

(1965) 12 MAD CK 0039
In the Madras High Court

Silambani Sri Chidambara Vinayagar Devasthanam	APPELLANT
Vs	
Duraisamy Nadar and Another	RESPONDENT

Date of Decision : 24-12-1965

Acts Referred:

Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 18(4), 19A

Citation : (1967) ILR (Mad) 624 : (1967) 2 MLJ 181

Hon'ble Judges : M. Natesan, J

Bench : Division Bench

Judgement

M. Natesan, J.—This second appeal by the plaintiff Silambani Sri Chidambara Vinayagar Devasthanam, Devakottai, by its Trustees, raises an interesting question of law as to the impact of the Madras Estates (Abolition and Conversion into Ryot-wari) Act (XXVI of 1948) on the rights of a tenant of land from the landholder for building purposes, where the tenancy commenced prior to 1948, and the building erected by the tenant on the land, continued in the tenant's occupation on the date of the notification of the estate under the Act. The second appeal is connected with three revision petitions also by the appellant as petitioner, u/s 115 of the Code of Civil Procedure. The cases were heard together both in the trial and appellate Courts. The suits being for arrears of rent, and of small cause nature in view of the value of the claim, three of them have been brought up to this Court in revision. Lease of vacant sites had been granted by the appellant to the several defendants, the defendants being permitted to put up buildings thereon at their own cost, the superstructure being removable by the tenants at the expiry of tenancy. They were, however, prohibited from sub-letting or assigning the superstructure. The sites thus leased are in the under-tenure village of Kallambirambu which was notified and taken over by the Government on 7th September, 1949, under the provisions of the Madras Estates Abolition Act (XXVI of 1948). The appellant Devasthanam was the landholder of the village and there is no dispute, that the site, the subject-matter of the suit out of which the second appeal arises, is situated on what was the eastern bund

of the Vellaiyyan Oorni. The plaintiff claimed a sum of Rs. 1,091.84 as rent for the site from 1st April, 1960 up to 30th November, 1961. The first defendant is the contesting defendant and there is no dispute that the origin of the possession of the defendant was as tenant under the plaintiff, nor is it disputed that the amount claimed as rent has not been paid. But the defence to the action is that the suit-site along with the building put up by the tenant thereon had Vested in the defendant and the title of the plaintiff as a landlord got extinguished with the notification of the estate under the Abolition Act, XXVI of 1948.

2. Some more facts which are relevant have to be set out. The tenancy under the plaintiff admittedly commenced even prior to 1948, but it is beyond dispute that the tenant has subsequent to the notification of the estate also been executing lease deeds in favour of the plaintiff and subsequent to the notification the plaintiff had filed a small cause suit for arrears of rent and secured decree thereon. Revision taken to the Court by the tenant failed but there was no determination of the question of title. After the notification of the estate the plaintiff applied for ryotwari patta for the suit-site amongst other properties as private land and the Assistant Settlement Officer decided that the item was Vellayan Oorani poramboke. The plaintiff did not claim the disputed site as house-site or building-site but as part of item 14 in the application-Vellayan Oorani. No doubt, as noticed by the lower appellate Court on the date of the notification of the estate, the tank bund did not exist as such but was being used as site for location of various shops. From the decision of the Settlement Officer, there was an appeal to the Estate Abolition Tribunal, Madurai, and on the dismissal of the appeal, the matter was brought up to this Court by way of a writ petition and that also failed. It is stated that the devasthanam may secure the site u/s 19-A of the Act. Of course, these proceedings cannot preclude the devasthanam from asserting its right to the property, if it can u/s 18 of the Abolition Act and that is the right that is now being asserted. The lower appellate Court records as an admission that the devasthanam claimed that it had only the landlord's interest in the tank bund sites. It was also conceded before the lower Court that the devasthanam had no right in the super-structures, The appellant has got marked in appeal Exhibit A-45 an order of the Assistant Settlement Officer, Madurai, dated 20th March, 1963, pending the suit granting joint patta in favour of the landholder and the tenant, the landholder as owner of the site and the tenant as owner of the superstructure. Counsel have not been able to edify me as to how under ryotwari settlement there could be patta recognising the ownership in superstructures. On the joint patta kist will have to be paid. But under what provision of law can the Government levy assessment on the superstructure? Revision has been preferred against this order to the appropriate authority and it is stated the same is pending.

3. The dispute as may be apparent from the above narration of facts is between the plaintiff on the one hand and the defendant on the other hand as to the title of the property, meaning thereby the site on which the superstructure put up by the tenant stands. The devasthanam claims title to the site absolutely by a

process of reasoning based on Section 18(4) of the Act. The trial Court took the view that the Government was a necessary party to the action and besides the civil Court was not the forum for adjudication of the dispute in question. On appeal the learned Subordinate Judge examined the question in extenso and negated the claim of the plaintiff on merits. The learned Subordinate Judge agreed with the contention of the appellant as to the jurisdiction of the civil Court, the question being one of title which of the rival title has to prevail? He found that the devasthanam had lost its right on the notification on 7th September, 1949. The contention of the devasthanam that the tenant was estopped from disputing its title was found against. There was no question of the tenant being asked to surrender possession before disputing the title of the plaintiff as the tenant had entered on the property long anterior to 7th September, 1949. It was held that the site in question also would u/s 18(4) of the Abolition Act, read with Section (5) vest in the owner of the building that is the tenant who had put up the building. In the result, the claim for rent for the site failed.

4. In this second appeal before me the arguments primarily centered round the scope and interpretation of Section 18(4), the plaintiff claiming that in the circumstances it had exclusive title to the building in question, the site and superstructure thereon u/s 18(4). Of course, no such extreme and exclusive claim was made in the lower Court, though a claim appears to have been made by the devasthanam before the Assistant Settlement Officer of the ownership in the building also. In the alternative, it is contended that the site on which the building stood is part of the building and would vest in the landholder u/s 18(4) as on a part owner of the building. Being part of a building the site was saved from being transferred to the Government u/s 3(b) of the Act. So it is argued the tenancy of the site was continued only under the plaintiff with the consequential liability of the tenant for rent. The question of jurisdiction of the civil Court to go into the matter was not raised before me by the respondents. Learned Counsel for the appellant pointed out that the question as to which of the rival claimants had title to the building was not in the exclusive jurisdiction of the authorities under the Abolition Act and in respect of it the civil Court's jurisdiction was not taken away. Reference in this connection was made to the decisions *Krishnaswami Thevar v. Perumal Konar* (1961) 1 M.L.J. 168, *Adakalathammal Vs. Chinnayyan Panipundar*, , and *Soosai Udayar v. Andiyappan* (1959) 1 M.L.J. 195.

5. Before I take up for consideration the rival claims of the parties u/s 18 of the Abolition Act, I shall dispose of the plea of tenant's estoppel raised by the appellant. Though the tenant had executed rent chits subsequent to the notification also, the tenancy had commenced anterior to the notification and the structures had been raised prior to the notification. According to the tenant, the rent chit had been executed in ignorance of the fact that by reason of the Abolition Act and under the provisions of Section 18, the original tenancy had got extinguished and he was no more a tenant of the devasthanam. The

devasthanam had claimed patta in. 1952-53 for the tank bund and though the claim had been negated, the devasthanam continued to collect rents from the tenants, and the tenants, in ignorance, had been paying the rent. It is stated that it was in 1959, that the Assistant Settlement Officer, Karaikudi, when coming for enquiry asked the tenants not to pay any rent to the devasthanam. Then only, according to the tenant, he came to know that the rents should not be paid to the devasthanam. This case has been accepted by both the trial Court and the appellate Court. The trial Court refers to the oral evidence in the matter and the complaint by the plaintiff to the Board of Revenue, of the Assistant Settlement Officer asking persons in occupation not to pay rents to the devasthanam. No doubt the devasthanam had filed suits for rent under the Small Causes Court Act and obtained decrees. But the title of the devasthanam was not ultimately adjudicated in these suits. The trial Court holds that till the Assistant Settlement Officer informed them, the tenants were under the honest impression that the plaintiff's right to collect rents continued even after the Abolition Act and that they were labouring under a bona fide mistake. That there has been a bona fide mistake will be apparent on the fact that even the Settlement Officer had issued a joint patta and the same is now the subject-matter of revision before the superior authority. There can be no controversy that the estoppel u/s 116 of the Evidence Act is restricted to the denial of the title of the landlord at the commencement of the tenancy and that it is open to a tenant even without surrendering possession to show that since the commencement of the tenancy the title of the landlord has come to an end. In the present case the plea is that the original tenancy under which the tenant entered into possession had got extinguished by reason of the statute and that the landlord's right in the site had been taken away. The ownership of the site has by statute vested in the tenant and by the statute the tenancy got extinguished. The subsequent execution in the circumstances, of rent chits in favour of the erstwhile landlord under a mistaken belief without knowledge of their own title, cannot preclude the tenant from asserting the true legal relationship. The tenant had not entered into possession under any arrangement subsequent to the notification of the estate. The decision in *Balan V. Angatmuthu Naicker* (1963) 76 L.W. 41 (Notes of Recent Cases), cannot be of any help to the appellant herein. The plea there was not one of determination or extinguishment of the landlord's rights subsequent to the commencement of the tenancy. The defence was one of eviction by title paramount and it was pointed out that the essence of eviction lay in dispossession of the tenant in some manner by a holder of title paramount, that would show that the person who continued in possession no longer held on behalf of the erstwhile landlord. The facts in that case did not warrant such an inference. Nor is the decision *Narasimham V. Atchayya* (1954) 2 M.L.J. 83 : ILR (1955) Mad. 227, of any relevance. In that case, the defendant in an earlier suit accepted a compromise decree giving up his claim to occupancy rights and accepted a lease for a term. The question in the subsequent suit for ejection was whether the defendant could be held to have contracted out of occupancy rights in the face of the provisions of Section 187 of the Madras Estates Land Act.

This Court held that Section 187 of the Madras Estates Land Act would not apply to a case of that type, a case in which there had been no final adjudication by a competent Court that the suit lands were part of an estate and that the respondent was entitled to occupancy rights and, nevertheless, the tenant contracted to surrender such rights. It cannot be said that the tenancy in the present case was entered into in circumstances as in the above precluding the tenant from agitating and putting forward the true title.

6. The argument of Mr. R. Kesava Ayyangar, the learned Counsel appearing for the devasthanam u/s 18 of the Act may be summarised thus: It may be that the superstructure was erected by the tenant at his cost but it was during the tenancy and so quicquid plantatur solo, solo cedit whatever is fixed to the soil belongs to the soil. Though the maxim in the form has been held not to apply to India, still the Indian law only permits the removal by the lessee of all things which he has attached to the earth even after the determination of the lease, while he is still in possession of the property leased provided, however, the tenant leaves the property in the state he received it. The question for consideration in relation to Section 18 is not the right of the tenant to remove the superstructure he had brought on the property at the termination of the lease, but who should be deemed to be the owner of the building inclusive of the superstructure during the currency of the lease. In the alternative, learned Counsel contends the land having been built upon the she has become part of the building on the date of the notification. As owner of the land he would be owner of a part of the building and so a co-owner with the tenant of the building. u/s 18 of the Abolition Act, the land went with building. So his joint ownership at least must be recognised, and the consequential liability of the tenant to pay rent for that part of the building, namely, the site which would as part of a building vest in the land-holder.

7. It will be convenient at this stage to set out the provisions of Section 18 of the Abolition Act:

Section 18(1).-Every building situated Within the limits of an estate, Which immediately before the notified date, belonged to any landholder thereof and was then being used by him as an office in connection With its administration and for no other purpose, shall vest in the Government, free of all encumbrances, With effect on and from the notified date.

(2) Every building so situated Which, immediately before the notified date, belonged to any such landholder and the Whole or principal part whereof was then in the occupation of any religious, educational or charitable institution, shall also vest in the Government, free of all encumbrances, With effect on and from the notified date:

Provided that when such institution ceases to exist, the building shall revert to such landholder, or if he is dead, to his heirs or legal representatives.

(3) Where any building so situated-

- (a) which belonged to any such landholder on the 1st day of July, 1947; and
- (b)(i) which on that date Was being used by him as an office in connection with the administration of the estate, and for no other purpose, or
- (ii) the whole or principal part whereof Was on that date in the occupation of any religious, educational or charitable institution

Has, after the 1st day of July, 1947 and before the notified date, been sold or made a gift of, by the landholder, or ceased to be used by him as an office as aforesaid or ceased to be in the occupation of such institution, the value of the building shall be assessed by the Tribunal in such manner as may be prescribed; and the Tribunal shall pay to the Government such value from out of the compensation deposited in its office u/s 41, Sub-section (1).

(4) Every building other than a building referred to in sub-sections (1), (2) and (3) shall, with effect on and from the notified date, vest in the person Who owned it immediately before that date; but the Government shall be entitled (for each fasli year commencing With the fasli year in which the estate is notified)-

(i) in every case, to levy the appropriate assessment thereon; and

(ii) in the case of a building Which vests in a person other than a landholder, also to the payments Which such person Was liable immediately before the notified date to make to any landholder in respect thereof, whether periodically or not and Whether by Way of rent or otherwise, in so far as such payments, may accrue due on or after the notified date.

(5) In this section, "building" includes the site on Which it stands and any adjacent premises occupied as an appurtenance thereto.

(6) Any person holding a mortgage or charge on any building referred to in Sub-section (1) or Sub-section (2) shall, for the purpose of Section 42, be a secured creditor and be entitled to priority over any person holding a mortgage or charge subsequently created by the land-holder over any part of the estate.

In applying Section 18(4) the problem for consideration in the present case is, who is the person who owned the building in question immediately before the notified date-whether it is the landholder or tenant or both. The concept of building under the provision will have to be examined. The building vests in the person who owned it before the notified date and, of course, there can be a plurality of owners. The argument on behalf of the appellant is that Sub-section (5) provides that in the section building includes the site on which it stands. The erstwhile land-holder is the owner of the land. If the superstructure could be held to get annexed to the land, the ownership vests entirely in the landholder. If that is not the true legal position, the learned Counsel contends that the site at any rate in part of the building and the landholder would be a part owner of the building, and, therefore, the building must be deemed to have been owned by both the landholder and the tenant at the time of the notification.

8. There can be no doubt that prior to the notification of the estate, the landlord was the owner of the site. Even assuming that the site in question having been tank bund poromboke, his rights were restricted under the provisions of the Madras Estates Land Act, the title would still be in the landholder. The learned Counsel refers to the decision in Secretary of State for India v. Kirtibas Bhupati Harichandan Mahapatra (1915) L.R. 42 IndAp 30 : (1915) 28 M.L.J. 457 : (1914) Cal. 710, wherein their Lordships of the Judicial Committee observe:

The respondents are the zamindars and "as such they have the prima facie title", to use the language of this Board in the Well-known case of Raja Sahib Perhlad Sein (1869) 12 M.I.A. 289, 331, to the full enjoyment of every parcel of land Within their zamindaris for which they pay revenue to Government.

In support of the argument that the landlord would be the owner at law of the superstructure subject to the tenants' right of removal of the same, learned Counsel referred to the following observations of Lord Watson in Beni Ram v. Kundan Lal I.L.R.(1899) All. 496. :

It must also be kept in view that, in Indian Law, the maxim quicquid in cificatur solo, solo cedit has no application to the present case. The rule established in India is that of Section 108 of the Transfer of Property Act, Which provides that" the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth; provided he leaves the property in the state in which he received it.

Learned Counsel submits that the principle enunciated by the Judicial Committee as above does not conclude the question as to whether the landlord could be deemed to be the owner of the superstructure during the currency of the lease despite the right of the tenant to remove the same. Reference was made to K.K. Das v. Amina Khatun Bibi ILR (1940) 1 Cal. 161, 167, where from Ramsden v. Dyson (1866) L.R. 1 H.L. 129, a preposition is deduced that if a tenant builds on his lessor's property in the absence of special circumstances, the land and the building belong to the lessor. Learned Counsel argues that the decision points out only that this third proposition must be taken subject to the provisions of section, 108(h) of the Transfer of Property Act. I find little room in the above decision for such a subtle distinction. The principle of Roman Law of acquiring ownership by accessio was relied upon. Accessio is where a thing becomes one's property by accruing to something which one already owns and becomes incorporated with it. Liege in his Roman Private Law (second edition) illustrates accessio thus at page 153:

A builds a house with his own materials upon B's ground. Again, on the principle superficies solo cedit, B becomes owner of the house by accessio.

In Laxmipat Singhania v. Larsen & Toubro Ltd. (1949) 52 Bom.L.R. 688, 694, referred to by respondent's Counsel, there is no doubt the observation:

...that qua the lessee it may be that the lessor is the owner of the property; and

in proceedings between the lessor and the lessee it would be possible to say that the premises belonged to the lessor and not to the lessee.

That is a case arising under a Special Act, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and depended on the particular terms of the lease. Besides it is doubtful whether some of the observations in the decision could stand after the decision of the Supreme Court in *Bhatia Co-operative Housing Society Ltd. Vs. D.C. Patel*, where the provisions of the Act came up for consideration. But in *Karayan Das Khettry v. Jatindra Nath Roy Choudhury* L.R. (1927) 54 IndAp 218 : (1927) 53 M.L.J. 158 : I.L.R.(1927)Cal. 669, the Judicial Committee has stated the rule thus:

The property in question lies in the 24-Parganas, outside the boundaries of Calcutta, and it was conceded that the maxim, which is found in English law, viz., "quicquid plantatur solo solo cedit", has at the most only a limited application in India.

The case of *Thakoor Chunder Poramanick v. Ramdhone Bhattacharjee* (1866) 6 W.R. 228, to which reference was made in the High Court's judgment, differs materially from the present case in its facts, and the decision itself is not applicable. The following statement, however is to be found in the judgment of the Full Bench which was delivered in 1866:

We have not been able to find in the laws or customs of this country any traces of the existence of an absolute rule of law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself.

Their Lordships, therefore, are of opinion that in construing the provisions of the abovementioned. Acts it is necessary to bear in mind the statement made by Sir Barnes Peacock in the above-mentioned case, Which seems to have been accepted for many years as a correct pronouncement.

9. If there could still be any doubt in the matter, it should get dispelled by the following further observations of Sir Barnes Peacock in *Thakoor Chunder Poramanick v. Ramdhone Bhattacharjee* (1866) 6 W.R. 228, set out with approval in the judgment of the Judicial Committee in *Vallabhdas Naranji v. Development Officer, Bandra* L.R. (1929) 56 IndAp 259 : (1929) 57 M.L.J. 139, .

We think it clear that, according to the usages and customs of this country, buldings and other such improvements made on land do not, by the mere accident of their attachment to the soil, become the property of the owner of the soil; and we think it should be laid down as a general rule that, if he who makes the improvement is not a mere trespasser, but is in possession under any bona fide title or claim of title he is entitled either to remove the materials, restoring the land to the state in Which it was before the improvement was made, or to obtain compensation for the value of the building if it is allowed to remain for the benefit of the owner of the soil,-the option of taking the building, or allowing the

removal of the material, remaining with the owner of the land in those cases in which the building is not taken down by the builder during the continuance of any estate he may possess.

The decision of the Supreme Court in *K.A. Dhairyawan and Others Vs. J.R. Thakur and Others*, , with respect as I see it, settles the law in the matter. That was a case where the lessee of a parcel of land for building purposes had agreed on the termination of the lease at the end of twenty-one years, the stipulated lease period, or earlier, to surrender and yield up the demised premises including the building to the lessors without any compensation. Under the terms of the lease, the lessee had to construct within fix months from the commencement of the lease a double storeyed building consisting of shops on the ground floor and residential premises on the upper floor. The construction had to be to the satisfaction of the lessors' engineers and the building was to be insured in the joint names of the lessors and the lessee. Before the lease was about to expire, the lessors gave notice to the lessee to deliver possession of the demised premises and the building on the expiry of the lease. Under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, land used for non-agricultural purposes was also defined as premises. The lessee would, therefore, be a tenant of the land within the meaning of the expression as defined under that Act and could not be evicted so long as he complied with the provisions of that Act. The lessors who were the appellants before the Supreme Court instituted the suit inter alia for a declaration that they were entitled to the building, for possession of the same and for the rents and profits thereof. The Supreme Court observed, that there could be no question so far as the land demised by the lease was concerned the respondent could not be evicted. The appellants in fact did not claim in the plaint that they were entitled to evict the respondent from the demised land. At page 792 their Lordships state:

We have examined the various clauses of the lease and find that in none of them has it been positively stated that the building to be erected on the demised land would be in the ownership of the lessors and that the building would be deemed to have been leased to the lessees along with the demised land. Under the law there was no impediment in the way of the parties to have had a clause, in a positive form, to that effect. In the absence of such a clause the various clauses of the lease, as they exist, will have to be construed in order to ascertain whether in a proper construction thereof it can be said that there had also been a demise of the building. The schedule to the lease, as already stated specifically mentions that the land had been demised and there is no mention therein that the building when constructed thereon would also form parts of the demised "property. In 1927 when the lease was executed the Act was not in existence and it may reasonably be said that none of the parties had ever in contemplation that the Act or anything akin thereto would become law in the future affecting the rights of the parties under the lease. The various clauses of the lease are consistent with the ownership in the building being with the lessees in which the lessors had no right while the lease subsisted.

After referring to the decision of the Judicial Committee, *Marayana Das Khettry v. Jatindra Nath Roy Chowdhury* L.R. (1927) 54 IndAp 218 : 53 M.L.J. 158 : I.L.R. (1927) Cal. 669 , and *Vallabhdas Naranji v. Development Officer, Bhandra* (1929) 57 M.L.J. 139 : (1929) 56 LA. 259 Imam, J., who delivered the judgment proceeding states:

Normally, u/s 108 of the Transfer of Property Act, before the expiry of the lease, a lessee can remove all structures and buildings erected by him on the demised land. All that was necessary for him to do Was to give back the land to the lessor, on the termination of the lease in the same condition as he found it. The ownership therefore, of the building in this case was not With the lessors but was With the lessees. u/s 108 of the Transfer of Property Act there was nothing to prevent the lessees contracting to hand over any building or structure erected on the land by them to the lessors Without receiving any compensation. In other words, although u/s 108, the lessees had the right to remove the building, by the contract they had agreed to hand over the same to the lessors without the right to receive compensation at the end of the lease, the matter being entirely one of contract between the parties. Such a contract, however did not transfer the ownership in the building to the lessors while the lease subsisted.

The contention on behalf of the respondents that the possession of the building could not be given to the appellants until the lease of the land had been determined was repelled with the following observations at page 794:

This contention is without force as the provisions of the Act do not provide for the continuation of a lease beyond the specified period stated therein. All that the Act does is to give to the person who continues to remain in possession of the land, although the period of the lease had come to an end, the status of a statutory tenant. That is to say, although the lease had come to an end but the lessee continued to remain in possession Without the consent of the lessor, he would nonetheless be a tenant of the land and could not be evicted save as provided by the Act.

This decision, though on its own facts, enunciates a principle. Even though on the termination of the lease the lessee had to surrender the building to the lessors, it was held that the building during the tenancy of the lease did not vest in the lessor. In the present case, the lessor is not even entitled to the structure being left on the land on the termination of the lease. It may be that the lessee had no right to assign the superstructure to any third party. But the lessee had a right to remove the structures on the termination of the lease. It follows that the structures did not vest in the lessor during the tenancy of the lease. The ownership of the building remained and was in the lessee when the estate was notified under the Abolition Act.

10. Learned Counsel relied upon the observations of Veeraswami, J., in *Palaniappa Chettiar Vs. Babu Sahib alias Sheik Mytheen Sahib and Others*, . In that case a vacant site was leased for the purpose of putting up building thereon

by the lessee and during the period of the lease, the lessee actually erected some buildings. The suit was filed to evict the lessee on the expiry of the term of the lease. In second appeal a defence was taken under the Madras Buildings (Lease and Rent Control) Act, the contention being that the building put up had become part of the vacant site and the vacant site should, therefore, be regarded as part of the building and it followed that the lease became a lease of the building within the meaning of the Madras Buildings (Lease and Rent Control Act). A division Bench of this Court in *Palaniappa v. Vairavan* ILR (1963) Mad. 519, has held that a lessee who renews a lease of land which originally had been leased out as vacant site for building purposes and had been built upon would be entitled to protection under the Madras Buildings (Lease and Rent Control) Act. The basis of the decision was that at the time the lease was regranted there was a building on the property albeit the building was not that of the lessor. Although the ground on which the superstructure was built alone formed the subject-matter of the lease, the ground was a part of the building. In *Palaniappa Chettiar Vs. Babu Sahib alias Sheik Mytheen Sahib and Others*, , the learned Judge Veeraswami, J., extended this principle even though in that case there was no renewal observing thus:

The principle of *Palaniappa v. Vairavan* ILR (1963) Mad. 519, as I understand the Judgment, is that when a vacant site is leased out for putting up buildings thereon and buildings are actually put up on the land they become part of the land so that the land is also a part of the buildings. With the result that the lease should be regarded as one of buildings. Notwithstanding the fact that the buildings do not belong to the lessor. This principle, as it seems to me, does not depend upon renewal of a lease, the essence of it being when the buildings are put up, they become the integral part of the land and the land for the purpose of lease can no longer be regarded as a vacant site.

With respect, I may state that it appears to me that it will be difficult to reconcile the principle thus enunciated with the reasoning of the decision of the Supreme Court in *K.A. Dhairyawan and Others Vs. J.R. Thakur and Others*, , cited above. Under the Bombay Rent Act premises besides meaning any land not being used for agricultural purposes means also any building or part of a building let separately, and their Lordships of the Supreme Court held that the tenant who had put up the building with a covenant to yield up the building to the landlord at the end of the term, would have the immunity of the Rent Act in respect of the land after the expiry of the term, but, that would not extend to the building. He was never a lessee of the building.

11. However, it is needless to examine this aspect of the matter, as the present case is under the Abolition Act and the case before my learned brother Veeraswami, J., was one under the Madras Buildings (Lease and Rent Control) Act and the facts were considered in the light of the interpretation of the provisions of that Act.

12. Considerable reliance was placed by the learned Counsel on the decision of

this Court in, *Irani v. Chidambaram Chettiar* (1952) 2 M.L.J. 221, for the contention that the word building in ordinary parlance would comprise not only the fabric of the building but also the land on which it stood. Learned Counsel relies upon this to make out his case that he is a co-owner of the building along with the tenant who put up the construction on the land. That also is a case concerned with the definition of building under the Madras Building (Lease and Rent Control) Act (XV of 1946). At page 226 it is observed thus:

The definition in the Act includes in it not only a building, but even a part of it. A building consists of not only the superstructure but also the site on which the superstructure stands and in Which the foundation for the superstructure is erected. A mere superstructure dissociated from the site on which it stands cannot in law, in my opinion be considered to be a building. The letting, in the present case, of a piece of land apart from the buildings belonging to the lessor was not a letting of a vacant land at the time it Was let to the first defendant. In 1914, no doubt, the land was vacant and it was so expressly described in the lease. But in the subsequent leases, the Word "vacant" was significantly omitted. So, in substance and in effect, What was let to the first defendant under the lease, Exhibit P-9, With which alone we are now concerned was besides the building of the lessor the entire property With the compound walls and the gate, there was also the land occupied by the superstructure of the Gaiety Theatre Besides the vacant land round about it. This land, on which the structure stands, undoubtedly both in the physical and in the ordinary sense, forms part of the building, namely the Gaiety Theatre.

The lessee in that case had purchased the superstructure and had obtained as assignment of the rights under the lease of the land. When he obtained a final lease Exhibit P-9 in his favour, there was already the superstructure of the theatre on the land.

13. It is observed at page 227 of the report:

Obviously, the letting of the land was for the purpose of carrying on cinema bussiness and it was well known to the parties that the structure of the theatre owned by the first defendant was already there and what was being granted in substance and in effect under the lease was the right to continue the structure on the land as a building, as without the land the structure cannot stand. Taking all the facts into consideration, what was leased under Exhibit P-9 was the entire property with its compound walls and with the buildings of the lessor shown in the plaint plan, Exhibit P-I, together with the site on which the superstructure was erected and which gave continuous support to the building and the other vacant space round it. This undoubtedly is part of the building known as the Gaiety Theatres. So, the lessor leased not only his building but also part of the building of the Gaiety Theatre under the document.

The decision is under the particular provisions of a special Act and on the facts of the case. The learned Judge (Satyanarayana Rao) after setting out the facts,

premises the discussion with the observation:

The short question for decision is whether the first defendant is a "tenant" in possession of building within the meaning of the Act.

No doubt to strictly fall within the definition of a building under that Act, the part of a building under consideration must also be let or to be separately let for occupation and the site in question cannot be properly considered to be so let. As a part the site cannot be separately let and occupied, and it looks as if the question has been considered in the case in a general way. But a reading of the entire judgment leads one to the impression that it is an inference of fact on the particular facts of the case in the context and requirements of the Act then under consideration, that the site in question in that case was let as part of a building. In my view, this case also cannot help the appellant as we have to interpret the definition of the word building u/s 18 of the Abolition Act. Raghava Rao, J., in his judgment in the same case-observes at page 234:

It must also be remembered whether with reference to this limb of the respondent's argument or the third one with which I shall hereafter deal that a word like "building" as shown by the several cases English and Indian, cited to us must be understood in different senses in different statutes and contexts according to the purpose and object of the statute and the context...

When have in the present case to see whether the ordinary meaning of "building" which includes the site underneath as applied in that decision is applicable to the present case. I find nothing in the considerations connected with the purpose of the statute with which we are concerned or in the language to be found in its several provisions which excludes the application of the ordinary meaning of the word.

The learned Judge refers to Baldwin's edition (1928) of Bouvier's Law Dictionary at page 141 where building is annotated as meaning an edifice erected by art and fixed upon or over the soil composed of stone, brick, marble or wood or other proper substance connected together and designed for use in the position in which it is so fixed.

14. In my view, the definition of building under the Madras Buildings (Lease and Rent Control) Act and the case law with reference to that definition cannot be imported while considering the context of the word building u/s 18 of the Abolition Act. As observed by Raghava Rao, J., in *Irani V. Chidambaram Chettiar* (1952) 2 M.L.J. 221, in the absence of a statutory definition the expression building has to be construed with reference to the context of the particular enactment. The case law in regard to what is conveyed by the word building the subject of examination in the said decision cannot be of much assistance in the present case. I will be echoing only what has been repeatedly laid down when I state that no real help can be gained as to the meaning of a word in one statute by reference to its meaning in other statutes, particularly if they are all special statutes.

15. Rajagopalan, J., in *Pandian v. Board of Revenue* (1960) 74 L.W. 649, while considering the provisions of Section 18 itself remarks at page 652:

Thus what constitutes a building for purposes of Section 18 of the Act has to be gathered primarily from the scheme of that Act. Obviously, Section 18 is not confined to residential buildings as Clauses 1 to 3 themselves of Section 18 make clear. Even with reference to a residential building, a hut whether in a rural or urban area with a thatched roof, would be a building, even if the walls of that hut had not come up to the roof, Clauses 4 and 5 of Section 18 secure for the owners rights in a building other than those that fall Within the scope of Clauses 1 to 3. Clauses 4 and 5 it should be noticed are not confined to dispossessed landholders but extend to others also who owned buildings in an estate before the notified date. The scheme of the Act was to substitute ryotwari tenure for Zamindari tenures for the cultivable lands. Special provision has to be made for land With superstructures thereon in view of the otherwise comprehensive provisions of Section 3 vesting everything in the estate in the Government with effect from the notified date.

The first rule of interpretation is that the words of an Act should be construed as they are understood in common language; words are prima facie deemed to have been used in their popular sense unless there are indications to the contrary. In my view, when we speak of the owner of building with reference to a structure known to have been constructed on a site taken on lease for building purposes, we refer only to the person who had put up the superstructure and not the owner of the land. It may be that without a site to support and stand upon, there cannot be any building, but a building in its etymological sense means anything built upon and that is the superstructure. As far as I am able to see, the legal position in this country regarding the respective rights of the lessor and the lessee in cases where the lessee has put up a superstructure on land taken on lease, is well-established. The lessee in the absence of a contract to the contrary is the owner of the building put up by him while the lessor continues to be the owner of the land. Distinct ownership one in the land and another in the edifice thereon has been recognised, and can exist.

16. Stress was laid for the appellant on Sub-section (5) of Section 18. Far from supporting the appellant, in my opinion, the section proceeds in the view that building, where any question of ownership is in question need not include the site on which it stood. The need for the inclusion of the site in the meaning will be apparent presently. Section 3(b) of the Act provides that on and from the notified date except as provided in the Act, the entire estate (including all communal lands and porambokes, other than non-ryoti lands, waste lands, pasture lands, lanka lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries) shall stand transferred to the Government and vest in them free of all encumbrances. Under the wide, all-embracing language of this provision even the site on which the buildings stand should vest in the Government. Vesting of buildings is specifically provided for u/s 18 and the

site as part of the building is made to vest in its owner, instead, of vesting in the Government u/s 3(b). Learned Counsel for the appellant contends that the site of a building cannot and does not vest outside Section 18, and that when the landholder happens to be the owner of the site though not of the building thereon, the site Vests in the landholder. This argument is sought to be strengthened by a reference particularly to proviso to Section 3, Sub-clause (d) that the Government shall not dispossess any person of any land in the estate in respect of which they consider that he is prima facie entitled to ryotwari patta. Learned Counsel contends that while the Government was not dispossessing persons entitled prima facie to ryotwari patta it is conceivable that the landholders and private owners of buildings could be dispossessed from their homes and homesteads except for the provisions of Section 18, as Section 3 Clause (d), provides that the Government may after removing any obstruction that may be offered forthwith take possession of the estate. To a certain extent, I am inclined to agree with this contention and will advert to the matter again presently.

17. In this connection learned Counsel referred me to decision in Rengaraja Iyengar v. Achikannu Ammal (1939) 2 M..L.J. 513, where Subrahmanyam, J., observes at page 769 thus:

It is not necessary that, in order that the policy underlying Madras Act XXVI of 1948 be completely given effect to, house-sites belonging to private individuals (that is, persons other than the landholder) in a grama natham, should be transferred to the Government. It is not part of the policy of the Act to transfer to the Government land in which the proprietor had no interest at any time.

Earlier the learned Judge observes:

It is contended that, in relation to buildings, specific provision is made u/s 18 of Act XXVI of 1948 and that, consequently unless a house-site can be brought within the ambit of Section 18, such house site should be held to be property as to which title gets transferred to the Government u/s 3(b). Section 18 deals, in my opinion, with buildings wherever they be situated whether in the grama nathams or in ryoti lands or pannai lands or waste lands. Section 18 has no particular application to buildings or house-sites in a grama natham. A building in a grama natham (or village habitation) is protected from transfer of title to the Government both u/s 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house-site in a grama natham is protected from transfer to Government by the operation of Madras Act III of 1905.

The point to be noticed in the above decision is that the learned Judge takes out of his observation house-sites belonging to landholders.

18. The case now on hand is not even house-site land or as it is commonly called natham poramboke. u/s 3(e) of the Act, the principal or any other landholder and any other person whose rights stand transferred under Clause (b) or cease and

determine under Clause (c) shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act. While under Clause (b) the entire estate shall stand transferred to the Government and vest in them, Sub-clause (c) emphasizes further that all rights and interests created in or over the estate before the notified date by the principal or any other landholder shall as against the Government cease and determine. It is in this context relating to the rights and liabilities in and over the state that we have to interpret the provisions of Section 18. All rights of a landholder stand extinguished except what is provided under the Act for him. With reference to buildings u/s 18(1) buildings within the limits of an estate which immediately before the notified date belonged to any landholder in connection with the administration of the estate, shall vest in the Government free of all encumbrances. Buildings belonging to the landholder in the occupation of any religious, educational or charitable institution as provided u/s 18(2) also vest in the Government free of all encumbrances. Buildings other than the above two, vest in the person who owned it immediately before the notified date u/s 18(4). In regard to these buildings which do not vest in the Government, the Government is entitled to levy appropriate assessment. Any mortgages or charges over buildings that vest in the Government under sub-sections 1 and 2 are provided for payment by Sub-clause (7) of Section 18, u/s 42 of the Act. If we read the whole of Sub-section (4) of Section 18 with its sub-clauses it is manifest that the landholder who might have leased the site for building purposes cannot claim the vesting of the site on him as part of the building. While Sub-clause (i) of Sub-section (4) provides for the levy of appropriate assessment of the building, Sub-clause (ii) provides in case of buildings which vest in a person other than the landholder, that the Government shall be entitled also to payments which such person was liable immediately before the notified date to make to any landholder in respect thereof, whether periodically or not and whether by way of rent or otherwise, in so far as payments may accrue due on or after the notified date. In the face of this provision I fail to see how after the notified date the landholder can claim any rent from those who had put up structure on estate property taking sites on rent from the landholder. But the present action is for such rent.

19. A reference to Sub-section (3) of Section 18, also guides one to this interpretation. This deals with buildings of the character dealt with under sub-sections (1) and (2), but which do not vest in the Government under the said sub-sections. Where building of the description dealt with under sub-sections (1) and (2) was owned by the landholder on the 1st of July, 1947 had, after the 1st day of July, 1947 and before the notification of the estate been sold, or made a gift of by the landholder, or ceased to be used by him as an office as aforesaid, or ceased to be in the occupation of such institution, as the case may be, there is no provision for its vesting under sub-sections (1) and (2). The vesting under Sections 1 and 2 postulates the user in the manner specified immediately before the notified date. Where such user has ceased after the first day of July, 1947 and before the notified date, the sub-section provides the assessment of the

value of the building by the Tribunal in such manner as may be prescribed and the payment of the value of the building assessed to the Government out of the compensation amount. The rules prescribed for evaluating the building contemplates also the taking into consideration the value of the land on which the superstructure stands [See Rule 2(b) of the rules, dated 15th August, 1950]. It is a reasonable inference therefrom that the landholder whose interests get transferred and vest in the Government gets his compensation even in respect of the land over which the building stands. It may be that he might have rented out sites in the estate for building purposes on ground rents. While u/s 3(b) the entire estate is vested in the Government, Section 25 provides that the compensation shall be determined for the estate as a whole, and not separately for each of the interests therein. Section 27(iv) which specifies the component parts of the basic annual sum on which compensation is calculated for a Zamindari estate takes in also in the computation as provided therein one-third of the average net annual miscellaneous revenue derived from all sources in the estate specified in Section 3(b) other than the sources which had been considered and provided for in the earlier parts of Section 27 but not including lands in respect of which the landholder is entitled to a ryotwari patta, as ascertained u/s 30. Similar provision for taking into consideration the net annual miscellaneous revenue is to be found in respect of inam estates.

20. If Sub-section (5) of Section 18 has not been there, on the vesting of the building; in the owner, several problems may arise for resolution. The site of the building, it may be claimed vested in the Government and the dual ownership continued, the Government being the owner of the site. Questions would arise whether in the context of the vesting in the light of the sub-clauses to Section 18(4) building would not include the site and the appurtenant premises. Section 19-A is another related provision in the Act that will have to be considered in the context. In my opinion Sub-section (5) resolves the controversies and is intended to enlarge the rights of the owner of the edifice, by including in the definition of building, the site on which it stands and appurtenant premises. As I see it the purpose of Sub-clause (5) of Section 18 is certainly not to confer any special rights on the landholder even when he is not the owner of the superstructure and continue the intermediary with reference to sites of buildings in estates. It is for the vesting provided in section 18, that the building is made to include the site on which it stands, and Section 19-A must be read subject to the provisions of Section 18.

21. I see no difficulty in giving the word building in Section 18, a narrower or a wider meaning as may be required in the context of its user to accord with the scheme of the Act. In *Ganapati Pandian v. Sheik Muhammad and Bros.* (1958) 71 L.W. 45, 46 a case under the Madras Buildings (Lease and Rent Control) Act where buildings include part of a building Panchapakesa Ayyar, J., observes:

Under our laws, which are becoming larger and larger every day, it is often the case that the same Word is given different meanings in different places according

to the context and in order to meet the exigencies of the situation. To give the word the same meaning everywhere Will lead to chaos and confusion.

The finding in this case is that the site is poramboke and the landholder has been refused patta for the same as private hand. Be that as it may, whether it is poramboke or house-site, even though the landholder might have been the owner of the estate, he cannot claim any interest in or over any land in the estate except what is provided for him under the provisions of the Abolition Act. On the foregoing discussion he cannot claim to be the owner of the building in question and, therefore, cannot claim any vesting of the building u/s 18, Sub-section (4); of the Act.

22. Counsel on both sides refer to me the decision of Veeraswami, J., in Venkatasubramania Pillai v. The Board of Revenue and two others W.P. No. 732 of 1961. This decision cannot in the least support the landholder and in fact the observations therein are opposed to the claim of the landholder. In that case, the site was owned by a private person and not by the landholder. This naturally makes all the difference, a difference which has been noticed by Subrahmanyam, J., in S. Rengaraja Iyengar and Another Vs. Achikannu Ammal and Another, . The learned Judge Veeraswami, J.,. observes:

It is true that where after the notified date the site would otherwise have vested in the State Government pursuant to a notification u/s 3, the effect of Section 18(5), would be that the owner of the building falling within the ambit of the Section 18(4) would also be entitled to the site on which the building stands. But as it seems to me, the intention of Section 18(5) is not to divest the title of a private owner to the site and vest in the owner of the building on the site. The section does not appear to contemplate a case where the building belongs to a person and the site on which it stands to another, except a case of owner of a building and a landholder owning the site. In this case it is not contended by Counsel for respondents 2 and 3 that the petitioner could claim the site as a landholder. In fact that is the assertion of Mr. V. Vedantachari on behalf of the petitioner which is not countered by respondents 2 and 3. If extinguishment of a person's title to the site and vesting the same in the owner of the building is not within the purview of Section 18, I fail to see how Section 18(5) will be of any assistance to respondents 2 and 3. That sub-section, in my opinion will apply only to a case where the building which belongs to an individual, is on a site which but for a Section 18(5) would have vested in the State Government upon a notification u/s 3.

In that case respondents 2 and 3 who owned the building were held entitled to patta for the building and the owner of the site to patta for the site. This decision in my view completely answers the appellant's contentions. The learned Judge, if I may say so with respect, has clearly set out the distinction between the vesting of the building in Section 18(4) and vesting of the site on which it stands, by reason of Section 18(5). As I read the decision if the site belongs to the landholder the building with the site would vest in the person who was the owner

of the building meaning thereby the edifice, on the date of the notification. The owner of the building may be a private party and not the landholder. In that case, the private party would have the benefit of the site as an adjunct of the building and the building with the site standing thereon would vest in him subject to its obligation to pay the appropriate assessment and subject to making any payments to the Government under Clause (ii) of Sub-section (4) of Section 18. If the owner of the building is the landholder, he retains the site with his building but subject to the liability for assessment under Sub-clause (i) of Sub-section (4) of Section 18. I respectfully follow the decision. Of course a plurality of persons may own the superstructure. Then the building with the site will vest in them all. So far as the landholder is concerned eo instanti with the notification he loses all interest in the estate except what the Act gives him. His interest in the site of the building, if he had only a landholder's interest therein without ownership of the edifice thereon, is lost and vests in the Government for the purposes of the Act for the vesting u/s 18(5).

23. Learned Counsel for the appellant contended that there could be only one vesting, and if there is to be a vesting of the building with the site in the owner u/s 18, there could be no vesting u/s 3 of the site as land. Vesting is a word of variable import, has no fixed connotation, and vesting may be in title, in possession or in a limited sense as indicated in the context of its user in any particular enactment. Here the vesting of the landholder's interest in the site in the Government would be for the purpose of its being dealt with u/s 18. Of course in the context of its user, vesting in Section 18 is vesting in title and ownership.

24. A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered said Lord Goddard, C.J., in *Barnes v. Jarvis* (1953) 1 W.L.R. 649. The object of the Abolition Act is to introduce Ryotwari Settlement in estates. The landholder in his right as the proprietor of the estate might have granted on lease sites to tenants and others for building purposes for rent. Under the Ryotwari Settlement introduced by the Abolition Act, the Government takes the place of the proprietor and vests the site in ownership with the owners of the buildings subject to their paying proper assessment on the sites. The landholder is compensated under the Act for the deprivation of his interests in the estate. Viewed in this perspective, little room is left for subtle arguments that the proprietor having provided sites for the building must be deemed to be a co-owner with the owner of the superstructure of the building and the premises as such would be held in joint ownership, the proprietor as the owner of the site and the tenant, the superstructure. In my understanding of the section, the two questions that arise under it, one who owns the building and two, what goes with the building, must be kept distinct.

25. It is admitted that the devasthanam had only the landholder's interest in the tank bund sites and it is beyond dispute that the appellant was not the owner of the building, that is, the superstructure, on the date of the notification. In the

circumstances, in my opinion, neither the site of the building nor the superstructure can vest in the appellant u/s 18(4) of the Act. The appellant has, therefore, lost its title to the site by virtue of the statute and can no longer claim rent for the same from the tenant.

26. The Second Appeal therefore fails and is dismissed with costs. Leave granted.