Bharat Petroleum Corp.Ltd. vs R.Chandramouleeswaran And Ors. on 28 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 727, AIRONLINE 2020 SC 69, (2020) 1 RENCR 274, (2020) 2 SCALE 512

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Bench: Krishna Murari, Sanjiv Khanna, N.V. Ramana

REPORTA

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2870 OF 2007

BHARAT PETROLEUM CORPORATION LIMITED

... APPELLA

VERSUS

R. CHANDRAMOULEESWARAN AND OTHERS

... RESPONDEN

WITH

CIVIL APPEAL NO.761 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 2645 OF 2010

CIVIL APPEAL NO.763 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 19246 OF

CIVIL APPEAL NO.765 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 34955 OF

CIVIL APPEAL NO.766 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 34945 OF

CIVIL APPEAL NO.767 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 34839 OF

CIVIL APPEAL NO.768 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 16686 OF

CIVIL APPEAL NO.769 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 17435 OF

CIVIL APPEAL NOS.770-771 OF 2020

(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS.29712-713 OF

CIVIL APPEAL NO.772 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 7165 OF 2

Civil Appeal No. 2870 of 2007 and Others Pa

CIVIL APPEAL NO.773 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 3842 OF 2017)

CIVIL APPEAL NO.774 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 32286 OF 2017)

AND

CIVIL APPEAL NO.775-776 OF 2020
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NOS.18342-343 OF 2018)

JUDGMENT

SANJIV KHANNA, J.

Leave granted in the special leave petitions.

2. The above-captioned appeals filed by the three oil companies, namely, Bharat Petroleum Corporation Limited, Indian Oil Corporation Limited and Hindustan Petroleum Corporation Limited (hereinafter referred to as 'the appellant'), raise an identical question of law relating to the right of a tenant, in terms of Section 9 of the Madras City Tenants' Protection Act, 1921 (hereinafter referred to as the 'Act'), to an order whereby the landlords could be directed to sell the leasehold land in whole or in part at the price fixed by the court.

3. Briefly, the appellant had under different written registered lease deeds with the landlords taken land on long-term lease and had thereupon constructed petrol pumps that were given to and operated by the dealers appointed by the appellant under the dealership agreements. In some cases the leases were renewed on nationalisation of companies in terms of Burmah Shell (Acquisition of Undertakings in India) Act, 1976, Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited) Act, 1977, and Esso (Acquisition of Undertakings in India) Act, 1974. However, it is an accepted position that the term or duration of the leases, even where leases were renewed, has expired in all cases.

4. The landlords, who are the contesting respondents before us, had or have filed suits for ejectment for recovery of possession of the land. The appellant had filed applications purportedly in exercise of their right under Section 9 of the Act for transfer/sale of the leasehold land in whole or in part at the price fixed by the court. By different impugned judgments, some of which have arisen from the remand order dated 3rd December 2009 passed by the Division Bench of this Court, the Madras High Court has rejected the applications filed by the appellant, either affirming or reversing the findings of the trial court or the lower appellate court.

5. Preamble of the Act as originally enacted in 1921 had stated:

> "An Act to give protection to certain classes of tenants in the City of Madras.
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> WHEREAS it is necessary to give protection to tenants who in many parts of the City of Madras have constructed buildings on others' lands in the hope that they would not be evicted so long as they pay a fair rent for the land and WHEREAS the sanction of the Governor-General has been obtained under section 80-A (3) of the Government of India Act" The Objects and Reasons of the Act read as under:
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> "In many parts of the City of Madras, dwelling houses and other buildings have, from time to time, been erected by tenants on lands belonging to others, in the full expectation that subject to payment of a fair ground rent, they would be left in undisturbed possession, notwithstanding the absence of any specific contract as to the duration of the lease or the terms on which the buildings were to be leased. Recently, attempts made on steps taken to evict a large number of such tenants have shown that such expectations are likely to be defeated. The tenants, if they are evicted, can at the best remove the superstructure, which can only be done by pulling down the buildings. As a result of such wholesale destruction, congested parts of the City will become more congested to the serious detriment of public health. In these circumstances, it is just and reasonable that the landlords when they evict the tenants should pay for and take the buildings. There may, however, be cases where the landlord is unwilling to eject a tenant if he can get a fair rent for the land. The Act provides for the payment of compensation to the tenant in case of ejectment for the value of any building which may have been erected by him or his predecessors-in-interest. It also provides for the settlement of fair rent at the instance of the landlord or tenant. Provision is also made to enable the tenant to purchase the land in his occupation subject to certain conditions." The Act as enacted in 1921 was to give protection to a certain class of tenants in the city of Madras who had before the enactment of the Act, and not after the enactment, constructed structures on the leasehold lands in the city of Madras. The objects and reasons refer to a peculiar situation prevailing in the city of Madras where dwelling houses and other buildings had been erected by the tenants on land taken on lease in expectation and belief that their possession would not be disturbed, subject to payment of fair-ground rent to the landlords. The agreements with the landlords, reasons record, would be silent on duration of the lease and the terms on which the buildings were to be leased. Reasons

> further state that recently, that is before the enactment in 1921, attempts and steps had been initiated by the landlords to evict large number of such tenants, thereby the general expectations of the tenants were likely to be defeated as they were liable to be evicted. Therefore, the Act was enacted to prevent wholesale destruction of the buildings/superstructures which were required to be pulled down by the tenants on eviction. This would have caused serious detriment to public health as buildings were to be demolished in the congested parts of the city. In these circumstances, it was reasonable and proper that the tenants should be asked to pay fair market price of the land to the landlords and become owners of the land. As some landlords would not be interested in ejectment of a tenant, the Act provided for enhancement of rent in such cases so that the landlord would get fair market rent. The Act dealt with payment of compensation of the value of the building by the landlord in case the tenant did not want to purchase or pay fair market value of the land.

6. The Act has undergone a paradigm shift in terms of its reach and ambit by extending protection to leases and constructions made post-1921 and extension to areas other than the ones recognised in the original enactment as well as by enhancing and modifying the terms of protection available to the tenants. These amendments particularly vide the Madras Act No. 19 of 1955, Tamil Nadu Act No. 13 of 1960, Tamil Nadu Act No. 4 of 1972 and Tamil Nadu Act No. 24 of 1973 which have been hereinafter referred to as the Amendment Act, 1955; Amendment Act, 1960; Amendment Act, 1972 and Amendment Act, 1973, respectively, shall be expounded to the extent necessary for the present decision. To avoid prolixity, we have avoided quoting and referring to the history of the legislation and the changes made thereto.

7. By the Amendment Act, 1955, the Act was extended to 'municipal towns and adjoining areas in the State of Madras' 1. By the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969, the expression 'State of Tamil Nadu' was substituted for the words This was further amended by the Madras City Tenants' Protection (Amendment) act, 1979 whereby the words "municipal towns" were substituted by the words "municipal towns and townships". 'State of Madras'. The Amendment Act, 1972 had also amended the Preamble by deleting the words 'in the hope that they would not be evicted'. The Preamble as it stands now reads as under:

> "An Act to give protection to certain classes of tenants in municipal towns and townships and adjoining areas in the State of Tamil Nadu.
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> WHEREAS, it is necessary to give protection against eviction to tenants, who in municipal towns and townships and adjoining areas in the State of Tamil Nadu have constructed buildings on others' land so long as they pay a fair rent for the land;" With the amendments, the Act was extended to be applied even to leases of land executed post the enactment and enforcement of the Act in 1921. However, the Act even post the amendments applies only to those leases of land on which building was constructed by the tenant prior to the date specified and not post the date specified.

8. We would begin our interpretation by referring to in brief the scheme of the Act which postulates and grants certain rights that may be exercised by the tenant facing eviction proceedings. Under Section 3 of the Act, the tenant is entitled to be paid compensation equivalent to the value of the building, which he or any of his predecessors in interest or any person not in occupation at the time of ejectment who derived title from either of them, had erected and for which compensation has not been already paid. The tenant is also entitled to the value of the trees and any improvements which may have been planted/made by him. Section 9 of the Act grants the tenant, who is entitled to compensation under Section 3 and against whom a suit for ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882) taken by the landlord, to apply for an order directing the landlord to sell for a price to be fixed by the court, in whole or in part, the extent of land specified in the application. Under clause

(b) to Section 9(1), the court shall decide the minimum extent of the land which is necessary for the convenient enjoyment by the tenant and accordingly fix the price for the land either as prayed by the applicant or as determined by the court, whichever is less.

9. Section 12 protects the rights of a tenant against eviction, notwithstanding the contract entered into by a tenant. However, prior to its amendment vide the Amendment Act, 1972, the override and paramountcy of the Act was not applicable to written registered leases of land that had stipulations as to the 'erection of buildings'. Section 12 as originally enacted had stated:

> "12. Effect of contracts made by tenants. – Nothing in any contract made by a tenant shall take away or limit his rights under this Act provided that nothing herein contained shall affect any stipulations made by the tenant in writing registered as to the erection of buildings, in so far as they relate to buildings erected after the date of the contract." Thus, the proviso to Section 12 had given primacy to the written registered document with a covenant as to 'erection of buildings' after the date of the agreement. Parties are ad idem that the effect of the proviso was to effectively deny the tenants the statutory right to purchase land under Section 9 or enforce other rights under the Act where the written registered agreement had a stipulation relating to 'erection of buildings' by the tenant, in which event parties would be bound by the terms of the agreement and the Transfer of Property Act, 1882, and the Act, that is the Madras City Tenants' Protection Act, 1921, would not apply. The proviso to Section 12 viz., the words 'provided that nothing herein contained shall affect any stipulations made by the tenant in writing registered as to the erection of buildings insofar as they relate to buildings erected after the date of the contract' were deleted vide Section 3 of the Amendment Act, 1972 which reads:
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> "3. Amendment of Section 12, Tamil Nadu Act III of 1922.☐In section 12 of the principal Act, the portion commencing with the words "provided that" and ending with the words "date of the contract" shall be, and shall be deemed always to have been, omitted." Section 3 of the Amendment Act, 1972 postulates that the deleted words shall be always deemed to have been omitted and did not form part of the statute. A deeming provision with retrospective effect was thus enacted. We are not

dealing with the constitutional validity of the amendment made and, therefore, would not comment upon this aspect.

10. In N. Vajrapani Naidu v. New Theatres Carnatic Talkies Ltd., Coimbatore,2 the Constitution Bench of five judges had upheld validity of the Act, as it existed before the amendments vide the Amendment Acts of 1972 and 1973, after referring to Section 12 which had then vide the proviso excluded the written registered lease deeds with the stipulation as to 'erection of buildings' from application of the Act, to observe that the Act applies only to a limited class of land, that is, land granted on lease for construction of buildings before the date with effect from which the Act was extended to the town or village. The purpose and objective behind the enactment was to give protection to the tenants who had, notwithstanding the usual covenant relating to the determination of tenancies, obtained land on lease in the hope that as long as they pay and continue to pay fair rent, they would not be evicted. However, the changed circumstances as a result of the war leading to appreciation in land values and increase in rents had put such tenants to great inconvenience and harassment as they were faced with actions of ejectment involving dismantling of properties constructed by them and eviction. Upholding the Act, as (1964) 6 SCR 1015 it then existed, the Constitution Bench observed that the protection and rights granted under the Act become effective only when the landlord seeks to obtain, in breach of mutual understanding, benefit of unearned increase in the land values by instituting a suit for ejectment. The Act was manifestly in the interest of general public to effectuate the mutual understanding between the landlords and the tenants as to the duration of the tenancies, and to conserve the existing buildings so constructed. Section 9 did not do much to deprive the landlord of his property or to acquire his rights as it was to give effect to the real agreement between the landlord and the tenant consequent to which the tenant was induced to construct a building on the plot let out to him. The restriction would be in the interest of the general public and, therefore, the Act did not offend the right to property under Article 19(1)(f) of the Constitution of India. Referring to the amendments vide the Amendment Act, 1960, it was observed that the court can direct sale only of minimum area of land necessary for convenient enjoyment by the tenant of the property/building built by him and the price to be paid was the average market value of three years immediately preceding the date of the order. In this decision, the majority had differed from the minority on the meaning of the expression 'erection of buildings' in the context of written registered lease deed in question, with the majority holding that the tenant was not covered by the proviso as the clauses of the written registered lease deed did not relate to 'erection of buildings'. The expression 'erection of buildings' in the proviso to Section 12 was subsequently interpreted in Haridas Girdhardas and Others v. Varadaraja Pillai and Another3. However, we need not go into the said aspect and interpretation of the expression 'erection of buildings' because this question neither arises in the present appeals nor is raised and argued before us.

11. We would now reproduce clause (4) to Section 2 of the Act which defines the expression 'tenant' as amended from time to time. Originally Section 2(4) of the Act read as under:

> "4. 'tenant' means tenant of land liable to pay rent on it, and every other person deriving title from him, and includes persons who continue in possession after the termination of the tenancy." By the Amendment Act, 1960 which came into force on

27 th July 1960, the definition of 'tenant' was substituted to read as under:

"4. 'Tenant' in relation to any land –

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and

(ii) includes□

(a) any such person as is referred to in sub-

clause (i) who continues in possession of the land (1971) 2 SCC 601 after the determination of the tenancy agreement, and

(b) the heirs of any such person as is referred to in sub-clause (i) or sub-clause (ii)(a), but does not include a sub-tenant or his heirs." The Amendment Act, 1973, while retaining sub-clause (ii)(a) had added a new sub-clause (b) in Section 2(4)(ii). The earlier sub-clause (b) inserted vide the Amendment Act, 1960 was transposed as sub-clause (c). Post the amendment vide the Amendment Act, 1973, clause (4) to Section 2 defining the term 'tenant' would read as under:

"(4) 'Tenant' in relation to any land –

(i) means a person liable to pay rent in respect of such land, under a tenancy agreement express or implied, and

(ii) includes –

(a) any such person as is referred to in sub-

clause (i) who continues in possession of the land after the determination of the tenancy agreement,

(b) any person who was a tenant in respect of such land under a tenancy agreement to which this Act is applicable under sub-section (3) of Section 1 and who or any of his predecessors in interest had erected any building on such land and who continues in actual physical possession of such land and building, notwithstanding that (1) such person was not entitled to the rights under this Act by reason of the proviso to Section 12 of this Act as it stood before the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act 4 of 1972), or (2) a decree for declaration or a decree or an order for possession or for similar relief has been passed against such person on the ground that the proviso to Section 12 of this Act as it stood before the date of the publication of the Madras City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act 4 of 1972) disentitled such person for claiming the rights under this Act, and

(c) the heirs of any such person as is referred to in sub-clause (i) or sub-clause (ii)(a) or (ii)(b), but does not include a sub-tenant or his heirs;" Section 2 of the Amendment Act, 1973 which brought in

the amendment in Section 2(4) gave retrospective effect to the amendments from the date of enforcement of the Act, that is, 21 st February 1922. For clarity, we would like to reproduce Section 2 of the Amendment Act, 1973 which reads as under:

> "2. Amendment of section 2, Tamil Nadu Act III of 1922.□For sub-clause (ii) of clause (4) of section 2 of the Madras City Tenants' Protection Act, 1921 (Tamil Nadu Act III of 1922) (hereinafter referred to as the principal Act), the following sub-clause shall be and shall be deemed always to have been substituted [...]"
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> 12. A Division Bench of this Court vide order dated 3 rd December 2009 in C.A. No. 5903 of 2006 titled Bharat Petroleum Corporation Ltd. v. Nirmala and Another and other connected matters while interpreting sub-clause (b) to Section 2(4)(ii) has held that the expression 'actual physical possession of land and building' would mean and require the tenant to be in actual physical possession.

The provisions would not be applicable if the tenant is not in actual physical possession and has given the premises on lease or licence basis to a third party. The Court, however, did not give any finding on the question whether such benefit is available to the appellant under Section 2(4)(i) or Section 2(4)(ii)(a). We are reproducing the relevant portion of the order which reads as under:

> "7. As regards sub-clause (b) of Section 2(4), we do not agree with the contention of Mr. Nariman. On a plain reading of sub-clause (b) we notice that it uses the words "actual physical possession". Had the word 'possession' alone been used in clause (b), as has been done in clause (a), the legal position may have been different. However, the words 'actual physical possession' are strong and emphatic. That means that the factual state of affairs has to be seen, not the legal or deemed state of affairs. There is no doubt that the appellant had handed over possession to his licensee/agent who was in actual physical possession of the suit premises. When a Statute uses strong and emphatic words, we cannot twist or give a strained interpretation to the said words. The literal rule of interpretation is the first rule of interpretation which means that if the meaning of a Statute is plain and clear then it should not be given a twisted or strained meaning. We will be giving a strained and artificial interpretation to the words 'actual physical possession' if we say that the appellant is deemed to be in actual physical possession. We cannot give such an interpretation to sub-clause
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> (b) of Section 2(4) of the Act particularly since clause (a) only uses the word 'possession' and not 'actual physical possession'. Hence, we reject the contention of Mr. R.F. Nariman, learned counsel appearing for the appellant and hold that the appellant was not in actual physical possession.

8. The Preamble of the Act makes it clear that the Act applies where superstructure is constructed on the land, which is leased. Hence, the submission that clause (a) applies when there is no superstructure erected on the vacant land which was leased is not correct. In fact, the Act was meant to give some protection to leased land on which the tenant constructed some superstructure.

9. As regards the submission of Mr. Nariman that the appellant is entitled to the benefit of sub-

clause (a) of Section 2(4) of the Act, it appears that this aspect has not been considered by the High Court. In our opinion, the High Court should have considered whether the appellant is entitled to the benefit of Section 2(4)(i) and sub-clause (a) of Section 2(4)(ii) of the Act.

10. We are not expressing any final opinion on the question whether the appellant is entitled to the benefit of Section 2(4)(i) and 2(4)(ii)(a) of the Act as in our opinion it was incumbent upon the High Court to have recorded a finding on the said issue. Therefore, we set aside the impugned judgment and order of the High Court and remand the matter back to the Division Bench of the High Court to record a finding on the question whether the appellant is entitled to the benefit of Section 2(4)(i) and sub-clause (a) of Section 2(4)(ii) of the Act. Needless to mention, that the Division Bench of the High Court shall decide the said question in accordance with law and uninfluenced by any observation made by us in this order except the finding that the appellant is not covered by subclause (b) of Section 2(4) of the Act. We make it clear that we are not expressing any opinion of our own on the other issue. We hope and trust that the Division Bench of the High Court will dispose of the case expeditiously and preferably within a period of six months from the date a copy of this order is produced before it.

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12. We are further of the opinion that where the lessee is in actual physical possession of the land over which he has made construction then he is entitled to an additional benefit given by Section 9(1)(a) (ii) of the Act. However, if the lessee who has made construction on the land let out to him but was not subsequently in possession of the same, as is the case of the appellants in the present cases, then he is not entitled to the benefit of Section 9(1)(a)(ii) though he may be entitled to the benefit of Section 9 (1)(a)(i). These are the questions on which the Division Bench of the High Court will record a finding.

13. Therefore, we set aside the impugned judgments and orders of the High Court and remand the matter back to the Division Bench of the High Court to record a finding on the question whether the appellant is covered by Section 2(4)

(i) and sub-clause (a) of Section 2(4)(ii) of the Act and is entitled to the benefit of Section 9(1).

Needless to mention, the Division Bench of the High Court shall decide the said question in accordance with law and uninfluenced by any observation made by us in this order except our finding about clause (b) of Section 2(4). We make it clear that we are not expressing any opinion of our own on other issues. We hope and trust that the Division Bench of the High Court will dispose of these cases expeditiously and preferably within a period of six months from the date a copy of this order is produced before it." Thus, while interpreting sub-clause (b) to Section 2(4)(ii), this Court has held that the expression 'actual physical possession of land and building' would mean and require the tenant to be in actual possession and the sub-clause(b) would not apply if the tenant has sub-let the building or has given the premises on leave and licence basis. The aforesaid decision

would operate as res judicata in the case of the appellant and the landlords who were parties to the decision. In other cases, it would operate as a binding precedent under Article 141 of the Constitution.

13. Before we go on to examine the challenge raised by the appellant, it is apparent that the Act essentially protects the rights of three categories of tenants as enlisted under Section 2(4) of the Act, viz., those covered under sub-clauses (i) and (ii)(a) who have always been protected under the provisions of the Act; and by addition of clause (b) with retrospective effect the tenants who were originally disallowed the benefits on account of the proviso to Section 12 of the Act; and lastly as per sub-clause (c), heirs of the tenants covered under the aforesaid categories, but not sub- tenants and heirs of sub-tenants. By excluding sub-tenants and their heirs, the legislature has made it clear that sub-tenants would not be entitled to benefits and rights conferred under the Act including right to purchase the land under Section 9 or compensation payable for the construction etc. under Sections 3 and 44 of the Act. Sub-tenants or the heirs of sub-tenants are not "4. Disposal of suits for ejectment. – (1) In a suit for ejectment against a tenant in which the landlord succeeds, the Court shall ascertain the amount of compensation, if any, payable under Section 3 and the decree in the suit shall declare the amount so found due and direct that, on payment by the landlord into Court, within three months from the date of the decree, of the amount so found due, the tenant shall put the landlord into possession of the land with the building and trees thereon.

(2) In an application under Section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882), in which the landlord succeeds, the Court shall ascertain the amount of compensation payable under Section 3 and shall pass an interim order declaring the amount so found due and stating that, on payment by the landlord into Court within three months of the date of the said interim order of the amount so found due, the landlord shall be entitled to the order contemplated by 'tenants' and hence in their case the question of possession or actual physical possession is immaterial.

14. The Amendment Acts of 1972 and 1973 were wide and far reaching, beyond the object and purpose of the Act as originally enacted. Moreover, several amendments to Sections 2(4), 9 and 12 of the Act were with retrospective effect. We have already referred to the deletion of the proviso in Section 12 with retrospective effect. The consequence of the deletion was that written registered leases for land with stipulation relating to 'erection of buildings' would no longer enjoy primacy and would be governed by the provisions of the Act as applicable. In other words, statutory mandate of Sections 3, 4 and 9 of the Act would apply notwithstanding the terms of the written registered lease deed relating to the 'erection of buildings' by the tenant and Section 108(h)5 of the Transfer of Property Act. As the proviso to Section 12 stood deleted, the distinction carved out in terms of Section 43 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882). (3) In in such suit or application, the Court finds that any sum of money is due by the tenant to the landlord for rent or otherwise in respect of the tenancy, the Court shall set off such sum against the sum found due under sub-section (1) or sub-section (2), as the case may be, and shall pass a decree or interim order declaring as the amount payable to the tenant on ejectment, the amount, if any, remaining due to him after such set off.

(4) If the amount found due is not paid into Court within three months from the date of the decree under sub-section (1) or of the interim order under sub-section (2), or if no application is made under Section 6, the suit or application, as the case may be, shall stand dismissed, and the landlord shall not be entitled to institute a fresh suit for ejectment, or present a fresh application for recovery of possession for a period of five years from the date of such dismissal." "108. Rights and liabilities of lessor and lessee.— [...] (h) the lessee may 1 [even after the determination of the lease] remove, at any time 2 [whilst he is in possession of the property leased but not afterwards,] all things which he has attached to the earth: provided he leaves the property in the state in which he received it:" Section 12 between written registered lease agreements with specific stipulations relating to 'erection of buildings' and other lease agreements, ceased to be applicable with retrospective effect and the landlords and tenants with written registered leases were at par with those holding oral tenancies or unregistered leases of land or written registered tenancies without any stipulation with regard to 'erection of building' on the land. Pertinently, even before the deletion of the words/proviso to Section 12 of the Act, the tenants, as defined by Section 2(4)(i) and (ii)(a) were entitled to protection and benefit of Sections 3, 4 and 9 of the Act. The amendments made vide the Amendment Acts of 1972 and 1973 did not, in any manner, dilute or withdraw the benefit or the protection granted to the tenants not covered by the proviso to Section 12 of the Act. The amendments vide the Amendments Acts of 1972 and 1973 were not to dilute the rights of the already protected tenants, but to expand the Act's protection and scope to the tenants who were denied the benefit of the Act vide the proviso to Section 12 of the Act.

15. The amendments and modifications made by the Amendment Acts of 1972 and 1973 whereby sub-clause (b) to Section 2(4)(ii) was added with retrospective effect, the proviso to Section 12 was deleted with retrospective effect and the amendments to Section 9 were made with retrospective effect, have to be read holistically and in entirety, for it is a well-known canon of construction that every section of a statute is to be construed with reference to the context and other sections of the statute, so as, as far as possible, to make a consistent enactment of the whole statute.6 By these amendments, the tenants excluded from the benefit/privilege of the Act vide the proviso to Section 12 were brought within the ambit of the protection and rights given under the Act but with different conditions and stipulations. In other words, sub-clause (ii)

(b) to section 2(4) is restricted and applies to only those tenants who were covered by the proviso to Section 12 and not those tenants who were already entitled to protection and rights under the Act. This is clear from the latter portion of sub-clause (ii)(b) to Section 2(4) of the Act which refers to the proviso to Section 12 and also a decree for declaration or possession or similar relief passed against the person on the ground that proviso to Section 12 had disentitled such persons from claiming rights under the Act. The amendment made by adding sub-clause (b) to Section 2(4)(ii) vide the Amendment Act, 1973 was not to dilute or impose new conditions on the tenants who were otherwise entitled to protection as tenants under Section 2(4)(i) or to Section 2(4)(ii)(a) of the Act read with Sections 3, 4 and 9 of the Act. This also flows Raghbir Singh Gill v. Gurcharan Singh Tohra and Others 1980 SCR (3)1302 quoting R v. Board of Trade, [1965] 1 Q.B. 603.

from the legislature using the word 'continues in possession' in sub-clause (ii)(a) to Section 2(4), whereas the words used in sub- clause (ii)(b) are 'continues in actual physical possession'. The

legislature deliberately has used different words in sub-clauses (ii)

(a) and (ii)(b). The enactment of sub-clause (ii)(b) has to be read with other amendments made vide the Amendment Acts of 1972 and 1973 and would accordingly apply to those tenants who were brought under the umbrella and protection of the Act by deleting the proviso to Section 12. Therefore, sub-clause (ii)(b) to Section 2(4) would apply to tenants who were covered by the deleted proviso to Section 12, whereas sub-clause (ii)(a) to Section 2(4) would apply to tenants who had taken land on lease without any written registered instrument relating to the 'erection of buildings'.

16. No doubt, sub-clause (ii)(a) to Section 2(4) refers to land, and the words 'land' and 'building' have been separately defined vide clauses (2) and (1) to Section 2 respectively, with the postulate that land does not include building, however we are not inclined to hold that the distinction between sub-clauses (ii)(a) and (ii)(b) to Section 2(4) is based upon whether a tenant had constructed a building in which case sub-clause (ii)(b) would apply and not sub- clause (ii)(a). In other words, we are not in agreement with the contention that where the tenant of a land has not constructed building, sub-clause (ii)(a) would apply and where a tenant of land has constructed a building, sub-clause (ii)(b) would apply. The reason is obvious. The Act as per the objects and purposes was enacted and enforced to grant certain rights to tenants who had acquired leases of land and had thereupon constructed a building with the implied understanding that they would not be evicted as long as they paid the fair rent. The tenants covered by sub-clause

(ii)(a) were protected under the Act even before the enactment of sub-clause (b) to section 2(4)(ii) of the Act vide the Amendment Act, 1973. The Act as originally enacted with Section 2(4) defining the term 'tenant' before its amendment vide the Amendment Act, 1973 would apply to all the tenants who had acquired leasehold land and thereafter constructed a building, except the tenants who had entered into written registered contracts with terms relating to 'erection of buildings' who were covered by the deleted proviso to Section 12.

17. Decision of the Constitution Bench of six judges in Swami Motor Transports (P) Ltd. And Another v. Sri Sankaraswamigal Mutt and Another7 on which reliance was placed by the counsel for the appellant, though relating to the Act, relates to the challenge to the Amendment Act, 1960 by which non-residential buildings constructed on the leasehold land in the municipal towns of 1963 Supp (1) SCR 282 Tanjore were excluded and denied the benefit of the Act. This judgment upheld constitutional validity predicated on the principle of classification under Article 14 and also the right to property under Article 19(1)(f) read with Article 31(1) of the Constitution. Even in respect of pending ejectment proceedings, it was observed that the law in India does not recognise equitable estates. Further, the statutory right to purchase land is, or confers, no interest or right in the property but only a right to purchase land. In the view of this Court, a statutory right to apply for the purchase of the land is a non-proprietary right. On the question of equitable estates, it was observed that Section 9 of the Act confers only a right in respect of the land owned by the landlord and not in the superstructure which was owned by the tenant. The right of the tenant on the superstructure is neither taken away nor affected under Section 9 of the Act or the amendment made vide the Amendment Act, 1960. Even earlier, this Court in Dr. K.A. Dhairyawan and Others v. J.R. Thakur and Others8, after referring to several decisions of the Privy Council, had held that there was no

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 a property as the soil itself. We do not in India apply the doctrine of English law as to buildings viz. that they should belong 1959 SCR 799 to the owner of the land. Where clause (h) of Section 108 of the Transfer of Property Act would apply, the lessee can remove all the structures and the buildings erected on the demised land while he is in possession of the property but not afterwards, meaning thereby the ownership of the building is with the lessee and not with the lessor. At the same time, nothing prevents the lessee from contracting to hand over the building or the structure erected on the land constructed by him without receiving compensation.

18. In P. Ananthakrishnan Nair and Another v. Dr G. Ramakrishnan and Another,9 a Division Bench of this Court interpreting Section 2(4) and Section 9 of the Act had held that as per the mandate of Sections 3, 4 and 5, post the 1972 and 1973 amendments, it is mandatory for the court to first decide the minimum extent of land "which may be necessary for the convenient enjoyment by the tenant". The words in italics were emphasised by the Division Bench to observe that the court may, on facts of a particular case, come to a conclusion that the tenant may not require any portion of the land and in that event it may reject the application and decree the suit for ejectment and direct the landlord to pay compensation to the tenant. Section 9 confers a privilege on the tenant and not a vested right, but the privilege (1987) 2 SCC 429 granted by the statute is equitable in nature. Elucidating further, it was observed:

> "11. [...]The enquiry presupposes that the tenant making the application has been in the occupation of the land and the superstructure wherein he may be either residing or carrying on business, and on his eviction he would be adversely affected. The policy underlying Section 9 of the Act, is directed to safeguard the eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purposes of their residence or business." In the said case, an eviction decree was passed observing that the tenant had in the small portion of the land kept account books of the business and rest of the land and structure standing thereon had been in occupation of sub-tenants since 1964.

19. In S.R. Radhakrishnan and Others v. Neelamegam10, this Court had again interpreted Section 2(4) and 9 of the Act after referring to the dictum in P. Ananthakrishnan (supra) elucidating that the policy underlying Section 9 is to safeguard eviction of those tenants who may have constructed superstructure on the demised land, so that they may continue to occupy the same for the purpose of residence or business. Thus, the tenant not in actual possession of most of the demised premises in P.Ananthakrishnan (supra) had suffered a decree for eviction. Therefore, it was held in P. Ananthakrishnan (supra) that it will be (2003) 10 SCC 705 unreasonable to direct the landlord to sell the land to the tenant. In the said case, application under Section 9 filed by the legal heir of the tenant was dismissed observing that admittedly he was not in possession of the demised premises and had ceased to be a tenant.

20. The counsel for the appellant had made a valiant attempt to distinguish the said decisions as P. Ananthakrishnan (supra) was a case of sub-letting and in S.R. Radhakrishnan (supra), the court had relied upon the reply of the defendant No.1 stating that he had nothing to do with the property as

defendant Nos. 2 and 3 were in possession thereof. It is correct that P. Ananthakrishnan (supra) was a case of sub-letting which means parting of possession by the tenant to the sub-tenant. However, the said case records observations as to the object and purpose behind Section 9 and the tenants whose interests were sought to be protected. In S.R. Radhakrishnan (supra), the land had been given on lease to the father of the defendant No. 1 who had thereafter in terms of lease made constructions for setting up and running a printing press, in which business he had taken his younger brothers, defendant Nos. 2 and 3, possibly as partners. Thereafter, he had executed a deed in favour of defendant Nos. 2 and 3 relinquishing his business of the printing press. For the same reasons, we would hold that the observations made relating to the interpretation of Sections 2(4) and 9 are relevant even if we hold that the ratios are not applicable as the facts are not identical.

21. In view of the aforesaid discussion, we hold as under:

> (I) Sub-clauses (i) and (ii)(a) to clause (4) of Section 2 of the Act apply to all tenants who had entered into oral or unregistered written agreements or registered written agreements without any stipulation with regard to 'erection of buildings' for taking land on lease, and had subsequently constructed buildings. Such tenants would be entitled to protection of the Act provided the tenant satisfies the conditions mentioned in sub-clauses (i) or (ii)(a) to clause (4) of Section 2 of the Act.
>
> (II) Paragraph 1 of sub-clause (ii)(b) to clause (4) of Section 2 of the Act applies to tenants who are not entitled to the rights under the Act by reason of the proviso to Section 12 which stood deleted vide the Amendment Act, 1972. Paragraph 2 of the said sub-clause applies to cases where a decree of declaration or decree or an order of possession or similar relief has been passed against a tenant on the ground that the proviso to Section 12, which was omitted by the Amendment Act, 1972, disentitles the tenant from claiming rights under the Act. Accordingly, sub-clause (b) to Section 2(4)(ii) would apply only to tenancies which were earlier excluded from the protection under the Act vide the proviso to Section 12 which stands deleted with retrospective effect vide the Amending Act, 1972.11 (III) Sub-clause (ii)(c) to clause (4) of Section 2 states that heirs of a tenant referred to in sub-clause (i) or sub-clauses (ii)(a) or (ii)(b) would be entitled to benefit of the Act. However, it expressly excludes a sub-tenant or heirs of the sub-tenant.

22. Recording the aforesaid position, we dismiss the present appeals by the appellant, that is, the three petroleum companies, and uphold the orders passed by the High Court that the appellant tenants would not be entitled to the benefit and rights under the Act unless they are in actual physical possession of the building constructed by them. In other words, in case the appellants have let out or sub-let the building or given it to third parties, including dealers or licensees, they would not be entitled to protection and benefit under the Act.

Paragraph 2 in sub-clause (ii)(b) to clause (4) of Section 2 of the Act, has been interpreted in different judgments by the Madras High Court, including the decision in Haridas Girdhardas and Others v. M. Varadaraja Pillai and Another [(1976) 89 Madras Law Weekly 1)]. Pertinently, in the

aforementioned case, the Madras High Court dealt with the applicability of sub-section (3A) to Section 9 of the Act which stipulates the reopening or reviewing of a decree or order passed, in terms of the deleted proviso to Section 12 of the Act, against the interests of the tenant, that is, those who are covered under paragraph 2 of sub-clause (ii)(b) to Section 2(4) of the Act. We are not required to examine the true impact and effect of the said paragraph 2 or sub-section (3A) to Section 9 of the Act as they are not relevant for the present decision. On this aspect, we make no comment.

In the facts of the case, there would be no order as to costs.

……J. (N.V. RAMANA) ……J. (SANJIV KHANNA) .....J. (KRISHNA MURARI) NEW DELHI;

JANUARY 28, 2020.