another		APPELLANT
	Vs	
M.S. Meyyappan and Another		RESPONDENT

Date of Decision : 11-01-1973

Acts Referred:

Income Tax Act, 1961 — Section 10

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(2)

Citation : AIR 1974 Mad 57 : (1973) ILR (Mad) 556 : (1973) 86 LW 629

Hon'ble Judges : K. Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Judgement

Raghavan, J.—The defendants are the appellants.

2. The suit is for recovery of possession of the "Hotel Oceanic" and its annexe "Ratnagar" more fully described in Schedules 1 and 2 to the plaint,

for recovery of Rupees 22,500/- as and for mesne profits for the period commencing from 12-7-1969 to 26-8-1969 (date of suit) and for future

mesne profits at the rate of Rs. 15,000/- per month. The first plaintiff is the son of late M. S. Ramaswami Chettiar and the second plaintiff is the

wife of the said Ramaswami Chettiar. The said Ramaswami Chettiar was the owner of the building "Hotel Oceanic" and his wife, the second

plaintiff, is the owner of "Ratnagar" an annexe of Hotel Oceanic, at Madras. The said Ramaswami Chettiar was himself running a residential high

class Hotel and Restaurant in the said Hotel Oceanic and its annexe Ratnagar which were fully furnished with fittings, furniture and equipment ever

since the completion of its construction in or about 1954. In or about July, 1959, the defendants would appear to have approached the said

Ramaswami chettiar and negotiated for a lease of the said hotel business with

the restaurant in their favour with a view to run the hotel business.

Accordingly, a lease of the hotel business as per the deed dated 12-7-1959 run in the said Hotel Oceanic and Ratnagar was granted. By the time

the said lease deed was executed, the said Ramaswami Chettiar had himself run a hotel business for about five years and the plaintiffs' case is that

during that period the hotel had acquired a high reputation among the top-class hotels in India, having been equipped with linen, crockery, cutlery,

refrigerators, air-conditioners, cooking ranges, electric fans, ice-cream machines, ice-making machinery, light fittings and other moveable and also

with tools, implements, lawn mowers, equipments, kitchen and other utensils. The lease granted was for a period of five years commencing from

12-7-1959 on a consolidated monthly rent and hire of Rs. 6,500/-. At the time of the lease, it was agreed between the lessors and the lessees that

the linen room and dhoby room in the north-western corner with all the machinery as racks and also the vacant land in front thereof with coconut

trees thereon, should also be included in the lease deed and that the defendants should pay Rs. 100/- per month in addition to the lease amount of

Rs. 6500/-. It was further agreed between the parties that a sum of Rs. 24/- for the telephones should be separately paid. Thus the total rent and

hire payable by the defendants to the plaintiffs was Rs. 6,624/- per mensem. The lease further provided that the lessees should deposit a sum of

rupees one lakh, free of interest, as security for the due performance of the covenants and conditions contained in the lease deed and that the said

security was refundable by the lessors to the lessees on the expiry of the period of the lease, on the lessees paying up all arrears of rent and hire

and putting the lessors in possession of the premises, buildings, annexes, erections, furnitures, fittings, fixtures and other moveable properties

inclusive of machinery. It was further provided in the lease deed that the lessees shall take the entire stocks of liquor, stores and stationery as on

12-7-1959 and pay the lessors the value thereof at the lessor's book cost price. There was a further covenant in the lease, relating to repairing,

white-washing, varnishing, painting etc., of the premises, maintenance of all fittings, furniture, fixtures, carpets, rugs, linen, crockery, cutlery, air-

conditioners, refrigerators, ice-cream machinery and ice-making machine, electrical ceiling fans, light fittings etc. and keeping the demised buildings

in a good state of repair and for replacement of all breakages and deficiencies in the demised premises and hired articles from time to time. Under the lease deed the lessees were given an option to renew the lease for a further period of five years on the expiry of the term of five years fixed under the lease. There were provisions for insuring the building, furniture and fittings therein and for continuation of the existing arrangements entered into previously by the lessors with the Handicrafts Emporium, Oceanic Stores, Oriental Arts, Radha Silk Emporium, Ram Mohan Private Limited, Travel Agents and others with whom the plaintiffs had already entered into commitments before. The lessees were also directed to pay the lessors the amount deposited as security by them with the Madras Electricity System in respect of the power supply to the hotel business and obtain a transfer of the deposit in the name of the lessees, and in case such a transfer was not practicable, the lessees should make arrangements for making the necessary deposit with the Madras Electricity System. The said M. S. Ramaswami Chettiar, who entered into the lease aforesaid, died on 3-9-1964, leaving his last will and testament dated 6-5-1963, under which he appointed the first plaintiff (his son) as executor and trustee regarding his estate. The Will further provided that with regard to the Oceanic Hotel excluding the half share which belonged to the first plaintiff, the other half should be taken equally by the first plaintiff's children and further conferred power on the first plaintiff to manage the properties during the minority of the children. The said Will was duly probated. After the expiry of the five years period under the lease deed dated 12-7-1959, the defendants exercised their option to renew the lease for a further period of five years, and a deed dated 13th December 1965 was executed substantially on the same terms and covenants contained in the 1959 Lease deed. The plaintiffs' case is that the defendants did not run the hotel with proper business attention and care and allowed the reputation of the hotel to suffer, that they even allowed the telephone charges to fall into arrears, resulting in the disconnection of telephones for sometime, that the defendants failed and neglected to pay the water tax to the Corporation of Madras, resulting in the discontinuation of water supply to the hotel, that the reputation of the hotel as a top-class hotel slumped, that the defendants were indifferent to the proper upkeep and management and maintain its reputation, that they allowed the rent to fall into arrears, that

they commenced unauthorised constructions in the premises demised to them in disregard of the covenants contained in the lease deed and without obtaining the plaintiffs' consent and that the plaintiffs had to file a suit in the City Civil Court, Madras. (O.S. No. 805 of 1968), seeking for the issue of a permanent injunction against the defendants restraining them from proceeding further with the unauthorised a construction and for an injunction seeking to injunct the defendants from cutting and removing the coconut trees in the properties. The further complaint made by the plaintiff's is that the defendants put up Central Air-conditioning, a costly project, in or about April, 1968, roughly at the fag end of the renewed lease period, in spite of the protests made by the plaintiffs, with a view to remain the possession of the properties and continue the business even after the expiry of the renewed lease period in 1969. To the notice issued on behalf of the plaintiffs, terminating the lease and determining the tenancy on the expiry of the lease period on July 11, 1969, and seeking delivery of possession on the expiry of the lease period no reply was sent by the lessees. The plaintiffs' case is that long time thereafter, a lawyer's notice was sent to the lessors, making untenable claims that the lease was of the building of Hotel Oceanic and Ratnagar as distinct from the moveables, machinery, furniture etc., which were all hired out to them to run the hotel therein, that they are entitled to the benefits of the Madras Buildings (Lease and Rent Control) Act, that they are statutory tenants under the said enactment, that the plaintiffs should arrange to remove from the premises as early as possible the articles described in Schedules 3, 4 and 5 to the lease deed, that they are no longer liable for the hire charges for the said articles and that the plaintiffs should return the deposit of Rs. 1,00,000/- after adjusting the arrears of rent and hire charges for 5 months 11 days upto and inclusive of 11-7-1969, admittedly owing to the lessors. Along with the said notice, they enclosed three cheques, one for Rs. 4,000/-, the second for Rs. 200/- and the third for Rs. 1,000/-, the first and second cheques being drawn in the name of the first plaintiff and the third cheque in the name of the second plaintiff, representing the deposit of two months' rent for the respective buildings referred to in the notice issued to them. To this, the plaintiffs sent a reply contending that the integrity of the lease deed should not be broken, that the lease is a composite lease of the buildings, fittings, furniture, crockery, etc., that the

defendants have no right to continue in possession of the properties after the expiry of the lease duly determined, that the defendants are liable to pay damages for use and occupation at Rupees 15,000/- per month after the expiry of the lease period, that the defendants are not entitled to the benefits of Madras Buildings (Lease and Rent Control) Act, that the defendants have no right to call upon the plaintiffs to remove from the hotel premises the various machineries, moveables etc., that the lease was of the hotel business which was actually functioning in the buildings at the time the lease deed was entered into, that the claim of the defendants is wholly untenable, unjust and inequitable and that the plaintiffs are willing to refund out of the deposit of rupees one lakh, the balance due after deducting the arrears of rent and other sums due. The plaintiffs have filed the present suit, out of which the above appeal has arisen, for the reliefs mentioned above. The defendants filed a written statement contending that the lease deed dated 12-7-1959 is not a composite lease, that what was leased was only two buildings known as "Hotel Oceanic" and "Ratnagar" with the lands appurtenant thereto, on a total monthly rent of Rs. 2,500/- for the purpose of running a hotel therein, that the furniture and other articles were hired to the defendants separately on a monthly hire basis, that the lease is not a composite lease, that at the time of the execution of the lease deed it was not agreed between the lessors and the lessees that the linen room, dhoby room etc. should be included in the lease deed, that the said tenancy came up some time thereafter, independent of the lease deed, that the letting of the said premises is not governed by the terms of the lease deed, that there is no question of degrading the hotel from Three Stars to Two Stars by reason of their default, that the reputation of the hotel and its goodwill had not slumped, that the subject-matter of O.S. No. 805 of 1968 on the file of the City Civil Court, Madras is irrelevant in the present context, that the defendants are not liable to pay damages for use and occupation at Rs. 15,000/- per month, but that they are liable to pay the rent at Rs. 2,500/- per month, which they are willing to pay, that the hire of the furniture and other articles came to an end after their letter dated 7-7-1969, that the plaintiffs have illegally refused to take delivery of the said articles, that the defendants are not liable to pay any hire to them after the said date, that the plaintiffs have no cause of action for the suit and that the suit is not maintainable in a Civil Court.

3. The trial Judge framed a number of issues, the principal issues being--

(1) Whether the lease dated 12-7-1959 and renewed by lease deed dated 13-12-1965 is a composite one, and

(2) Whether the plaintiffs can invoke this forum for taking possession of the suit premises without restoring to the Madras Buildings (Lease and

Rent Control) Act, and if not, is the suit maintainable?

3-A The learned Judge took up for consideration the first question, which is the main issue arising for trial. After referring to the terms of the lease

deed in detail, the learned Judge came to the conclusion that the lease in question is a composite lease not only because of the inclusion of the

various articles which are not part of the building but also because as such and there were several circumstances to indicate that the hotel as a

running business had been transferred to the defendants. The learned Judge also came to the conclusion that on a proper construction of the lease

deed, the intention of the parties was that the hotel business transferred under the lease had to be run in the buildings leased out, hiring the furniture,

fixtures, crockery, etc., and claim that the lease was of the buildings alone. Notwithstanding the fact that the goodwill of the hotel was not

separately valued at the lease deed and that the lease amount was shown under the various components, such as rent, hire etc. Rs. 2,500/- as rent

and Rs.4,000/- per month being the hire of the articles and machinery etc. the learned Judge came to the conclusion that the said apportionment of

the lease amount did not amount to a separate lease of the buildings and a separate hire of the furniture, but that both the buildings with the

furniture, fittings, etc. were transferred to the lessees as a going concern, although for municipal taxation the break-up figures for the lease of the

building and hire charges were separately shown. In the result, the learned Judge came to the definite conclusion that the lease in question is only a

composite lease and that the suit for recovery of possession of the suit properties was rightly filed in a Civil Court. In the result, the plaintiffs were

given a decree for possession of the suit properties as prayed for, and the defendants were directed to pay mesne profits from 12-7-1969 upto

date of delivery at a rate to be fixed on an enquiry. The trial Judge also further gave six months' time to the defendants for delivering vacant

possession to the plaintiffs. The defendants have filed the above appeal to this

Court.

4. The main question arising for determination in this appeal is whether the indenture of the lease dated 12-7-1959 (Ex. P-3) is a composite lease

of a hotel business run in the premises as contended by the plaintiffs or whether the lease is of the two buildings for the purpose of running a hotel

as contended by the defendants. In determining the question whether the lease is a composite one or not, we have to find out the intention of the

parties and for that purpose the provisions of the lease deed have to be taken into account in the light of the background and surrounding

circumstances at the time of the execution of the lease deed. The lessors are (1) M. S. Ramaswami Chettiar, father of the first plaintiff and (2) M.

S. Seetha Achi, the second plaintiff and wife of M. S. Ramaswami Chettiar. The lessors are stated to be owners of the properties, buildings and

annexes, known as "Hotel Oceanic" and "Ratnagar" and particularly described in Schedules 1 and 2 to the lease deed. The lessors are stated to

have furnished the said buildings for the purpose of running a hotel therein and they have provided all furniture, fittings, fixtures, carpets, rugs,

vases, pictures, refrigerators, crockery etc., for the purpose of running a residential hotel business and restaurant. The first lessor is stated to have

been conducting for about five years previous to the lease deed a residential high-class hotel business in the said premises and to have equipped

the same with linen, crockery, air-conditioners, cooking ranges, ice-cream machine, ice making machinery, electrical fans, light fittings and all other

moveables and further provided the business with tools, implements, lawn mowers, kitchen and other utensils. The furniture, fittings, fixtures, vases

and pictures in the building known as "Hotel Oceanic, and "Ratnagar" are particularised in schedules III and IV to the lease deed. The preamble

part of the lease deed further mentions that the linen, carpets, rugs, crockery, cutlery, refrigerators, air-conditioners, cooking ranges, ice-cream

machinery and ice-making machinery electric fans, light fittings and other machinery described in Schedule V to the lease deed, form part of the

business run by M. S. Ramaswami Chettiar. The preamble further provides that the lease of the properties described in Schedules I and II and for

the hiring out of the furniture, fittings, fixtures etc., described in schedules III and IV and the carpets, rugs, linen, crockery, cutlery, etc. described in

Schedule V to the lessees for a period of five years from 12-7-1959 is for running a residential Hotel business and restaurant. The preamble also

makes specific reference to the fact that the first named lessor had been conducting for about five years past a residential high-class hotel business

in the said premises, that he had equipped the same with linen, crockery, cutlery, air-conditioners, cooking ranges, ice-cream machines, ice-making

machinery, electrical fans, light fittings and that he had also provided the business with tools, implements., lawn mowers equipment, kitchen and

other utensils. A monthly consolidated rent and hire for Rs. 6,500/- is provided and the break up figures of the said sum of Rs. 6,500/- are shown

as follows:--

Rs. 2,000/- being the rent for the land and buildings and annexes and erections known as Hotel Oceanic;

Rs. 1,500/- being the hire of the furniture, fittings, fixtures etc., described in Schedule III;

Rs. 2,000/- being the hire for the moveables, machinery and other articles mentioned in Schedule V;

Rs. 500/- being the rent payable to the first lessor for the land, buildings, annexes and erections known as Ratnagar and described in Schedule II;

and

Rs. 500/- being the hire for the furnitures, fittings and fixtures described in Schedule IV. (the amount of Rs. 5,500/- covered by items 1 to 3 above

being payable to the first lessor, and the amount of Rupees 1,000/- covered by items 4 and 5 above being payable to the second lessor).

The premises, buildings and annexes described in Schedules I and II and the various furniture, fittings, fixtures, etc., described in Schedules III to V

are stated to have been delivered to the lessees. The lease deed provided that in consideration of the grant of the lease, the lessees were to deposit

by way of security a sum of rupees one lakh with lessors for the due performance of the various obligations of the lessees, refundable free of

interest on the expiry of the lease period and on the lessees having paid all arrears of rent and hire and on the lessees delivering possession of the

premises, buildings, annexes and the furniture, fittings, fixtures, etc. The lessees were empowered to take over all liquor stocks, provisions and

stores that were in the premises on 12-7-1959 (the date of the execution of the

lease deed) and pay the value thereof to the lessors at the lessors"

cost book price, which was estimated to be about Rupees 15,000/-. As counsel for both parties placed considerable reliance upon several of the

covenants of the lease deed, we consider it necessary to set out the relevant clauses in lessors" covenants and lessees" covenants which run as

follows:--

(4) The Lessees hereby covenant with the Lessors as follows:--

(i) The lessee will pay to the Lessors the monthly rent and hire of Rs. 6,500/- (Rupees six thousand five hundred) to be apportioned as above on

or before the 5th day of every succeeding month. If the lessees should fail to pay the monthly rent and hire by the 10th of the succeeding month

then and in that case, the Lessees will be liable to pay interest on the over due amount of rent at the rate of 9 per cent, per annum from the date on

which the same shall respectively fall due until payment.

(ii) The Lessee will pay and discharge all license fees and other outgoings that may be payable in respect of the hotel business and they shall also

pay the electricity consumption charges excess water tax and all motor charges and all connecting and disconnecting charges to the Corporation,

Madras Electricity System and the licensing authorities. They shall pay the telephone bills and hire charges regularly and punctually and keep the

vouchers for the Lessors" inspection whenever necessary.

(iii) The Lessees will keep and maintain the demised buildings in a proper and good state of repair and will attend to all annual repairs including

white-washing, varnishing and painting and the Lessees will also keep and maintain all furniture, fittings, fixtures, carpets, rugs, linen, crockery,

cutlery, air-conditioners, refrigerators, ice-cream machine and ice-making machine, electrical ceiling fans and light fittings and all other articles of

machinery and other moveable properties used on the premises and the lawn mowers, tools and implements, kitchen and other utensils in proper

and good state of repair. Lessees shall replace all breakages and deficiencies in the demised and hired articles from time to time.

(iv) The Lessees will not be entitled to sublet or transfer the demised premises to any other person or persons without the express consent in

writing of the Lessors first hand and obtained. The Lessees shall however be entitled to give on sub-contract the Vegetarian and non-vegetarian

catering and Restaurant departments, without reference to the Lessors.

(v) The Lessees will on the expiry of the lease or sooner determination thereof deliver and hand over vacant possession of the premises and also

the various articles hired out to them in the same good condition in which they are now, fair wear and tear and damages or loss, if any, sustained by

acts of God only being excepted. The Lessees will also pay for all breakages and deficiencies in the hired articles and replace the same at the

Lessees' own costs.

(vi) The Lessees will have the option to renew the lease for a further period of five years on the expiry of the term hereby reserved on the same

terms and conditions. A separate lease deed will be executed by the Lessees at their own cost and the Lessors will join in the execution of the

same as and when the said option is exercised. Three months notice before the expiry of the lease shall be given by the Lessees to the Lessors in

the event of their desiring to renew the lease.

(vii) The lessees will do all necessary acts to keep the licences for conducting a residential western style hotel business in full force and effect. Such

licences are liquor licence, sales tax registration, Corporation licences for running a lodging house, coffee and meals hotel, barber saloon etc. The

Lessees shall also pay the water charges and conservancy charges and the fee for maintaining electric motors and the fee necessary for renewal of

permits or registration certificates. They shall also pay and discharge the charges and fees that may be claimed for radio licence, police, licence,

liquor licence etc. all of which have been transferred or will be transferred in the Lessees' name at the Lessees' expense. It is however expressly

agreed and declared that on the expiry of the lease and at the time when possession of the properties demised and the articles hired is given to the

Lessors the Lessees will do all acts necessary to have such possession re-transferred to the Lessors and sign all necessary applications to the

authorities whenever such joint applications are found necessary.

(viii) In the event of the Lessees adding to the equipment or machinery with a view to improve the utility of the establishment and attract customers

and generally to improve the business such machinery or equipment (which they are hereby empowered to do) shall be sold, to the Lessors at such

price as the parties hereto may then agree upon and in case of any disagreement

regarding the price, the Lessors shall be entitled to remove the said equipment and machinery.

(ix) The Lessees shall at their own expense insure the buildings and the furniture and fittings therein and all machinery and other articles hired out to

them in the sum of Rs. 8,00,000/- (Rupees eight lakhs) of which Rs. 6,00,000/- (Rupees six lakhs) shall be the amount for which the buildings shall

be insured and the balance of Rs. 2,00,000/- (Rupees two lakhs) shall be for the movable properties, machinery and other articles hired out. The

Lessees shall pay the insurance premia of about Rs. 1,000/- per annum as and when they fall due and the policy shall be assigned by the Lessees

to the Lessors so that in the event of the amount becoming due the same may ensure to the Lessors" benefit.

(x) The Lessees shall continue the existing arrangements entered into by the Lessors with (1) The Handicraft Emporium (2) Oceanic Stores

(owned by Sri G. K. Shanker of G. K. Syndicate Private Ltd.) and (3) Oriental Arts for remaining their sales stalls and (4) Radha Silk Emporium

for their show window and (5) Ram Mohan & Co. Private Ltd., for running a travel agency on the same terms and conditions and the benefit of the

rental paid by the above named firm shall go to the Lessees provided that on the expiry of the terms of the present arrangements with all or any of

the said parties, the Lessees shall be entitled to terminate the said arrangements or to renew the same either with the same parties or other parties

on such terms and conditions as the Lessees shall deem fit without reference to the Lessors and the benefit of such arrangements will go to the

Lessees.

(xi) The Lessees shall pay to the Lessors the amount deposited as security by the Lessors with the M.E.S. in respect of the Power supply to the

hotel business on the lessors transferring the same deposit to the lessees. In case such a transfer is not practicable, the Lessees shall themselves

make the necessary deposits with the M.E.S. and the lessors shall be entitled to obtain a refund of their present deposit.

(xii) The Lessees shall during the currency of the lease keep the hotel and the premises in the same high standard of cleanliness and finish and the

buildings fixture, fittings, furniture etc., are in now and shall do all acts to satisfy the municipal and health authorities without infringing any rule or

bye-Law. If by reason of any infringement of such rules any action is taken by the Government or Corporation authorities the Lessees shall

indemnify the Lessors against all the loss and damage so caused to the Lessors.

(xiii) The Lessors or any of their representatives authorised by them in writing shall be entitled on prior reasonable notice and at reasonable times to

enter into the hotel business for the purpose of examining the condition of the buildings, fixtures, furnitures machinery and other articles let out and

hired as above.

(xiv) The Lessees shall honour hotel reservations already accepted by the Lessors till date without seeking to alter the terms to the disadvantage of

the customers concerned. The Lessees shall also allow the Lessors in collecting dues from boarders and customers payable as on this day; and

shall give every co-operation in the recovery of the said dues.

(xv) The Lessees shall in the event of the Lessors effecting a sale of the property, subject of course to the lease evidenced hereby, give all facilities

for inspection to the Lessors and their representatives as well as to the prospective buyers.

(5) The Lessors agree with the Lessees as follows:--

(i) to pay the Corporation property tax and quit rent in regard to the land and buildings hereby demised regularly;

(ii) to settle with the staff including the Manager servants, suppliers and contractors and labourers now working in the premises upto 13-7-1959

their claims for salary, wages, bonus leave pay and retrenchment compensation that such staff, servants, suppliers, contractors and labourers may

be entitled to in respect of their services under the Lessors. In the event of any default in this behalf by the Lessors and in case the Lessees are put

to any expense or loss or damage by reason of such default, the Lessors shall indemnify the Lessees against all such expenses, loss and damages.

(iii) That the Lessees paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on their part

contained shall peaceably hold and enjoy the demised properties during the said term without any interruption by the Lessors or any person or

persons rightfully claiming under or in trust for them or either of them.

(iv) On the written request of the Lessees made three calendar months before the term hereby created and if here shall not at the time of such

request be any existing breach or non-observance of any of the covenants on the part of the Lessees hereinbefore mentioned the Lessors will at the

expense of the Lessees grant to them a lease and hire of the demised premises and movables for a further terms of five years from the expiry of the

said term on the same terms and proviso as are herein contained with the exception only of the present covenant for renewal.

(6) Provided and it is hereby agreed and declared as follows:

If the rent and hire hereby reserved or any part thereof shall remain unpaid for a period of six months after becoming payable or any covenant on

the Lessees" part herein contained shall not be performed or observed then in any of the said cases, it shall be lawful for the Lessors at any time

thereafter to enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but

without prejudice to the right of action of the Lessors in respect of any breach of the Lessees covenants herein contained.

5. Mr. M. S. Venkatarama Iyer, the learned counsel for the appellants, in support of his contention that the lease in question is only a lease of the

building known as Hotel Oceanic and its annexe Ratnagar with furniture etc. for running a hotel therein, placed considerable reliance on the

following provisions of the lease;

(1) the recital in the preamble portion, referring to the demise unto the lessees the properties and buildings described in Schedules I and II;

(2) 4 (iii)(xii)--keeping the buildings in proper repair.

(3) 4 (iv)--not to sublet the leased premises.

(4) 4 (v)--delivery of vacant possession on the expiry of the lease period.

(5) 4 (vi)--option for renewal.

(6) 4 (xiii)--Right of entry to inspect the buildings.

(7) 4 (viii)--right to effect improvements.

(8) 4 (ix)--to effect insurance of the premises.

(9) 4 (xv)--right of the lessors to sell the properties, giving all facilities for inspection to the lessors, their representatives and the prospective buyers.

(10) 4 (vii)--to keep licences in force.

(11) 5 (i)--payment of taxes by the lessors.

(12) 6--default in payment of rest.

6. The contention of the learned counsel for the appellants is that the above enumerated provisions are usually found in leases of immovable

properties governed by the provisions of the Transfer of Property act and the incorporation of such provisions in the present lease deed would

show that the lease in question is only a lease of the buildings, fittings, furniture, etc. having been hired for the purpose of running a hotel and that

consequently the provisions of the Madras Buildings (Lease and Rent Control) Act, 1960, are alone applicable and the Civil Court has no

jurisdiction.

7. On the other hand, the learned Advocate-General appearing for the plaintiffs contends the Ex. P-3 (lease deed) is substantially a lease of the

business as a going concern to be conducted in the buildings referred to in schedules I and II to the lease deed and that Ex. P-3 is a composite

lease relating to both the buildings and the furniture, equipment etc. described in Schedules III to V of the lease deed. The learned Advocate-

General relied upon the following preamble portion of the lease deed as supporting his contention that the lease is a composite lease and that the

business as such was transferred under Ex. P-3.

the properties described in Schedules I and II have been furnished for the purpose of running a residential hotel and restaurant"; In fact the hotel

business was run in the premises by the first-named lessor (M. S. Ramaswami Chettiar) for about five years prior to Ex. P.3 in the aforesaid

properties, and that the premises have been equipped with crockery, cutlery, air-conditioners, cooking ranges, ice-cream machinery, ice-making

machinery, electric fans, light fittings and all moveables for the said purpose.

The learned Advocate-General further relied upon various other covenants in the lease deed showing what was transferred was the business itself,

viz.,

(1) Clause 4(ii) relating to payment of licence fees for a hotel business, electricity charges, water-tax etc.

(2) clause 4(iii) keeping the furniture, fittings, fixtures, crockery etc., in good repair and replacing of breakages and deficiencies from time to time.

(3) clause 4(vii)--keeping licences for conducting residential western style hotel business in full force and effect.

(4) Clause 4(Viii)--improvement of the business, the utility of the establishment and attracting the customers.

(5) clause 4(x)--providing for continuance of the existing arrangements.

(6) clause 4(ix)--referring to transfer of the business to the lessees.

(7) clause 4 (xii)--keeping the hotel and premises in the same high standard of cleanliness and finish as prevailing at the time of the lease deed.

(8) clause 4 (xiii)--the lessors entering into the premises.

(9) clause 4 (xiv)--the lessees to honour the hotel reservations already accepted by the lessors.

The contention of the learned Advocate-General is that the above clauses indicate that the business as such was transferred under the lease deed

and the lease in question is a composite lease dealing both with Immovable and moveable properties.

8. The various covenants and other provisions referred to by the respective counsel have to be considered in the light of the background, attendant

on the execution of the lease deed. The most important factor to be borne in mind is that the 1st lessor was himself running a residential high-class

hotel in the said business place for about five years prior to 1959. He had equipped the same

with linen, furniture, fittings, crockery etc., described in schedules III to V of the lease deed. He transferred the business to the lessees for a period

and intended to get back the business evidently with a view to run the same himself. The provisions in the lease deed relating to the transferee

continuing the businesses as before, keeping all the licences in tact, keeping the buildings in good repair, replacing broken crockery etc., improve

the business all in our opinion point to the transfer of the business to the lessees. Further the lessees continued the business under the old name

"Hotel Oceanic" without any change and the lessees substantially continuing the old staff and working in the business carried on by them in

pursuance of the aforesaid lease are, in our opinion, telling circumstances indicating a transfer of the business to the lessees. On the other hand, the

learned counsel for the appellants apart from a reference to the covenants in the lease deed laid particular emphasis on the following circumstances:

(1) There are no words of assignment of the business to the lessors under Ex. P-3.

(2) The absence of a clause in the lease deed forbidding the landlord from competing with the business so transferred;

(3) There is not transfer of good-will and the good-will has not been separately valued;

(4) There is no transfer of labour force and staff to the lessees. On the other hand, the staff working in the hotel at the time of the lease had been retrenched and thereby the continuity of the business broken;

(5) That what the defendants ran from the date of the lease is only a similar business and not the continuity of the old business; and

(6) The hire of the articles and furniture hired are separated from the rent for the buildings.

The lease deed read as whole leave no room for any doubt that what was transferred under Ex. P.3 was the lease of the business carried on in the

said building with the furniture, equipment, crockery etc., belonging to the lessors. The mere fact, that there are no specific words of "assignment"

is, in our opinion immaterial. We are further of opinion that the absence of a clause forbidding the lessors competing with the business transferred is

equally immaterial, as the lessors never contemplated the carrying on of such business at any time which the lessees wanted to prohibit. We shall,

therefore, consider the objections raised in detail in due course. We may, however, mention in this connection that splitting up of the lease amount

into rent and hire for the fittings, furniture, crockery etc., covered by schedules III to V of Ex. P-3 is only notional and that by itself cannot be a

clinching circumstances one way or the other. As we observed already, the various covenants relied on by Mr. M. S. Venkatarama Iyer, the

learned counsel for the appellants are not, in our opinion, decisive on the question whether the lease in question is the lease of the buildings for the

purpose of carrying on therein the hotel business with the furniture, crockery, fittings, etc. hired by the landlord.

9. Though the question whether the lease in question is a lease of buildings for running a hotel business with the furniture, fittings, crockery etc.,

hired from the lessors or a transfer of the business has to be decided with reference to the terms of the lease deed, yet the subsequent conduct of

the parties or the way in which the parties interpreted the document cannot be ruled out altogether, but may be taken as pieces of evidence

although of a very weak character. The lessees have not changed the name of the hotel which they took over on lease. In Ex. P-4 dated 13-3-

1959, the defendants wrote to the Post-Master, Annamalaipuram Post Office, Madras-28, that they had taken over the Hotel Oceanic as lessees

and requested the Post-Master that all letters, telegrams etc., addressed to the Proprietor of Hotel Oceanic or the Manager, Hotel Oceanic might

be forwarded to the Hotel Oceanic Office. Ex. P-5 dtd. 14-7-1959 is a letter by M. S. Ramaswami Chettiar, father of the first plaintiff, to the

Deputy Commissioner of Excise and Prohibition, Government of Madras, stating that he had leased out the Hotel Oceanic to the defendants with

effect from 12-7-1959 and that consequently the liquor permit for the said Hotel might be transferred in the names of the defendants. He also

requested permission to transfer the liquor stocks to them. Ex. P-5 to P-7 and P-13 show that the show that the liquor permit was eventually

transferred in the names of the defendants and the liquor stocks were also so transferred Ex. P-10 dated 16-7-1959 shows that the defendants

received from M. S. Ramaswami Chettiar, the coal issue card for the hotel. Ex. P12, P-15 and P-25 are correspondence between the parties

regarding payments made by customers in respect of bills prior to the date of the lease. Ex. P-16 dated 28-7-1959 is a communication from the

Commissioner of Police regarding transfer of licence to run the Boarding and Lodging House in the names of the lessees. Ex. P-19 dated 12-8-

1959 is a letter addressed by the first plaintiff's father to the lessees, relating to the transfer of the various licences. Exs. P-99 to P-104 are the

Income Tax assessment orders for the years 1964-65 to 1969-70, which show that the first plaintiff had been assessed in respect of the rental

income of Hotel Oceanic as business income and not as income from buildings.

10. In addition, we may consider the other circumstances which indicate that the Hotel as a running business had been leased out. The parties

themselves understood the lease as a transfer of the hotel business as such. In Ex. P-61 dated 24-12-1968, which is a notice issued by the

plaintiffs to the defendants, it was averred that under the indenture of lease dated 13-12-1965, "the schedule mentioned properties were leased out

as a running business concern for the purpose of their carrying on the business of a hotel for a period of five years"". In the reply notice Ex. P-65

dated 22-1-1969, this averment was admitted by the defendants. In Ex. P-64 dated 22-1-1969, the defendants admitted that ""the buildings in

which the business of Hotel Oceanic is housed has been leased to our clients together with the business itself as a going concern."" Similarly, in Ex.

P-98 dated 12-10-1960, which is a partnership deed entered into between the two defendants and two others in respect that the defendants

herein had taken ""a lease of the Hotel Oceanic as a going concern."" It is thus quite clear that the parties intended that the hotel business as such

was the one which was transferred under the lease deed Ex. P-3.

11. We may observe that if the appellants' contentions are accepted, the lessors have to remove the articles hired, which are enumerated in

schedules III, IV and V of the lease deed leaving the lessees to remain in possession of the two buildings as statutory tenants. This position is in our

opinion, contrary to the spirit of the lease deed and the various covenants entered into between the parties. The articles hired were only for the

purpose of running the business and the parties never contemplated the separation of the buildings and the fittings, furniture, crockery etc. hired.

Several of the articles hired had been imbedded in the building on a permanent basis and the parties could never have contemplated that those

permanent fixtures could be disturbed on the expiry of the lease period. We are of opinion that the various covenants of the lease deed cannot be

dissected in the manner contended for by the appellants, but that an overall picture has to be taken for the purpose of finding out whether the lease

deed is a composite one or not. As already observed by us we are of opinion that Ex. P-3 is a composite lease deed covering both Immovable

and moveable properties, fixtures, furniture, crockery etc., that is to say that the lease deed results in an assignment of the hotel business for the

period covered by the document.

12. We shall now refer to a few of the decisions relied on by the learned counsel for the appellants. The question whether a lease deed in a given

case is a composite one or not has come up for consideration in numerous decisions of this Court interpreting the definition of "buildings" and of

decisions of other Courts defining "premises" or "accommodation" under the

respective State enactments. So far as the decisions of the Madras High Court are concerned they turn upon the construction of the definition of "building" contained in the Madras Buildings (Lease and Rent Control) Act, 1960. Section 2(2) defines "building" 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 including (a).....(b) any furniture supplied by the landlord for use in such building or hut or part of a building or hut, but not including a room in a hotel or boarding house. There is, however, a difference in the definition in the enactments of other States such as (1) the Andh. Pra. (2) Bombay and (3) West Bengal and (4) Madhya Pradesh. In the definition of "building" occurring in the Andhra Pradesh Act, or "premises" or "accommodation" contained in the Acts of Bombay, West Bengal and Madhya Pradesh, we find the addition of the words "or any fittings affixed" after the words "any furniture" contained in Section 2(2)(b) of the Madras enactment. Therefore, the decisions of the High Courts of Andhra Pradesh, West Bengal and Bombay and Madhya Pradesh are distinguishable when we are construing the definition of "building" under the Madras enactment.

13. The earliest decision on this question in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, relating to Maharani Talkies in

Washermanpet, Madras. There, the indenture of lease dated 1-10-1948 ran as follows:--

All the piece of ground with the new cinema theatre including the buildings and stall erected thereon known as "Maharani Theatre" or "Maharani

Talkies".....together with all easements and appurtenances whatsoever thereunto belonging and also all the fixtures, fittings, cinematographic

talkie equipments, machinery, furniture, scenery and things in, upon or about the said theatre specified in the inventory thereunder.

The lease was for a period of five years. The monthly rent and hire was fixed at Rs. 3,200/- and this sum was expressed to be made up as follows:

(1) Rs. 1,600/- being the rent for the ground and superstructures, (2) Rs. 800/- being the hire of furniture and (3) Rs. 800/- being the hire of talkie

equipment machinery, buildings and lessors' fixtures. The question which arose herein was whether the provisions of the Madras Buildings (Lease

and Rent Control) Act, 1946 (Act XV of 1946) would apply to the lease in

question. Their Lordships held that the lease in question was not a lease of a mere "building or building with compound and furniture" but that the lease was of land and building together with fixtures fittings, cinematographic talkie equipments machinery and other articles that the splitting up of the lease amount into various components such as rent for the ground and superstructure, hire of furniture and hire of talkie equipments and machinery etc. was purely national and intended probably for purposes relating to municipal assessment and that the lease in question was a talkie house with everything that is necessary to run a cinema house and to split up such a composite lease into separate contracts of lease and hire would amount to destroying the lease altogether.

14. The next decision referred to related to Gaiety Theatre Madras, and it is In Re: S. Panchapakesa Iyer, , where another Division Bench of this Court (Satyanarayana Rao and Raghava Rao, JJ.) dealt with a lease consisting of (1) the site under the actual building (a cinema Theatre) which belonged to the lessee (2) the small sheds at the end of the premises and (3) all vacant space within exclusive of the theatre and the sheds. The learned Judges confirmed the view of the trial Judge (Subba Rao, J) as he then was, who having regard to the wide connotation that was given to the word "building" and the purposes 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 and the entire premises were being let out and used for a number of years at any rate from 1914 and the purposes for which the building was taken on rent by the lessee from time to time, held that the suit premises came within the meaning of the word "building" under the Madras Buildings (Lease and Rent Control) Act, 1946.

15. The next decision of importance in Om Prakash Gupta Vs. The Commissioner of Police, Madras and Others, . That case related to Rajakumari Talkies, Madras, where the lessee in whose favour the lease had expired continued in possession and the question that arose for determination therein was whether such a lessee in possession of a building who is not legally entitled to be in possession, can be said to be in "lawful possession" of the building within the meaning of Rule 13 of the Madras Cinemas Regulations Rules, 1957. The learned Judges referred to and followed the earlier decision in S. Raja Ghetty and Others Vs. Jagannathadas

Govindas and Others, , Natesan, J. in B.S. Nanda Rao and Others Vs. V.M. Lakshmanaswami Mudaliar, had to consider a similar question. There the lease was for running a theatre at Arcot. The lease amount was Rs. 200/- per month for five years. It was covenanted that the lessee should surrender possession in good repair. At the foot of the lease deed after describing the building with measurement, the document recited ""This and within these zinc sheet buildings and all moveables within this."" Then came the following description of the articles. ""Thirty four good Rattan chairs, five condemned chairs, nine sofas, forty three back benches, seventy benches, six sofas, sixteen inside light brackets, one control light, eighteen cushion sofas, eleven brackets outside the compound, three cabin lights, two ceiling bells, electric fitting switches, cabin board, wiring main boards all these"". The contention on behalf of the landlord in that case was that lease was a composite lease outside the scope of the Act and per contra contention on behalf of the tenant was that it was a building within the meaning of the Madras Buildings (Lease and Rent Control) Act, 1960. The learned Judge distinguished S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others, and followed Karnani Properties Ltd. Vs. Augustin, which depended upon the construction of the definition of "premises" under the West Bengal enactment stated that the difference did not matter, as the objects of the two enactments were similar and that the enumeration of the articles in the lease deed in addition to the building leased out amounted to "amenities" provided by the landlord for the better enjoyment of the property leased out. The learned Judge referred to Section 3(5) of the Act where the buildings required for occupation of Government Officers specified in sub-section (3) of the Act and Section 4(3) relating to the fixation of fair rent for any non-residential building, the explanation to S. 17(5) as also the Rules 12 and 13 of the Madras Buildings (Lease and Rent Control) Rules, 1961, came to the conclusion that the amenities provided by the landlord to the tenant inclusive of services as contemplated by the explanation to Section 17(a) to Section 17(5)(a) came to the conclusion that such amenities notwithstanding the omission of the words ""fittings affixed by the landlord for the use of the tenant"" would form an integral part of a building as defined in the Act. We may observe that Rules 12 and 13 relate to matters necessary in

the calculation of the cost of construction of non-residential building and allowances to be made for amenities. In our opinion, this consideration has no relevance in considering the question whether a non-residential building with fittings, furniture, crockery etc., as a going concern (hotel business) was let out. In our opinion the difference in phraseology of the definition of "buildings" under the Madras enactment and the Andhra Pradesh Buildings (Lease and Rent Control) Act as also the definition of premises under the West Bengal Act and the Bombay enactments or the definition of accommodation under the Madhya Pradesh enactment is very material and Natesan, J., has erred in seeking to enlarge the scope of the definition of the word "buildings", under the Madras enactment for which there is no justification. We are of opinion that the learned Judge erred in relying upon Karnani Properties Ltd. Vs. Augustin, which related to the definition of the words "premises" under the West Bengal enactment and distinguishing a direct decision of a Division Bench of this Court in S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others, construing the word "building" under the Madras enactment. In our view, the decision of Natesan, J. is wrong. The reasoning contained in the above decision was followed by Ramamurti, J. sitting in the Original Side of this Court in Isherdas Sahni and Brothers by Partner V.N. Sahni Vs. Rajah V. Rajeswara Rao and Others, relating to Odeon Cinema. This judgment though reported earlier, is later in point of time. We may, however, point out that the decree of Ramamurti, J. was set aside in O.S.A. No. 9 of 1969 by consent of parties.

16. We shall next refer to the decision of other Courts. In the Andhra Pradesh High Court a Division Bench consisting of Viswanatha Sastri and

Krishna Rao, JJ in Konijeti Venkayya v. Thammanna Peda Venkata Subbarao AIR 1957 AP 619 had to consider whether a lease of an oil mill

which consisted of a factory; comprising of land and buildings where machinery and plant were housed fell within the purview of the Madras

Buildings (Lease and Rent Control) Act, 1949. Their Lordships distinguished In Re: S. Panchapakesa Iyer, and came to the conclusion that what

was leased was a running factory comprising costly machinery intended to be used for the manufacture of oil and that the provision of the Madras

Buildings (Lease and Rent Control) Act, will not govern the lease in question. In Amritlal N. Shah Vs. Alla Annapurnamma, Umamaheswaram and

Krishna Rao, JJ in construing the lease deed which was similar to the lease deed in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and*

Others, followed the decision in *Raja Chetty's* case and held that the lease in question was of a talkie house with everything that was necessary to

run cinema shows that to split up such a composite lease into separate contract of lease and hire and hire of machinery and furniture was to destroy

it altogether.

17. The next decision in *Ramanathan v. Seetha Mahalakshmi*, (1970) 2 A WR 112 where Gopal Rao Ekbote, J. who spoke for the Court

observed as follows:--

The furniture supplied or any fittings affixed by the landlord in the premises and let out along with the cinema hall, the entire thing comes within the

definition of "building" and consequently the provisions of the Act would govern the relationship of the landlord and the tenant, the result is that

although the term of the lease deed had expired, the landlord would not be in a position to evict the tenant except for anyone of the grounds

mentioned in Section 10 of the Act.

The learned Judges followed the decision of the Supreme Court in *Karnani Properties Ltd. Vs. Augustin*, in *Mohammad Jaffer Ali v. S. Rajeswara*

Rao AIR 1971 A P the Full Bench of the Andhra High Court had to consider the question whether the lease of a cinema theatre equipped with

projector and sound equipment is a building and the lessee of such building is a tenant liable to be evicted only under the provisions of the Act and

not by a civil suit. *Sambasiva Rao, J.*, who delivered the judgment on behalf of the Full Bench referred to the Andhra Pradesh Buildings (Lease,

Rent Eviction) Control Act, 1960 which replaced the Madras Buildings (Lease and Rent) control Act, 1949, which was applied to the State of

Andhra Pradesh and the Hyderabad House and Rent Eviction Act, 1954, covering the Telegana Area. It may be noted that the Andhra enactment

of 1960 has added the words "'or any fittings affixed'" to the definition of the building under the Madras enactment, which governed that area

previously. In view of the difference in the definition of the word "'building'" occurring in the new Andhra enactment, *Sambasiva Rao, J.*, came to the

conclusion that the enactment would apply to such cinema theatres as well.

18. In *Karsandas Ramji v. Karsanji Kalyanji*, AIR 1953 Sau 113 the question

arose whether the lease of a cinema theatre together with furniture, electric fittings and electric generator amounted to a lease of premises within the meaning of Section 5(8)(b) of Bombay Rents, Hotel and Lodging House Rates (Control) Act, LVII of 1947. The definition of "premises", as already stated, included "any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof." Construing the definition of the word "premises" which is wider than the definition of the word "building" under the Madras enactment, Shah, C. J. speaking for the Court held that the Rent Act applied to the cinema theatre in question.

19. The next decision is Kali Prosad Vs. Jagadish Pada, which was also a case of a lease of cinema theatre and the definition of the word "premises" within the meaning of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, had to be considered. The definition of the word "premises" in the said enactment includes the use of any furniture or fittings affixed to the building and therefore the Calcutta High Court came to the conclusion that the word "premises" in the West Bengal enactment was wider enough to include any building, including any furniture and fittings therein, and consequently the cinema theatre fell within the definition of the word "premises".

20. In D. S. Jain v. Mechamal Roy, (68 Calcutta Weekly Notes, 1136) Mookerjee, J. speaking for the Bench, observed as follows:--

Where the letting is of a furnished and well-equipped cinema show house and the building, furniture and the machines and machineries etc., all constituting its essential and integral parts or components, they can not be regarded separately or as distinct or different units. They are linked up together by the lease itself and the entire lease is the lease of a "premises" under the West Bengal Premises Tenancy Act.

It may be noted that the material part of the definition of "premises" occurring in the West Bengal enactment is the same as the definition of "premises" construed in Kali Prosad Vs. Jagadish Pada, .

21. A Full Bench of the Kerala High Court in K. Kungu Govindan and Others Vs. Parakkat Kunhilekshmi Amma and Others, , took the same

view and the definition of the word "building" in the Kerala Act, which was amended in 1961, included the words "any fittings affixed by the landlord." Vaidialingam, J., speaking for the Full Bench, after an elaborate

review of the relevant case-law, expressed the view that the lease of a "cinema theatre including furniture, electric installation, machinery and equipment" fell within the ambit of the amended definition of the word "building".

22. We shall now refer to the two decisions of the Supreme Court which have a bearing on this point. We may at the outset observe that the said decisions turned upon the construction of the definition of the word "premises" under the West Bengal and Madhya Pradesh enactments. The construction of the definition of "premises" in the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 came up for consideration before the Supreme Court in *Karnani Properties Ltd. Vs. Augustin*, . In the case before the Supreme Court the tenant applied for fixation of standard rent and the landlord contended that the Act did not apply to the premises in question. The word "premises" is defined in the West Bengal enactment very widely and the preamble of the enactment showed that the intention was to make better provision for the control of rents and premises. Sinha J., who delivered the judgment on behalf of the Court observed that "in order fully to give effect to the provisions of the statute, the Court has to give them the widest application possible within the terms of the statute. Having those considerations in view, I do not think that the supply of amenities aforesaid would make any difference to the application of the Act to the premises in question."

23. The next decision of the Supreme Court is *Uttamchand Vs. S.M. Lalwani*, . The headnote in the case brings out correctly the position, which runs as follows:--

Dal mill buildings, with fixed machinery in sound working order and accessories was leased out on an annual rent. The intention of the lessee in accepting the lease was to use whether the Dal Mill was an "accommodation" within meaning of Section 3(a) M. P. Accommodation Control Act, 1955, and whether the Rent Control authority had jurisdiction to determine the standard rent.

Held after consideration of the terms of the lease that the factory was not a building within meaning of Section 3(a) and therefore was outside the purview of the Act.

The Court must apply the test of the dominant intention of the parties. The Court

must determine the character of the lease by asking itself as to what was the dominant intention of the parties in executing the document.

The fitting of the machinery in the present case could not be said to be fittings which had been fixed for the more beneficial enjoyment of the building. The fittings to which Section 3(a)(y)(3) refers are obviously fittings made in the building to afford incidental amenities for the person occupying the building. That being so, it was clear that the fittings in question did not fall u/s 3(a)(y)(3). If the fittings in question had attracted the provisions of Section 3(a)(y)(3) there would have been no difficulty in holding that the lease was in respect of accommodation as defined by the said provision.

The dominant intention of the lessee in accepting the lease was to use the building as a Dal Mill. Though the document purported to be a lease in respect of the Dal Mill building the said description 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 the Dal Mill building. It was not a case where the subject-matter of the lease was the building and along with the leased building incidentally passed the fixture of the machinery in regard to the Mill, in truth, it was the Mill which was the subject-matter of the lease, and it was because the Mill was intended to be let out that the building had inevitably to be let out along with the Mill. The fact that the machinery which was transferred to lessee under the lease was bound to be not very serviceable and that lessee had to bring in his own machinery, would not alter the character of the transactions. The fixtures described in the schedule to the lease were in no sense intended for the more beneficial enjoyment of the building. The fixtures were the primary object which the lease was intended to cover and the building in which the fixtures were located came in incidentally. Therefore the rent which the lessee agreed to pay to lessor under the document could not be said to be rent payable for any accommodation to which the Act applied.

24. Whatever test is applied to ascertain whether the lease, is a lease of a building or a composite lease, the primary question for determination is what is the intention of the parties, whether it is called a dominant intention or mere intention. The position, in our opinion, is the same. Having regard to the various factors mentioned above and the tests laid down by the

several decisions referred to, we are in respectful agreement with the view expressed by Rajamannar, C. J. and Panchapagesa Aiyar, J. in *S. Raja Ghetty and Others Vs. Jagannathadas Govindas and Others*, and hold that the lease in the present case is a composite lease to which the provisions of the Madras Buildings (Lease and Rent Control) Act, have no application.

25. The learned counsel for the appellants next contended that the trial Judge went wrong in referring to the Income Tax assessment orders Exs. P-

99 to P-104 for the years 1964-65 to 1969-70, which showed that the first plaintiff herein had been assessed in respect of the rental income of the

hotel business as business income and not as income from the buildings. The contention of the learned counsel is that the lease deed cannot be

construed with reference to how the Income Tax Officers construed the lease. While we agree with the learned counsel that such method of

construction is not proper, we do not see any ground why such evidence should be excluded altogether. As already observed such evidence is of

the weakest quality and the way in which the officers construed the lease would, in our opinion, stand in the same footing as to how the parties

themselves interpreted the document and conducted themselves. In this connection the learned counsel referred to *Commr. of Income Tax,*

Madras v. Bosetto Bros. Ltd. AIR 1940 Mad 366 where the nature of the lease of a hotel came up for consideration u/s 10 of the Income Tax

Act. The facts therein are as follows:--The assessee Company was carrying on the hotel business in Madras. Subsequently, the assessee built a

hotel in Ootacamund and carried on business there till 1934. Finding the business not profitable at Ootacamund, he leased the premises, furniture

and fittings to another firm for the purpose of running the hotel and the lessees carried of the hotel and the lessees carried on the hotel business. For

the assessment year 1937-38 the assessee claimed deduction from its income in certain sum as depreciation on building and furniture at the

Ootacamund hotel u/s 12(2)(vi). But, the Income Tax authorities refused deduction on the ground that the hotel at Ootacamund must be regarded

as property and as such assessable only u/s 9. It was held that the letting of the Ootacamund hotel must be regarded as part of the Company's

premises and that the assessee was entitled to allowance for depreciation u/s

10(2)(vi) in respect of the Ootacamund building.

26. In *Sultan Brothers (P) Ltd. Vs. Commissioner of Income Tax*, a similar question are relating to a hotel in Bombay. At page 1394, Sarkar, J.,

who delivered the judgment on behalf of the Bench, observed as follows:--

It seems to us that the inseparability referred to in sub-section (4) is an inseparability arising from the intention of the parties. That intention may be

ascertained by framing the following question: Was it the intention in making the lease--and it matters not whether there is one lease or two, that is,

separate ""lease"" in respect of the furniture and the building that the two should be enjoyed together? Was it the intention to make the letting of the

two practically one letting? Would one have been let alone a lease of it accepted without the other? If the answers to the first two questions are in

the affirmative, and the last in the negative then, in our view, it has to be held that it was intended that the lettings would be inseparable. This view

also provides a justification for taking the case of the income from the lease of a building out of Section 9 and putting it u/s 12 as a residuary head

of income. It then becomes a new kind of income, not covered by Section 9, that is, income not from the ownership of the building alone but an

income which though arising from a building would not have arisen if the plant, machinery and furniture had not also been let along with it.

That takes us to the question, was the letting in the present case of the building and the furniture and fixtures inseparable in the sense contemplated

in the sub-section as we have found that sense to be? It is true that the rent for the building and the hire for the furniture were separately reserved in

the lease, but that does not, in our view, make the two lettings separable.

We are of opinion that the above decisions have no application to the facts of the present case.

27. The learned counsel for the appellant next contended that the lease deed covered two buildings, one of them owned by M. S. Ramaswami

Chettiar, the husband, and the other owned by the second plaintiff, his wife, and that the business in the two buildings was carried on only by

Ramaswami Chettiar and if the intention of the parties was to transfer the business it was unnecessary for both Ramaswami Chettiar and his wife to

join in executing the lease deed. The contention is that Ramaswami Chettiar alone, who was running the business, was the person who could

transfer the business and that the fact that the husband and wife joined in the lease deed showed that it is the building that was leased out and not

the business. We are of opinion that there is no substance in this contention. The business is carried on in the two buildings and what is leased out is

the business that is carried on in the two buildings. The owners of the two buildings, in which the business has to be carried on, have to join in

executing the lease deed; otherwise the business without the lease of the premises cannot enable the transferee to run the business in the premises

belonging to the lessors. It is in that view that the owners of both the buildings joined in executing the lease deed.

28. The learned counsel for the appellants next contended that the provision in the lease deed relating to keeping the licences, such liquor licences.

Corporation licences, lodging house licences, coffee and meals hotel business licences, barber's saloon licences etc. for conducting a residential

western-style hotel business have to be kept in full force and effect, all of which will have to be retransferred to the lessors at the time when the

lease expired, showed that the lease is in respect of the buildings. In this connection, the learned counsel referred to Halsbury's Laws of England,

III Edition, Volume 23, page 637, dealing with covenants relating to licenced premises. Paragraph 1345 referred to reads as follows:

Leases of licenced premises usually contain covenants on the part of the tenant intended for the protection of the licence, and also if the landlord is

brewer and the premises are to be "tied" to his business, intended to create the "tie" and ensure that the benefit of it shall be assignable.

The argument of the learned counsel is that such covenants are usually contained in leases of licenced premises and the business is tied to the

premises and that consequently the lease in the present case is a lease of the premises to which the business is tied up. The learned counsel also

referred to the Encyclopedia of the Laws of England with Forms and Precedents, Vol. VII, page 747, where the form for a lease of a public house

by a firm of brewers is set out. We are of opinion that the lease in question cannot be dissected in this manner. We will have to take all the

covenants of the lease deed into account for the purpose of finding out whether the lease in question is a composite lease or a lease of a building. In

our opinion, the attempt of Mr. M. S. Venkatarama Iyer to compare the lease in the present case with the lease of licenced public house under the

English Law is not justified. The business transferred in the present case under the lease deed in question is a hotel business. Sale of intoxicant is one of the services rendered in the hotel by persons carrying on the hotel business. Apart from the question whether the lease could be dissected in this manner, we are of opinion that clause 4(vii) makes it obligatory on the part of the lessees to keep up such licences in full force and effect. If the various other clauses viz., (1) clause 4(v) in the lease deed, calling upon the lessees to deliver the various articles hired out in the same good condition in which they are now and for breakages and deficiencies being replaced, (2) the latter limb of clause 4(vii) expressly providing for the lessees doing all acts necessary to put back the lessors in possession and sign all necessary applications to the authorities whenever such joint applications are found necessary. (3) clause 4(viii) providing for the lessees adding to the equipment or machinery with a view to improve the utility of the establishment and attract customers and to improve the business, (4) clause 4(x) whereunder the lessees are obliged to continue the existing arrangement entered into by the lessors with various persons and (5) clause 4(xii) whereunder the lessees are obliged to keep the premises in the same high standard of cleanliness and finish, all point out the lessors taking over the management on the expiry of the lease period, so that the lessors could continue the business retransferred without any difficulty.

29. The next contention of the learned counsel for the appellants is that the goodwill of the business is a very material component of the business itself and when that is not taken into account in transferring the business, it must be assumed that the lease in question is only a lease of the building.

Goodwill" in a business, has been the subject of several decisions and we shall briefly refer to some of them.

30. "Goodwill" has not been defined precisely either in the Partnership Act or any other enactment. In Lindley on Partnership, 12th Edition, p.

467, it is stated as follows:

The term "goodwill" can hardly be said to have an precise significance. It is generally used to denote the benefit arising from connection and reputation and its value is what can be got for the chance of being able to keep that connection and improve it.

In Crutwell v. Lye, (1810) 17 Ves 335 Lord Eldon said at page 346 as follows:

the goodwill which has been the subject of the sale is nothing more than the probability that the old customers will resort to the old place.

The above is not an exhaustive definition. In *Churton v. Douglas*, 1859 John 174. Wood, V. C. stated at page 188:

"Goodwill", I apprehend must mean every advantage, every positive advantage, if I may so express it as contrasted with the negative advantage of

the late partner not carrying on the business himself, that has been acquired by the old firm in carrying on its business, whether connected with the

premises in which the business was previously carried on, or with the name of the late firm or with any other matter carrying with it the benefit of

the business.

In *Trego v. Hunt*, 1859 5 All ER 804 : 1896 AC 7 what "goodwill" means was considered by the House of Lords. Lord Herschell, L. C.

observed at page 810 as follows:

It is the connection thus formed, together with the circumstances, whether of habit or otherwise, which tend to make it permanent, that constitutes

the goodwill of a business. It is this which constitutes the difference between a business just started, which has no goodwill attached just started,

which has no goodwill attached to it, and one which has acquired a goodwill. The former trader has to seek out his customers from among the

community as best he can. The latter has a custom ready made. He knows what members of the community are purchasers of the articles in which

he deals, and are not attached by custom to any other establishment.

Lord Macnaghton stated at page 813 as follows:

What "goodwill" means must depend on the character and nature of the business to which it is attached. Generally speaking it means much more

than what Lord Eldon took it to mean in the particular case before him, in (1810) 17 Ves 335 often it happens that the goodwill is the very

sap and life of the business, without which the business would yield little or no fruit. It is the whole advantage, whatever it may be, of the reputation

and connection of the firm, which may have been built up by years of honest work, or gained by lavish expenditure of money.

In *Inland Revenue Commr. v. Muller and Company's Magarine Ltd.*, 1901 AC 217, Lord Macnaghton observed at pages 223 and 224 as

follows:

What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. If there is one attribute common to all cases of goodwill it is the attribute of locality. For goodwill has no independent existence. It cannot subsist by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it, though element remain which may perhaps be gathered up and be revived again.

In the Supreme Court in S.C. Cambatta and Co. Private Ltd. Vs. Commissioner of Excess Profits Tax, Bombay, , Hidayatullah, J. speaking for the Bench, after referring to (1810) 17 Ves 335 and 1895 9 All ER 804 : 1896 AC 7 and other cases, observed as follows:

It will thus be seen that the goodwill of a business depends upon a variety of circumstances or a combination of them. The location, the service, the standing of the business, the honesty of those who run it, and the lack of competition and many other factors go individually or together to make up the goodwill, though locality always plays a considerable part. Shift the locality, and the goodwill may be lost. At the same time, locality is not everything. The power to attract custom depends on one or more of the other factors as well. In the case of a theatre or restaurant, what is catered, how the service is run what the competition is, contribute also to the goodwill.

In the Rustom Cavasjee Cooper Vs. Union of India (UOI), , observed as follows:

Goodwill of a business is an intangible asset: It is the whole advantage of the reputation and connections formed with the customers together with the circumstances making the connection durable. It is that component of the total value of the undertaking which is attributable to the ability of the concern to earn profits over a course of years or in excess of normal amount because of its reputation, location and other features: 1896 AC 7.

Goodwill of an undertaking therefore is the value of the attraction to customers arising from the name, and reputation for skill, integrity, efficient business management, or efficient service.

The argument of the learned counsel for the appellants is that inasmuch as the lease deed did not specifically refer to the goodwill of the hotel

business and the premises, which is a very valuable ingredient in the business assigned under the lease as referred to in the above cases, the lease in

question can only relate to the buildings and not a transfer of the business. No doubt, goodwill has not been separately mentioned and dealt with.

In our opinion, the lessors, when negotiating for the lease, ought to have taken this ingredient into account in fixing the lease amount. The following

consideration justify the conclusion which we have arrived at, viz.,

(1) the fact that the lessors were carrying on the hotel business for a period of about five years prior to the grant of the lease in question;

(2) that the business leased out is in the same premises as that which was originally carried on;

(3) the lessors not reserving a right to start a competing business in the same locality;

(4) the lessors having placed at the disposal of the lessees all the fittings, linen, furniture, carpets, rugs, crockery, cutlery, air-conditioners,

refrigerator, ice-cream machinery etc.

(5) the lessees not being granted a right to sublet or transfer without the lessors' consent;

(6) the lessors' intention of taking back the business on the expiry of the lease period or its renewal;

(7) the anxiety of the lessors to keep all licences intact and the other covenants in the lease deed, fixing, the lessees with liability to pay the taxes

etc. regularly.

These are several indications according to us which go to show that the business with its reputation earned over years of its functioning was

transferred to the lessees although "goodwill" as such was not specifically mentioned in the lease deed. What has happened in this case is that the

business remained as such and was continued as such by the lessee under the lease deed and that there is only, a transfer of management.

31. Mr. M. S. Venkatarama Iyer next contended that the lessors' covenants (Cl. 5 (ii)) to settle with the staff including the Manager, servants,

suppliers contractors and labourers now working in the premises upto 13-7-69, their claims for salary, wages, bonus, leave pay and retrenchment

compensation, showed that the hotel business which was carried on was not meant to be continued as such by the lessees, that this is an indication

that the hotel business run by the first lessor till the date of the lease in question is a new business and not the continuation of the old business, and

that there is no transfer of the business as such involved. We are of opinion that there is no substance in this contention. In this connection, the

learned counsel sought to distinguish the direct decision on the question under consideration namely, *Kenmir Ltd. v. Frizzell*, 1968 WLR 329. The

facts therein are as follows:--

The respondents were employed by K. Bros., a firm carrying on business as manufacturers of furniture for sale through the trade. The appellants,

who were engaged in the manufacture of furniture components, entered into an agreement in writing with E. Bros., on June 5, 1964, for the

purchase of their factory premises, fixtures and fittings, plant and machinery. The agreement also contained undertakings by K. Bros. to continue

the business of furniture manufacturers and the management of their employees until the date of completion and thereafter not to compete with the

appellants in that business and to transfer to the appellants the benefit of all trade agreements, licences or official permits and the right to use the

name K. in all its forms. There was no assignment of the goodwill of the business to the appellants. The terms of the agreement were duly carried

out, the appellants taking possession of the factory, adopting the name of K. Ltd. and issuing forms of particulars of contract of service to the

respondents. Following the dismissal of the respondents by the appellants in December, 1966, the amount of the redundancy payments to which

they became entitled u/s 1 of the Redundancy Payments Act, 1965, was referred to the industrial tribunal which held that in the circumstances the

written agreement amounted to a transfer of the business within Schedule 1, para 10(2) to the Contracts of Employment Act, 1963, and therefore

that the respondents' employment with K. Bros. and K. Ltd., was a continuous employment within the meaning of Schedule I to the Act of 1965

and they should be awarded payments on that basis. On appeal, it being contended that there could be no transfer of a business unless the

transaction included an assignment of the goodwill, *Widgery, J.*, who delivered judgment on behalf of the Bench, applying the principles contained

in *H. A. Rencolue Limited v. Hunt* 1967 2 ITR 475 and *C. D. Ault (Isle of Wight) Limited v. Gregory*, 1967 KLR 590 observed as follows:

In deciding whether a transaction amounted to the transfer of a business regard must be had to its substance rather than its form, and consideration must be given to the whole of the circumstances, weighing the factors which point in one direction against those which point in another. In the end the vital consideration is whether the effect of the transaction was to put the transferee in possession of a going concern the activities of which he could carry on without interruption. Many factors may be relevant to this decision though few will be conclusive in themselves. Thus, if the new employer carries on business in the same manner as before this will point to the existence of a transfer, but the converse is not necessarily true because a transfer may be complete even though the transferee does not choose to avail himself of all the rights which he acquires thereunder. Similarly, an express assignment of goodwill is strong evidence of a transfer of the business but the absence of such an assignment is not conclusive if the transferee has effectively deprived himself of the power to compete. The absence of an assignment of premises, stock-in-trade or outstanding contracts will likewise not be conclusive if the particular circumstances of the transferee nevertheless enable him to carry on substantially the same business as before.

We are in respectful agreement with the above observations.

32. This question again came up for consideration by the Court of Appeal in *Lloyd v. Brassey*, 1969 2 QB 98. Lord Donning, M. R., referred to the judgment of the Divisional Court in 1968 1WLR 329 with approval and observed as follows at page 103:

If the new owner takes over the business as a going concern-so that the business remains the same business but in different hands-and the employee keeps the same job with the new owner, then he is not entitled to redundancy payment. His period of employment is deemed to continue without a break in the same job: so that, that if he is afterwards dismissed by the new owner for redundancy, his payment is calculated on the whole period in that job.

Russell, L. J., in dealing with the transfer of an agricultural farm, applied the test laid down in 1968 1 WLR 329, and observed:

The business carried on at a farm such as this, is, and is inseparable form, the occupation of it for agricultural purposes, and it is to my mind the

same business whoever occupies it for those purposes. I think, with respect, that the Divisional Court erred in thinking that there could not be a change of ownership of a business unless there was some transfer of the goodwill or pending contracts. But if the business is such that it can and does exist without goodwill or pending contracts, the absence of such a transfer is of no relevance in considering whether there has been a change of ownership of the business.

We may refer to the observations of Salmon L. J., who after referring to the judgment in 1967 2 ITR 475, observed:

The whole operation necessarily meant a smooth and unbroken continuity between what was happening before and after the transfer. Of the many factors to be taken into account in considering whether or not a change in the ownership of a business has occurred, none by itself nor a combination of any of them together is necessarily conclusive. Everything depends on a broad view of all circumstances of each particular case.

The learned counsel next referred to Sec. 25(FF) of the Industrial Disputes Act, 1947 and contended that Clause 5(2) of the lease deed showed

conclusively that there is no transfer of the business but that a new business was carried on by the lessees under Ex. P-3. The relevant part of

Section 25FF of the Industrial Disputes Act runs as follows:--

Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation

to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking

immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section 25F, as if the workman

had been retrenched:

Provided that nothing in this section shall apply to workman in any case where there has been a change of employers by reason of the transfer, if--

(a) the service of the workman has not been interrupted by such transfer;

(b).....; and

(c) the new employer is under the terms of such transfer of otherwise, legally liable to pay to the workman, in the event of his retrenchment,

compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

On the admitted facts in the case substantially all the workmen employed by the lessors" in the hotel business were continued by the lessees after

the business was taken over by them. Under these circumstances, the provision in the lease deed namely clause 5(ii) that the lessors should settle

with the staff including the Manager, servants, suppliers, contractors and labourers, their claims for salary, wages, bonus, leave pay and

retrenchment compensation that such staff, servants suppliers, contractors and labourers may be entitled to in respect of their service under the

lessors, have no relevance.

33. Mr. M. S. Venkatrama Iyer, the learned counsel for the appellants, in support of his contention that what was leased out was only the building

including the furniture and fittings therein and that no transfer of business was involved, referred to the decision of the Court of Appeal in *Ex Parte*

Turquand In Re Parker, (1884) 14 QBD 636. In the said case, the notoriety of the custom for hotel keepers to hire the furniture for their hotels

was referred to. That case related to the Bankruptcy of the lessor of a hotel, who was carrying on the hotel business in the premises let out to him

with all furniture, fittings and effects. *Brott, M. R.* at page 645, dealt with the doctrine of reputed ownership in respect of fittings, furniture etc. in a

running hotel. After referring to the notorious custom for hotel keepers to carry on their business by means of furniture which is not their own, the

learned Judge observed as follows:

But it is said that the Courts have not yet declared what they understand by "furniture". It is obvious from the nature of the case that "furniture"

must include everything which goes to the furnishing of an hotel for the purpose of using it as an hotel. It is said that the custom only applied to such

things as sofas, chairs, and tables. I suppose it may at least be said to apply to bedsteads. But what is the use of a bedstead for the purpose of

carrying on an hotel if you have not sheets and blankets and counterpanes? What is the use of an hotel if it has not wash-hand basins and wash-hand

stands? You cannot carry on an hotel unless you have those things. Therefore linen and crockery must come within the custom. What is the use of

attempting to carry on an hotel if you have not souptureens, wine glasses and tumblers? The very nature of the case shows at once that to attempt

to split up furniture into different classes with regard to some of which the

custom applies, and with regard to others of which it does not, is as a matter of business ridiculous. "Furniture" must include everything which is necessary for the furnishing of an hotel for the purpose of carrying it on as an hotel.

The learned counsel, relying on the aforesaid decision, argued that what was let out was only the building with furniture and fittings and the test, to be applied to determine whether a business as such is transferred or whether the lease was only of a building to be used as an hotel, is one of "user". In our opinion, there is no substance in this contention.

34. We are clearly of opinion that the lease deed in question is a composite lease dealing both with immovable properties and fixtures and movable properties, fittings, furniture, crockery, linen, etc., that the transaction of lease amounted to a transfer of the business which on the date of the lease deed the first plaintiff was conducting in the two buildings, to the lessees for a period and that it is not a lease of the building and fixtures and a hire of fittings, furniture, crockery, linen etc., for the purpose of running a hotel that the provision of the Madras Buildings (Lease and Rent Control) Act is inapplicable to the lease in question and that the Civil Court has jurisdiction to entertain the suit. There is no substance in any of the contentions put forward by the learned counsel for the appellants.

35. The appeal, therefore, fails and is dismissed with costs. Time for delivery of possession till 31-3-1973 subject to payment of all arrears within one month from today.

36. Appeal dismissed.