Supreme Court of India
Larsen & Toubro Ltd. Club House ... vs Trustees Of Dharmamurthy, Rao ... on 31 August, 1988
Equivalent citations: 1988 SCR, Supl. (2) 755 1988 SCC (4) 260
Author: S Rangnathan
Bench: Rangnathan, S.

PETITIONER:
LARSEN & TOUBRO LTD. CLUB HOUSE ROAD, MADRAS

Vs.

RESPONDENT:
TRUSTEES OF DHARMAMURTHY, RAO BAHADURCALAVALA CUNNAN, CHETTY

DATE OF JUDGMENT31/08/1988

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MUKHARJI, SABYASACHI (J)

CITATION:
1988 SCR Supl. (2) 755 1988 SCC (4) 260
JT 1988 (3) 684 1988 SCALE (2)605

ACT:
Tamil Nadu City Tenant's Protection Act (No. 111 of 1922)-Whether the lessee-Company was entitled to protection under section 9-Of-In eviction proceedings-Construction of the lease deed.

HEADNOTE:
In this appeal by special leave, the dispute arose out of a lease by a charitable trust in favour of a company. The respondent-Trust Bled a for possession of a property taken on lease from it by the appellant-company. The appellant responded by filing an application claiming protection under section 9 of the Tamil Nadu City Tenant's Protection Act (the `Act'). The application was accepted by the trial court which held that the company was entitled to the benefit of the Act and appointed a Commissioner to inspect the property and fix the minimum extent of the property required by the defendant for convenient enjoyment of the super-structure which it would be entitled to purchase in terms of section 9.

The trustees filed an appeal, contending that the company was not entitled to the protection of section 9. The appeal was allowed. The company preferred a revision petition before the High Court, which dismissed it, holding that the

application of the company under section 9 was not maintainable. The company appealed to this Court,

Dismissing the appeal, the Court,

HELD: The short question to be decided was whether the company was entitled to the protection under section 9 of the Act. This piece of legislation was enacted primarily for the protection of small tenants, who in certain municipal towns and adjoining areas had constructed buildings on others' lands, by ensuring that they were not evicted so long as they paid a fair rent for the lease. The Act also contained a provision whereunder a tenant could put up a claim to purchase the land in question from the owner. [758C]

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The Act applies only to tenants in respect of land situated in certain areas where the tenancy has been created before a prescribed date. The only controversy here was whether the lease in question could be said to be a lease of `land'. Before a right of purchase can be exercised under section 9, the tenant must be a tenant of land, not comprising buildings or lands appurtenant thereto. The High Court had held that there had been a lease not of the vacant land but of a building with the land appurtenant thereto and the provisions of the Act would not apply. [764E, F-G; 765F-G]

The case involved construction of the lease deed. The language employed in the lease-deed only showed that both land and building were leased. Whether the land was to he treated as an appurtenant or not would depend upon the extent and nature of the land and its situation vis-a-vis the building thereon and not on whether the lease deed described the subject-matter as `call that land and building" or Vice Versa. If the deed had described the demised premises as `building and appurtenant land'. that would have helped in ascertaining the intention of the parties but even that would not have been conclusive. [766E-G]

The question whether a certain land is appurtenant or not is one of fact. There was no reason to disturb the finding of the first appellate Court and the High Court that the land was appurtenant to the building. The use of the land, in the circumstances of the case, was incidental to the enjoyment and beneficial use of the building. [768B-d]

The clauses of the lease deed could not be construed as consisting of two separate leases, one, of the building and the other, of the land, as suggested by the lessees. There were clear indications in the lease deed that it was a single, indivisible lease of both the building and the vacant land. It was impossible to consider the document as comprising two leases. It was a composite lease of a building with appurtenant land, sad having regard to the definitions contained in the Act, the Lessee was not

entitled to the rights conferred by section 3 or section 9 of the Act. [769D; 770F]

Whether the Act applied to the lease or not was something which had to be considered on the terms of the lease deed, having regard to the nature of the property. The clause regarding removal of the structures is the normal clause that occurs in the leases under the Transfer of Property Act. The clause in this case made no mention of compensation and only talked of the lessees' right to remove structures. Even if no such clause had been inserted, that would have been the position in law. It was not

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possible to infer from such a natural clause that it had been put in with a view to denying compensation to the lessee and getting over the hurdle of the lessee putting in a claim for acquiring the property by purchase. The lease deed was a simple lease deed containing the usual clauses and covenants expected in it and nothing more. If the parties had been conscious of the possibility of the lessee claiming any rights under the Act, the lessors would have tried to safeguard themselves by making clear that what was let out was only a building and the appurtenant land. [771C-F]

The appeal was dismissed.

Maharaja Singh v. State of U. P., [1977] 7 S.C.C. l55r referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3095 of 1988.

From the Judgment and Order dated 1.4.87 of the Madras High Court in C. R.P. No. 370/87.

T.S. Krishnamurthy Iyer, V. Krishnamurthy, V. Balachandran and V. Ramamoorthy for the Appellant. Shanti Bhushan, S. Rangarajan, and Sanjay Prakash for the Respondent.

The Judgment of the Court was delivered by RANGANATHAN, J. 1. After having heard learned counsel on both sides, we grant special leave and proceed to dispose of the appeal itself by this order, the point involved being a very short one.

2. Real estate prices all over the country, and particularly in important capital cities, have spiralled up in the last few decades to such heights that disputes over land, which at one time could have been resolved by a little give and take between the parties have now assumed a magnitude which makes any type of reconciliation impossible.. In this case, where that dispute arises out of a lease by a prominent charitable trust in Madras in favour of a well-established engineering company of all-India stature, we were somewhat hopeful that the parties would agree not to waste further time and energy in litigation but would come to some reasonable compromise. We tried our best by

adjourning the case several times and encouraging the parties to come up with various proposals for compromise.

PG NO 758 Ultimately, however, we found that it was not possible to bring the parties together. We, there-fore, proceed to dispose of the issues raised in the appeal. On. 13.8. 1951, M/s. Larsen & Toubro. the appellant company, took on lease from the respondent trustees a property situated in a busy central locality of the city of Madras. In 1975, the trustees filed a suit for possession. The appellant company respondent by claiming protection under Section 9 of the Tamil Nadu City Tenants' Protection Act (No. 111 of 1922) (hereinafter referred to as the `Act'). The short question that arises in the appeal is whether the company is entitled to this protection. The above piece of legislation was enacted primarily for the protection of small tenants, who in certain municipal towns and adjoining areas had constructed buildings on others' lands, by ensuring that they are not evicted so long as they pay a fair rent for the land. The Act also contained a provision under which the tenant could put forward a claim to purchase the land in question from the owner at its average market value of the three immediately preceding years. It is highly doubtful whether the Act was intended to enable affluent persons or prosperous companies, like the present appellant, to take advantage of its provisions to compel a lessor to Sell to them property of which they have obtained initial possession as lessees. However, the question has to be decided not on such general considerations but on the language of the statute itself and so we proceed to discuss the issue involved. It is first necessary to advert to the terms of the lease deed.

By the lease deed dated 13.8. 1951, the lessors (trustees) purported to demise to the lessee (company) "all that plot of vacant land and the buildings erected thereon and more particularly described in the schedule hereto and delineated in the plan hereto annexed and measuring 17 grounds and 321 sq. ft. or thereabouts". The term of the lease was 21 years from the date of the lease. The consideration was "a monthly rent of Rs.900 for the aforesaid land and a monthly rent of Rs.350 for the aforesaid buildings aggregating in all to Rs.1,250 per month" and the other conditions and covenants set out in the deed. Paras I or II of the lease deed set out the following, among other,Covenants between the parties:

(a) The lessee was to pay, and had paid, an advance of Rs.15,000 to the lessor refundable without interest on the termination of the lease ;

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(b) the lessee was to pay the rent reserved regularly whether or not any buildings were erected by the lessees on the demised land and irrespective of whether the land or the buildings were of use to them for the purposes for which they were taken on lease ;

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(e) the lessee was to comply with all municipal and local regulations "in the erection and completion of any buildings on the demised plot."

(f) the lessors were to pay the property tax for the existing demised building but the lessees were to pay all taxes, rates etc. chargeable in respect of any buildings to be erected by the lessees on the demised plot ;

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(h) if and when the lessees sublet the demised land or any part thereof or the demised buildings or any portion or portions thereof at any higher rental and the Corporation authorities levy a property tax on the demised land or buildings higher than that based on a monthly rent of Rs.950 and Rs.300 respectively, the lessees shall pay such excess tax, if any, to the lessors.

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(j) the lessees were to enjoy the demised land during the term of the lease but surrender "the demised land and the buildings" to the lessors at the termination of the lease xxx xxx xxx

(m) the lessees during the subsistence of the lease, were to renovate, at their own cost, the demised buildings or any portion or portions thereof and carry out and effect all repairs considered necessary for their use and habitation.

Under Para III of the lease deed, it was agreed between the parties, inter alia:

(a) that in case of any default in the payment of rent or any breach of the covenant between the parties, the lessor could "re-enter upon the demised plot and buildings PG NO 760 or upon any part thereof in the name of the whole" and determine the lease ;

(b) that, in case the lessee fulfilled his obligations under the lease and gave six months' prior notice of his desire to obtain a renewal of the lease, the lessors shall grant a renewal lease of the demised plot and building for a further period of 21 years ;

(c) if during the subsistence of this lease, the lessors get an offer (for) the purchase of the demised plot of land or the buildings or both from third parties at a valuation acceptable to the lessors they shall intimate such offers to the lessees and give them the option of buying the demised plot and buildings at such valuation and if within two weeks of receipts of such intimation to the lessees they do not send a reply to the lessors expressing their consent to buy at such valuation and do not further pay to the lessors a deposit or earnest money towards the intended purchase, the lessors shall be entitled to sell the demised plot of land or buildings to such third parties for the price for which it was offered to the said lessees and any such sale to third parties shall be only subject to this lease. The lessees shall (be) in the event of their purchase of the demised plot and buildings themselves pay and bear the stamp, registration and all other charges incidental to the deed of conveyance.

The schedule to the lease deed described the demised property as "all that piece or parcel of land marked 'J' washed in yellow colour in the plan hereto stitched and measuring 17 grounds 32 I sq. ft.

or there-abouts and forming part of the entire piece or parcel of land with bungalow known as `Club Chambers' and bearing No. 1, Patullo's Road and No. 5, Club House Road . . . . ."

To turn now to the statute, the relevant provisions are not many and may next be set out. The Act came into force in 1922.S.1 applies the Act only to "tenancies of land" in certain towns and their adjoining areas in Tamil Nadu created before a particular date but there is no dispute that it does apply. within the city of Madras and that the lease deed in the instant case is prior to the specified date. S. 2 contains the definitions of which we are concerned only with the following.

(1) " `Building' means any building, hut or other structure whether of masonry, bricks. wood, mud or metal or any other material whatsoever used-

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(i) for residential or non-residential purposes in the City of Madras . . . . . .

(ii) for residential purposes only, in any other area; and includes the appurtenance thereto."

(2) "Land" does not include buildings. (4) 'Tenant' in relation to any-

(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 13 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 [Tamil Nadu Act 4 of 1972) disentitled such person from claiming the rights under this Act. and

(c) the heirs of any such person as is referred to in PG NO 762 sub-clause (i) or sub-clause (ii)(a) or (ii)(b); but does not include a sub-tenant or his heirs.

Section 3 entitles every tenant "'on ejectment" to be paid compensation for the value of any building which may have been erected by him, by any of his predecessors in interest, or by any person not in occupation at the time of ejectment who derived title from either of them. Section 4 requires the Court in a suit for ejectment against a tenant in which the landlord succeeds to determine the amount of compensation payable under Section 3 and direct the landlord to pay the same within a time to be specified, in default of which the suit will stand dismissed and landlord debarred from instituting a fresh suit for ejectment or presenting a fresh suit for recovery of possession for a period of five years. Sections 7 and 7-A enable the landlord and tenant respectively to apply to the court to fix a reasonable rent for the occupation of the land and section 8 provides that the tenant shall not be liable to eviction for a period of five years from the date of fixation of fair rent. Section 9 confers a valuable right on the tenant. It reads, in so far as it is relevant for our purpose, as follows:

"9 [1] [a] [i] : Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted ..... may within one month after the service on him of summons, apply to the court for an order that the landlord shall be directed to sell for a price to be fixed by the court, the whole or part of the extent of land specified in the application.

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(b) On such application, the court shall first decided the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court shall then fix the price of the minimum extent of the land decided as aforesaid or of the extent of the land specified in the application under cause (a), whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The court shall order that within a period to be determined by the court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into court or otherwise as directed the price so fixed in one or more instalments with or without interest.

PG NO 763 (2) In default of payment by the tenant of any one instalment, the application under clause (a) of sub-section (1) shall stand dismissed, provided that on sufficient cause being shown, the court may excuse the delay and pass such orders as it may think fit, but not so as to extend the time for payment beyond the three years above mentioned. On the application being dismissed, the court shall order the amount of the instalment or instalments, if any, paid by the tenant to be repaid to him without any interest. (3)(a) On payment of the price fixed under clause (b) of sub-section (1), the court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

[b] On the order referred to in clause (a) being made, the suit . . . . . shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated.

XXX XXX XXX Section 11 provides for a notice offering compensation in terms of the Act before any suit for ejectment could be filed against a tenant. Section 12 is of some relevance and needs to be set out:

"Nothing in any contract made by a tenant shall take away or limits 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."

The proviso, however, was deleted with complete retrospective effect by an Amendment Act of 1972. When the trustees filed the suit for ejectment, the company, as already stated, filed Application No. 1541 of 1976 under Section 9 of the Act. This application was PG NO 764 accepted by the trial court. The court negatived the company's contention that it had exercised its option for the renewal of the lease for the period beyond the initial period of 21 years. However, it was of the opinion that the company was entitled to the benefit of the Act and appointed a commissioner to inspect the property, find out the market value of the property and fix the minimum extent of the property required by the defendant for convenient enjoyment of the super-structure which it would be entitled to purchase in terms of Section 9.

The trustees filed an appeal. They contended that the lease in favour of the company was that of a building with appurtenant land and that, therefore, the respondent was not entitled to the protection of section 9 of the Act and that, therefore, the application filed by the company should have been dismissed. The appeal was allowed. The company, thereupon, preferred a revision petition before the High Court. The Iearned Judge examined closely the terms of the lease deed between the parties, discussed certain earlier decision of the Court and concluded that the first appellate court was right in holding that the lease was of a building and not of land and that, therefore, the application of the company under Section 9 was not maintainable. He, therefore, dismissed the revision petition. Hence the present appeal. From the statutory provisions set cut above, it will be seen that the Act applies only to tenants in respect of land situated in certain areas where the tenancy has been created before a prescribed date. The only controversy here is whether the lease in question can be said to be a lease of `land'. S. 2(2) which purports in define 'land' only clarifies that 'land' does not include 'building'. 'This takes us therefore to the definition of 'building' in s. 2(1) which expression means any structure whatever put up on land 'and includes the appurtenance thereto'. From these definitions It will be clear that, before a right of purchase can be exercised under Section 9$, the tenant must be a tenant of land, not comprising of buildings or lands appurtenant thereto. In the present case, the High Court has observed as follows:

"If a land with a building is leased out, then T..N. Act III of 1972 would have no applicability to such a property. (That) there was a palatial building over the property could not be disputed because the property originally belonged to a notable dignitary in yester years, who lived in that building with a spacious compound all round the property (and) which was enjoyed as an appurtenant area to the building PWl had stated that the plinth area of the building PG NO 765 XXX XXX XXX was about 5,285 sq. feet. In para 7 of the written statement, defendants stated that the vacant site covered by

the lease deed was about 35,830 which is equal to 14 grounds and 323 sq. feet. Under the lease deed, the total area leased out was 17 grounds and 321 sq. feet. Hence the building had occupied an area of nearly two grounds, which would be roughly about one eighth of the total area. Hence it was not a tiny insignificant structure, but a substantial building which was used as a residential building by a very affluent person, and which had been later on given to the charity, on a will executed by him. Under the Act, if there is a structure built with mud or any other material of even a tiny dimension, it would be a building for the purpose of the Act as defined in section 2(1); and section 3(2) being explicit that land does not include building, the provisions of the Act could be availed of by the tenant only if he had taken vacant land on lease.

XXX XXX XXX In the instant case a substantial building which had occupied one eighth of the area leased out cannot be overlooked particularly when the area was enjoyed us an appurtenant area for that building. Once a superstructure of such dimension had existed, it will be impossible to apply the provisions of Act III of 1922 and hold that only the land had been taken on lease by defendant.

(underlining ours) In other words, the High Court came to the conclusion that, in the present case, there had been a lease, not of vacant land but of a building with the land appertunant thereto and that, therefore, the provisions of the Act would not apply. Learned counsel for the appellant attacks the above finding on two grounds. ln the first place, he points out that under the terms of the lease deed what was leased out was" . . . . . plot of vacant land and building erected thereon". This is the description given of the subject matter of the lease both in the preamble as well as in the Schedule. He, therefore, submits that the subject matter of the lease was a piece of vacant land on some portion of PG NO 766 which there were buildings and not of a building with appurtenant land. The second submission is that when the definition of 'building' talks to appurtenant land, what it refers to is only such an extent of land as is absolutely necessary for the necessary and convenient enjoyment of the building in question. Pointing out that the building in the present case occupied barely an eighth of the area of the entire plot of land which was the subject matter of the lease, he contends that the land covered by the lease cannot be said to be appurtenant land. In this context, learned counsel relies on the definition of `appurtenant' in Black's Law Dictionary (Special Deluxe, Fifth Edition) page 94 which, in so far as is relevant, reads as follows:

"Appurtenant: belonging to; accessory or incident to; adjunct, appeanded, or annexed to; answering to accessorium in civil law. Employed in leases for the purpose of including any easments or servitudes used or enjoyed with the demised premises. A thing is 'appurtenant' to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or water- course, or of a passage for light, air or heat from or across the land of another."

In our opinion, the contentions of the learned counsel cannot be accepted. So far as the first contention is concerned, we do not think that the language employed is conclusive on the issue. It only shows that both land and building were leased. Whether the land is to be treated as an appurtenant or not would depend upon the extent and nature of the land and its situation vis-a-vis the building thereon and not on whether the lease deed describes the subject matter as "all that land

and building" or vice versa. Perhaps, if the deed had described the demised premises as 'building and appurtenant land' that would have helped in ascertaining the intention of the parties but even that would not have been conclusive.

On the second question, we may point out that this Court had occasion to consider at length the meaning of the expression 'appurtenant to building' in Maharaja Singh v. State of U.P., [1977] 7 SCC 155. There the question was whether the land on which a cattle fair was being held could be said to be appurtenant to the building situated on the land. This Court observed :

PG NO 767 "The heated debate at the bar on this and allied aspects need not detain us further also because of our concurrence with the second contention of the Solicitor General that the large open space cannot be regarded as appurtenant to the terraces, stands and structures. What is integral is not necessarily appurtenant. A position of subordination, something incidental or ancillary or dependant is implied in appurtenance. Can we say that the Iarge spaces are subsidiary or ancillary to or inevitably implies in the enjoyment of the buildings qua buildings? That much of space required for the use of the structures as such has been excluded by the High Court itself. Beyond that may or may not be necessary for the hat or mela but not for the enjoyment of the chabutras as such. A hundred acres may spread out in front of a clubhouse for various games like golf. But all these abundant acres are unnecessary for not incidental to the enjoyment of the house in any reasonable manner. lt is confusion to miss the distinction, fine but real.

"Appurtenant", in relation to a dwelling, or to a school, college includes all land occupied therewith and used for the purposes thereof [Words and Phrases Legally Defined-Butterworths, 2nd EDM.

The word 'appurtenances' has a distinct and definite meaning . . . . . Prima facie it imports nothing more than what is strictly appertaining to the subject matter of the devise or grant, and which would, in truth, pass without being specially mentioned. Ordinarily, what is necessarily for the enjoyment and has been used for the purpose of the building, such as easements, alone will be appurtenant. Therefore, what is necessary for the enjoyment of the building is alone covered by the expression 'appurtenance'. If some other purpose was being fulfilled by the building and the Iands, it is not possible to contend that these lands are covered by the expression "appurtenances". Indeed it is settled by the earliest authority, repeated without contradiction to the latest, that land cannot be appurtenant to land. The word 'appurtenances' includes all the incorporal hereditaments attached to the land granted of demised, such as rights of way, of common ... but it does not include lands in addition to that granted' (Words and Phrases, supra].

PG NO 768 In short, the touchstone of `appurtenance' is dependence of the building on what appertains to it for its use as a building. The law thus leads to the clear conclusion that even if the buildings were used and enjoyed in the past with the whole stretch of vacant space for a hat or mela, the land is not-appurtenant to the principal subject granted by Section 9, viz., buildings".

The question, therefore, whether certain land is appurtenant or not is one of fact. The High Court has applied its mind to the nature of the building as well as to the terms of the lease deed. It has kept in mind that the lease relates to a period about 35 years ago, a time when residential houses

occupied large extents of land. There used to be a building in the middle surrounded by a vast area covered by garden, arbor, trees and the like. The lease also describes the building as "Club Chambers" with a municipal door number. The building is itself a substantial one occupying as many as two grounds. Having regard to the position pertaining at the time when the lease was executed, the first appellate court and High Court came to the conclusion that the land in this case was appurtenant to the building. We see no reason to disturb this finding. On the other hand, we agree that the use of the land, in the circumstances of this case, was incidental to the enjoyment and beneficial use of the building and, therefore, squarely fell within the definition which has been discussed above. It was then contended for the appellant, in the alternative, that the lease deed in the present case should be treated as creating two separate leases, one of the building and the other of the land and that, viewed in this light, the appellant would be entitled to exercise rights under the Act atleast in respect of the portion of the demised premises which comprised of vacant land. To substantiate this contention, Iearned counsel for the appellant relied upon the following clauses in the lease deed:

1. The divisibility of the clauses in para I of the lease deed into two sets: clauses (b), (d), (e) and (g) as pertaining to the land and clauses (f), (m), (n). (o) and

(p) as pertaining, to the building;

2. The stipulation of separate rents for the land and the building,

3. The presence of clauses clearly envisaging and implying that the lessee could put up buildings on the vacant portions of the land and even providing that the lessee would be liable to pay taxes etc. in respect of the buildings to be so erected ;

4. The provision that the lessee that the sublet the demised land or building or any part or portion thereof PG NO 769 subject only to its being liable for any extra burden of municipal tax that may fall on the landlord as a consequence;

5. The covenant that, if during the subsistence of the lease, the lessors got an offer for the purchase of the demised plot of land or the buildings or both from third parties the lessee should be given a first option to purchase at the price offered. Relying upon the above features, it was contended that the lease deed does deal with the land and building separately. Separate rents were provided for; the lessees were given right to put up structures and, if necessary, even let them out; the sale or disposal of various parts of the land or the building separately was envisaged. It was, therefore, vehemently contended that the lease deed should be construed as consisting of two leases, one in respect of the vacant land and one in respect of the building rolled into one. We are unable to accept this contention. We agree with the conclusion of the High Court that these clauses of the lease deed cannot to be construed in the manner suggested by the lessees. There are clear indications in the lease deed that it is a single lease of both the building and the vacant land. They are jointly referred to in the lease deed. There are various passages in the lease deed where it is referred to as "the lease" i.e. a single indivisible lease. The rent payable is specified as an aggregate of Rs. 1,250 per month and a consolidated advance of one year rent is payable under the lease deed. The lease is for a period

of 21 years with an option to the lessee to renew it for the same period. The lease deed does not envisage the termination or renewal of the lease in respect of a part of the leased premises. The lease of the building alone cannot be renewed without a renewal of lease in respect of the land or vice versa. The deed contemplates the termination of lease at one point of time whereat the lessee has to surrender the possession with liberty to remove any super structures it might have put up there. The re-entry clause also provides a right to re-entry in respect of the demised premises as such in the event of any non payment of rent or breach of the stipulations. Also. physically, it is impossible to consider the document as comprising of two leases because the extent of land which has to go with the building as appurtenance-for some part of the land atleast is clearly and necessarily appurtenant-and the extent of land which can be treated as separately demised cannot be defined. No seperate lease of land can be read into the document without a proper specification and delineation of the extent of land that is to be comprised in such a separate lease.

PG NO 770 The clauses on which reliance has been placed on behalf of the appellant, in our opinion, do not lead to the inference suggested by the appellant. The High Court has pointed out that the rent for the property was Rs. 1,250 and that the bifurcation thereof into Rs.900 and Rs.350 had been introduced only with a limited purpose in view. The landlord wanted to, protect himself against the possibility of demands of high municipaL takes being made against him as a result of the Iessees putting up structures on the land or letting out parts of the property at high rent$. So far as the other clauses are concerned, as rightly pointed out by the learned counsel for the respondents they are just the usual clauses which find a place in a lease of immovable property. They are merely permissive in nature and enable the Iessee to deal with the land, during the period of demise, to the best advantage without affecting the lessor's interests. There was a substantial building existing on the land. There is no material to indicate that this was not sufficient for the purposes for which the building was taken on lease by the appellant. However, in case it was considered necessary to put up further structures, the lease deed permits the lessee to do so subject to safeguards against higher tax and compensation and with a stipulation that this should be removed at the time of termination of the lease. So far as the clause pertaining to sale is concerned, again, it merely provides for a possible eventuality. The execution of a lease deed does not prevent the lessor from disposing of the property, in whole or in part, subject to the lessees' leasehold rights therein. The clause only provides that, in case the landlord decided to exercise this right, he should give a right of pre-emption to the lessee. Thus all these are merely clauses which provide against the various contingencies that may occur during the period of the lease which may go up to 42 years. It is not possible to infer from these clauses that the parties had entered into two separate transactions of lease, though incorporated in a single document. In our opinion, this was a composite lease, as we have already said, of a building with appurtenant land and having regard to the definitions contained in the Act, the lessee is not entitled to the rights conferred by section 3 or section 9 of the Act.

Before we conclude, we might refer to one more argument addressed on behalf of the appellant. Counsel submitted that the lease deed itself contains a clear indication that the parties were fully conscious that the transaction was liable to be hit by the provisions of the Act. He pointed out that, when the lease deed was executed in 1951, section 12 of the Act contained a proviso (which has been extracted by us earlier). That proviso saved any stipulations between the parties regarding buildings erected after the date of the contract. Learned counsel for the appellant urged that the PG NO 771

clause I (j) in the lease deed which, by implication, disentitles the lessee to payment of any compensation in respect of structures at the time of termination of the lease was specifically put in to exclude the applicability of the Act. For, both parties were conscious that the Act would be applicable to the transaction and realised that, if such a clause were not specifically put in, the lessee would be entitled to such compensation and hence to the protection of the Act. Unfortunately, learned counsel urged, the proviso was dropped with retrospective effect. The result was that, despite the above clause in the lease deed, the lessor has become liable to pay the lessee compensation under section 3 thus conferring on the latter the correlative right of exercising an option to purchase the property under section 9. In our opinion, this argument is far-fetched. Whether the Act applies to the lease in question or not is something which has to be considered on the terms of the lease deed, having regard to the nature of the property. On this we have already expressed our conclusion. The clause regarding removal of structures is the normal clause that occurs in leases under the Transfer of Property Act. There may have been some force in the argument at least if there had been a clause specifically stating that the lessee will not be entitled to compensation for his structures. The clause here makes no mention of compensation and only talks of the lessees' right to remove structures. Even if no such clauses had been inserted, that would have been the position in law. it is not possible to infer from such a neutral clause that it was put in with a view to deny compensation to the lessee and thus get over the hurdle of the assessee putting in a claim for acquiring the property by purchase. lt is clear that the lease deed between the parties is a simple lease deed containing the usual clauses and covenants that one expects in it and nothig more. lf, indeed, the parties had been conscious of the possibility of the lessee claiming any rights under the Act, the lessors would have tried to safeguard themselves by making it clear that what was being let out was only a building and appurtenant land. We, therefore, do not think that there is much force in this submission of the learned counsel for the appellant.

As the view we have taken is entirely based on a construction of the lease deed before us, we do not consider it necessary to refer to the various decisions discussed by the High Court in its judgment.

In the result, this appeal fails and is dismissed. The respondents will be entitled to their costs.

S.L. Appeal dismissed.