N. Vajrapani Naidu and Another

Vs

The New Theatre Carnatic Talkies Ltd. Coimbatore

Civil Appeal No. 264 of 1962

(CJI P. B. Gajendragadkar, K. N. Wanchoo, J. C. Shah, N. Rajgopala Ayyangar S. M. Sikri JJ)

04.03.1964

JUDGMENT

SHAH J. –

The appellant Vajrapani Naidu and his mother Bangarammal - hereinafter collectively called 'the lessors' - granted a lease of an open site in the town of Coimbatore to Abirama Chettiar under a registered deed dated September 19, 1934, for 20 years at an annual rental of Rs. 1,080/- for putting up a building suitable for use as a theatre. Abirama Chettiar constructed a theatre on the site, and assigned his rights to the New Theatre Carnatic Talkies Ltd., Coimbatore - hereinafter called 'the Company'. The Company attorned to the lessors and was recognised as tenant under the lease dated September 19, 1934. On March 9, 1954 the lessors served a notice calling upon the Company to vacate and surrender vacant possession of the site, and the Company having failed to comply with the requisition, the lessors commenced an action against the Company for a decree in ejectment and for mesne profits at the rate of Rs. 1,000/- per mensem from September 19, 1954. The Subordinate Judge at Coimbatore awarded to the lessors a decree for possession and mesne profits at the rate of Rs. 350/- per mensem and costs of the suit. Against the decree the Company preferred an appeal to the District Court at Coimbatore which was transferred for trial to the High Court at Madras. During the pendency of this appeal by G.O. No. 608 dated February 10, 1958, the State of Madras extended the Madras City Tenants' Protection Act 3 of 1922, as amended by Madras Act 19 of 1955, to the Municipal town of Coimbatore. The Company then applied under s. 9 of the Act for an order directing the lessors to convey the site demised to the Company for a price to be fixed by the Court. Panchapakesa Iyer, J., directed that the lessors do sell to the Company the site in dispute under s. 9 of the Madras City Tenants' Protection Act, 1922, against payment of the full market value of the land on the date of the order, and further directed that the trial Court do appoint a Commissioner to fix the value of the site based on the market value prevalent on July 28, 1958. An appeal under cl. 15 of the Letters Patent of the High Court against the order of Panchapakesa Iyer, J., was dismissed. With certificate granted by the High Court of Madras, this appeal is preferred by the lessors.

Two questions fall to be determined in this appeal :

> (1) Whether the Company is entitled under s. 9 of the Madras City Tenants' Protection Act, 1922, notwithstanding the terms of the lease, to an order calling upon the lessors to sell the land demised under the deed dated September 19, 1934; and
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> (2) Whether the terms of s. 9 of the Act infringe the fundamental right under Arts. 19(1)(f) and 31(1) of the Constitution, of the lessors, and s. 9 is on that account invalid.

It is necessary in the first instance to notice the material terms of the lease. The land demised under the lease was a vacant site situate in the municipal town of Coimbatore. The annual rent stipulated was Rs. 1,080/- and the period of the lease was 20 years from the date of delivery of possession of the site. The land was to be utilised for constructing buildings thereon for "purposes of Cinema, drama, etc.". After the expiry of the term of 20 years stipulated under the deed the lessee had an option of renewal for another period of 20 years on fresh terms and conditions. The deed provided that "if after the termination of the stipulated period" * * * the lessees "fail to pay the arrears of rent that will fall due till that date and hand over possession of the site" to the lessors "after making it clear by dismantling the constructions therein and by demolishing the walls etc." the lessors "shall, besides realizing the arrears of rent due to them according to law, have the right to take possession through Court of the site in which the aforesaid buildings are put up after dismantling the constructions and demolishing the buildings therein". The other covenants of the lease are not material.

It appears that before 1922, in many cases on lands in the town of Madras belonging to others constructions had been put up by tenants obtained under periodic leases "in the hope that they would not be evicted so long as they paid fair rent". But on account of the inflationary pressure in the wake of the First World War, there was a steep rise in land values and rents, and many tenants who had constructed buildings on lands obtained on leases were sought to be evicted by the landlords. To prevent loss to the tenants consequent upon the enforcement of the strict provisions of the Transfer of Property Act, the Legislature enacted the Madras City Tenants' Protection Act 3 of 1922. Under the Act every tenant is on ejectment entitled to be paid as compensation the value of any building which may have been erected by him or by his predecessors-in-interest and for which compensation has not already been paid to him. In a suit for ejectment against a tenant in which the landlord succeeds, the Court has to ascertain the amount of compensation which is to be the value as on the date of the order of the buildings constructed, trees planted and other improvements made by the tenant and the decree in the suit must 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 has to put the landlord into possession of the land and the building. By s. 9 it is provided that any tenant entitled to compensation and against whom a suit in ejectment has been instituted may within the time prescribed apply to the Court for an order that the landlord shall sell the whole or part of the land for a price to be fixed by the Court. The price under the Act as originally enacted was to be the market value of the land on the date of the order, but by an amendment made in 1926 it has to be the lowest market value prevalent within seven years preceding the date of the order. On the price being fixed, the tenant has the option within a period not being less than three months and not more than three years from the date of the order to pay into Court or otherwise the price either the whole or in instalments with or without interest as directed, and when the payment is made the Court has to pass the final order directing conveyance of the land by the landlord to the tenant, and thereupon the suit or proceeding is to stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed is to stand vacated. By s. 12 it is provided :

> "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."

The Act as originally enacted extended only to lands in the City of Madras, let out before the commencement of the Act for construction of buildings for non-residential as well as residential

use. By Madras Act 19 of 1955 power was conferred upon the State Government to extend Act 3 of 1922 by notification to tenancies of land created before the date on which the Act was extended, to any other municipal towns and any specified village within five miles of the City of Madras or such municipal town with effect from such date as may be specified in the notification. Exercising this power, the Government of Madras issued a notification on February 10, 1958, extending the provisions of the Act to the municipal town of Coimbatore.

The scheme of the Act as extended by notification issued under Act 19 of 1955 is that when under a tenancy of open land within the municipal town created before the date with effect from which the Act is extended, a building has been constructed by the tenant, and he is sued in ejectment by the landlord, he has the right on ejectment to be paid as compensation the value as at the date of the order of ejectment, of the building constructed and trees planted by him, and he has in the alternative the right to claim an order from the Court that the land belonging to the lessor shall be sold to him at the price fixed by the Court according to the terms of the statute. By s. 12 it is provided that the rights conferred by the Act shall not be taken away or restricted by any contract made between the landlord and the tenant provided, however, the 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 of lease, are exempt from this restriction.

The lease granted by the lessors in this case was before the date on which the Act was extended to the Coimbatore municipal town and it is common ground that the buildings were constructed after the date of the contract of lease. Ex facie, the Company as lessee had, when an order for ejectment was made, an option to receive compensation for the value of the structure, or to claim that the lessors shall sell to it the land demised. But the lessors contend that because of the stipulations in the deed of lease (which is registered under the law in force for registration of assurances) relating to the obligation of the tenant on the expiry of the lease to deliver vacant possession of the land after dismantling the constructions therein, the Company has by the terms of s. 12 disentitled itself to the benefit of s. 9 of the Act. It is submitted that the stipulation relating to delivery of vacant possession of the site on the expiry of the period of the lease after removing the buildings is a stipulation "as to the erection of buildings" within the meaning of s. 12, and therefore the restriction on the liberty of contract between landlord and tenant imposed by the opening clause of s. 12 is removed, and the Company is bound by the terms of the lease and is not entitled to claim the benefit of s. 9 of the Act. We are, for reasons presently to be set out, unable to uphold that contention.

Section 12 of the Act consists of two parts : by the first part it enacts that the rights conferred upon the tenant under the Act may not be taken away or limited by any contract made by a tenant. Such rights would, amongst others, include the right to claim compensation under ss. 3 and 4 and the right to purchase the land from the lessor by order of the Court under s. 9. By the second part of s. 12, the protection granted by the first part does not avail the tenant in certain conditions. If there be a stipulation "as to the erection of buildings" made by the tenant in writing registered, in so far as it relates to buildings erected after the date of the contract, the protection conferred by the first part of s. 12 shall not apply. A covenant in a lease which is duly registered that the tenant shall on expiry of the lease remove the building constructed by him and deliver vacant possession, is undoubtedly a stipulation relating to the building, but it is not a stipulation as to "the erection of building". Section 12 has manifestly been enacted to effectuate the object of the Act which is set out in the preamble - viz. "to give protection to tenants who . . . . 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". The Legislature has sought thereby to protect the tenants against any contractual engagements which may have been made expressly or by implication to deprive themselves wholly or partially of the protection

intended to be conferred by the statute. And the only class of cases in which the protection becomes ineffective is where the tenant has made a stipulation in writing registered as to the erection of buildings, erected after the date of the contract of lease. The restriction is therefore made only in respect of a limited class of cases which expressly attract the description of the stipulations as to the erection of buildings. Having regard to the object of the Act, and the language used by the Legislature, the exception must be strictly construed, and a stipulation as to the erection of buildings would not, according to the ordinary meaning of the words used, encompass a stipulation to vacate and deliver possession of the land on the expiry of the lease without claiming to enforce the statutory rights conferred upon the tenant by s. 9. The stipulations not protected in s. 12 are only those in writing registered and relate to erection of buildings such as restrictions about the size and nature of the building constructed, the building materials to be used therein and the purpose for which the building is to be utilized. It is true that the operative part of s. 12 protects the tenant against the deprivation or limitation of his rights under the Act and the rights conferred by the Act do not directly relate to covenants relating to erection of buildings. But on that account it is not possible to give a wider meaning to the expression "as to the erection of buildings" that the stipulation as to the erection of buildings would include stipulations to remove buildings on the determination of the lease. It cannot be said that the literal meaning of the expression is likely to render the exception ineffective, for stipulations concerning erection of buildings in registered leases, or contracts subsequent to the leases, providing for forfeiture on failure to comply with the terms of the lease relating to the erection of buildings may undoubtedly involve limitations or deprivation of the rights of the tenant under the Act and to that extent the protection conferred by s. 12 in favour of the landlord may be lost. The construction for which the appellant contends assigns no meaning to the words "as to the erection of buildings" and makes them superfluous, besides it materially affects the scope of the relief which the Act obviously extends to the tenants falling under its provisions.

Section 9(1) which enables a tenant to purchase on determination of the lease the land of the landlord is somewhat unusual. But it cannot be said that it imposes an unreasonable restriction upon the right of the landlord to hold and dispose of property within the meaning of Art. 19(1)(f) of the Constitution. The Act applies to only a limited class of lands : it applied to lands granted in lease for construction of buildings before the date with effect from which the Act is extended to the town or village. It was enacted with a view to give protection to the tenants who had, notwithstanding the usual covenants relating to determination of tenancies, obtained lands on lease in the hope that so long as they paid and continued to pay fair rent, they would not be evicted, but because of changed conditions as a result of the War, appreciation in land values and consequent increase in the level of rents, were faced with actions in ejectment involving dismantling of properties constructed by them, and eviction. The protection becomes effective only when the landlord seeks to obtain, in breach of the mutual understanding, benefit of the unearned increment in the land values, by instituting a suit in ejectment. It was manifestly in the interest of the general public to effectuate the mutual understanding between the landlords and the tenants as to the duration of the tenancies, and to conserve building materials by maintaining existing buildings for purposes for which the leases were granted. Restriction imposed upon the right of the landlord to obtain possession of the premises demised according to the terms of the lease would, therefore, not be regarded as imposing an unreasonable restriction in the exercise of the right conferred upon the landlord by Art. 19(1)(f) of the Constitution, because the restriction would be regarded as in the interests of the general public. We ought to emphasize that what s. 9 does is not so much to deprive the landlord of his property or to acquire his rights to it as to give effect to the real agreement between him and his tenant which induced the tenant to construct his building on the plot let out to him. If the law is not

invalid as offending Art. 19(1)(f) of the Constitution, no independent infringement of Art. 31(1) of the Constitution may be set up.

It was urged, however, that by the statute as amended by the Madras City Tenants' Protection (Amendment) Act VI of 1926 (before it was amended by Act 13 of 1960), the price which the Court may fix and at which the tenant is entitled to purchase the land is to be the lowest market value prevalent within seven years preceding the date of the order. This, it was submitted was unreasonable. But it is not necessary for the purpose of this case to decide that question, for the Company has offered to pay the market value of the land as at the date on which the order was passed by Panchapakesa Iyer, J. That absolves us from the necessity to adjudicate upon the reasonableness of the provisions relating to payment of compensation at the rate prescribed by the Act as amended by Act VI of 1926. We may observe that by the Amending Act 13 of 1960 several alterations have been made as regards the extent of the right of the tenants to require the landlords to sell the land and the price which has to be paid by the tenants for purchasing the land. For instance, under the Amending Act the Court may direct sale only of the minimum area of land necessary for convenient enjoyment by the tenant of the house built by him and the price is to be the average marked value in the three years immediately preceding the date of the order. In view of this amendment, and having regard to the special circumstances, viz. the offer made by the Company, notwithstanding the provisions of the Act, to pay the market value of the land at the date of the order, we decline to enter upon an academic consideration as to the validity of the provision fixing compensation at the lowest market value prevalent within seven years preceding the date of the order. Assuming that a provision fixing such compensation is unreasonable and therefore invalid, it would be clearly severable from the rest of the statute and would not affect the validity of the provision relating to acquisition by the tenant of the land demised by purchasing it from the landlord. At best, the landlord would be entitled to obtain compensation which is equivalent to the market value, and that the Company has agreed to pay. That, however, is a matter on which we express no opinion.

The appeal therefore fails and is dismissed. There will be no order as to costs.

AYYANGAR, J. –

We regret our inability to agree with the order that the appeal should be dismissed. The facts of the case have been set out in the Judgment of our brother Shah, J. and do not, therefore, require to be repeated.

The two principal points arising for consideration and on which the decision of the appeal would turn are, first, the interpretation of s. 12 of the Madras City Tenants Protection Act (Madras Act III of 1922) and, second, the constitutional validity of s. 9 of that enactment. Section 12 enacts :

> "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."

The question that first calls for examination is the proper construction of s. 12 and in particular the meaning and effect of the proviso contained in it. Before, however, taking up the words of the section, it would be useful to read the preamble and certain of the other provisions of the Act because it is in the light of the guidance afforded by them that the content of the proviso to s. 12

could be determined. The preamble recites that the Act had been enacted as it was "found necessary to give protection to tenants who in municipal towns and adjoining areas in the State of Madras have constructed buildings on others' land in the hope that they would not be evicted so long as they pay a fair rent for the land". Section 1(3) of the Act which defines the tenancies within the local area to which the Act extends enacts (to read the provision as it now stands) that the Act shall apply only "to tenancies of land created before the commencement of the Madras City Tenants Protection (Amendment) Act, 1955 and in any municipal town or village to which this Act is extended by notification under sub-s. (2) only to tenancies created before the date with effect from which this Act is extended to such town or village." From these provisions two matters are clear : (1) that the Act was enacted in order to ensure that the hope entertained by tenants who had constructed buildings on others' lands that they would not be evicted so long as they paid fair rent was not frustrated, and (2) that the Act has application only to tenancies which having commenced earlier were subsisting on the date on which the Act came into force in the particular area.

With these preliminary observations we shall proceed to deal with the construction of s. 12 of the Act.

The tenancy under which the respondent was inducted into the land on which he has constructed buildings was of 1934, a date long anterior to 1958 when by a notification issued under s. 1(2) of the Act its provisions were extended to the municipal town of Coimbatore where the land involved in the present proceedings is situated. It was therefore a tenancy governed by the provisions of the Act. Next, the lease under which the respondent held the land was in writing registered, and therefore the only question to be considered is whether the stipulations it contains are comprehended by the proviso.

Section 12, it would be seen, is made up of two limbs - first a general provision saving to tenants comprehended by the Act, the rights conferred by its operative terms, notwithstanding any contract, and next a proviso which makes an inroad into the generality of the saving, by saving contractual stipulations from the operation of the statutory rights created by the Act. The entirety of the debate before us is as to the nature, scope and width of the saving effected by the proviso. It does not need any argument to establish that if s. 12 had stopped with its first limb, the respondent would be entitled to the benefit of every right conferred upon tenants by the Act, but the proviso it is conceded is intended to cut down the scope of that saving. Expressed in other terms, from the prohibition against the operation of any stipulation in a contract limiting the rights conferred on tenants by the Act an exception is carved out. So much is common ground but the controversy is as regards the scope and limits of that exception. As regards the exception contained in the proviso four matters are clear : (1) The stipulation must find a place in a contract in writing which is registered, (2) the stipulation which is within the proviso and to that extent detracting from the non-obstante provision contained in the opening words must be one in relation to "the erection of buildings", (3) it must relate to buildings erected after the date of the contract, and (4) if there is a stipulation satisfying these three conditions such stipulation would have effect notwithstanding anything in the previous part of s. 12 which would be the same thing as saying that the rights of the tenant under the Act may be taken away or limited by such a stipulation. It is common ground and beyond controversy that conditions 1 & 3 above are satisfied and the only point in dispute is whether the 2nd condition is satisfied so as to attract the operation of condition 4.

The learned Judges of the High Court have understood the words "as to the erection of buildings" occurring in the proviso as equivalent to a stipulation regarding the manner in which the building may be erected, the materials to be used, the area the building should cover and other details in

relation to the construction of the building and as not apt to cover the case of a stipulation whereby the tenant undertakes to remove the buildings constructed by him on the termination of the tenancy; and that was also the submission made to us by Mr. Setalvad on behalf of the respondent. With the greatest respect to the learned Judges of the High Court we are unable to agree with this construction of the proviso.

Before examining this we think it convenient and even necessary to refer to the terms of the lease deed under which the appellant became a tenant before considering whether it is a stipulation which would fall within the words "stipulations as to the erection of buildings". The lease deed which has been marked as Ex. B-1 in the case is a registered instrument dated September 19, 1934. The term of the demise was a period of 20 years from the date of delivery of possession and the rent stipulated was Rs. 1,080/- per year. The purpose for which the site was leased is stated in the document to be "to construct buildings thereon as he (the lessee) requires on the aforesaid site for the purpose of cinema, drama etc. at his own expense and also further constructions necessary for the same". This is followed by two clauses which have some relevance. Notwithstanding that the lease was for a fixed definite period of 20 years, the lessee was permitted to surrender the lease if he found that the business venture for which the lease was taken was not profitable. In that event the lessee was entitled to surrender the lease, and put an end to the tenancy, when he had to dismantle the buildings constructed by him at his own expense and pay to the lessors one year's rent for loss by the latter sustained by the premature termination of the lease. If this condition as to the removal of buildings were not fulfilled by the lessee, the lessors were authorised to take possession of the vacant site dismantling the constructions and demolishing the walls. On the termination of the stipulated period of 20 years the lessees stipulated that they would dismantle the constructions by demolishing the walls etc. and deliver possession of the vacant site to the lessors.

The question now for consideration is whether this stipulation contained in the registered lease deed that at the end of the term the lessee would demolish the buildings which he had erected and deliver vacant possession of the site is a stipulation which is saved by the proviso to s. 12. If the scope of the proviso had to be construed in the light of the preamble, it is obvious that the tenant who had entered into a contract with a stipulation of the sort we have extracted, could not be said to have constructed the buildings on another's land "in the hope that he would not be evicted so long as he pays rent for the land". The preamble would, therefore, indicate that the Act would not apply to afford protection in a case where by an express term in a registered lease deed a tenant agreed to surrender the site on which he had erected a building where he specifically contracted that he would demolish the building and deliver vacant possession of the site on the termination of his tenancy.

The next matter to be noticed is that the tenancies dealt with by the Act are tenancies which came into existence prior to the enactment or prior to the date the Act became operative in the local area and therefore one cannot expect stipulations worded in exactly the same terms as in the Act, because exconcessis the Act and its provisions were not in the contemplation of the parties when they entered into the contract. The mere fact, therefore, that a stipulation as regards the erection of the buildings is not worded in the same manner as under the provisions of the Act or in terms of the Act is no ground for refusing effect to it. Lastly, since what is saved by the proviso from the operation of the Act are the rights which are created in favour of tenants by the Act, we are led to an inquiry as to the rights which are conferred by the Act, for the saving must obviously have reference to and be determined by these rights.

Broadly speaking two kinds of rights have been conferred on lessees under tenancies falling within the scope of the Act - first a right to the payment of compensation for buildings erected by them on

leased land before they are evicted, (under s. 3 of the Act) and secondly (this of course could be only in the alternative) a right or option to require the landlord to sell them the land under lease for a price to be computed in accordance with s. 9. It is obvious from the very nature of things having regard to the time when the lease was entered into that there would not and could not in terms be a stipulation in a deed against the option accorded to a tenant to purchase the leased land, and the matter is so self evident as not to need any argument in support. We therefore reach the position that the stipulation contemplated by the proviso to s. 12 could only be one in relation to the right of the tenant to claim compensation for the buildings erected by him after the commencement of the tenancy. Expressed differently, though the proviso is worded as to permit the saving of stipulations contained in registered deeds whether the stipulations relate to the right to the compensation receivable by tenants under s. 3, or their right to require the sale of the leased land to them under s. 9 when on the termination of the tenancy they are sought to be evicted, the latter right is not one which could be affected by an express stipulation in that regard, but its non-availability to the tenant could be brought about only by a stipulation bearing on the right of the tenant to compensation under s. 3 for buildings erected by him during his tenancy.

We shall now proceed to ascertain the stipulation which would affect the right to compensation in respect of buildings erected conferred on tenants by s. 3. That provision reads :

> "Every tenant shall on ejectment be entitled to be paid as compensation 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 the ejectment who derived title from either of them, and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land and of any improvements which may have been made by him."

A stipulation which if effective would limit the quantum of compensation payable in respect of buildings constructed by a tenant provided for by s. 3, it is conceded, is within the proviso to s. 12 as being one with respect to the "erection of buildings". The effect of this concession on the meaning of the proviso, we shall consider later. But the question is whether these words can on any reasonable construction be limited or confined to such a contingency. Let us take a case where in a lease like the one before us for a fixed term say of 20 years there is a stipulation that the tenant shall not build on the land and that if he erected buildings he shall remove the structures, and deliver vacant possession at the end of the tenancy. Obviously such a stipulation would imply that he shall not claim any compensation for the structures which contrary to his undertaking he erects. We did not understand Mr. Setalvad to whom this was put during arguments to contend that the tenant, who constructed buildings under a lease with a stipulation such as this would be able to obtain compensation under s. 3, with the attendant rights conferred by s. 9. This can only be on the basis that a stipulation forbidding the erection of buildings by the lessee is a stipulation as regards "erection of buildings" - notwithstanding that it is part and parcel of this stipulation that the tenant shall demolish buildings which he constructed. If a stipulation forbidding erection of buildings and requiring their removal before surrendering possession of the site is conceded to be one 'in respect of erection of buildings' - as has to be conceded, it is not possible to accept the construction that a stipulation for the removal of buildings which the lessee is permitted to erect and keep in the site only for the duration of the tenancy is any the less one "in respect of erection of buildings". We understand these words to mean a stipulation which bears on or is in relation to the erection of buildings. Such a construction would reconcile the proviso with the preamble which sets out the object sought to be achieved by the Act. If the lease deed contains no stipulation whatsoever in

regard to the erection of buildings, as was the case with the large number of leases in the city of Madras which were entered into prior to the enactment of the Act in 1922, the tenant who erected a building exconcessis without contravening any undertaking on his part, obtains protection under the Act. Again if the lease though it contains such a stipulation against construction of buildings on the leased land is not by a registered instrument - as were again several leases in the city - the statutory rights to compensation and purchase were protected. If however the parties had recourse to a formal registered instrument for putting through the transaction and such a deed contained a stipulation against erection of buildings, or against the continuance of the buildings on the land at the termination of the tenancy, or what comes to the same thing against the tenant being entitled to compensation for the buildings erected by him during the currency of the lease, the stipulation would govern the rights of the tenant and not the statute. This in our opinion is the proper construction of the proviso to s. 12. The test would therefore be - "did the parties advert to and have in mind the contingency of the tenant erecting buildings on the leased land" ? If they had and had included in a solemn registered deed a provision which would bear upon the relative rights of the parties in the event of the erection of buildings on the site, the stipulation would have effect notwithstanding the Act; for in such an event the tenant would not have constructed buildings on the land in the hope that he would not be disturbed from possession so long as he paid the rent agreed upon.

Before concluding we shall examine how far the limited meaning attributed to the phrase "as to the erection of buildings" can be sustained. First let us take a case where there is a stipulation in a registered deed under which the lessee in consideration of a favourable rent undertakes to construct buildings of a particular type and deliver possession of the site as well as the building constructed at the end of the term without any claim to compensation. On the construction put forward by the respondent this would be a stipulation which would be saved by the proviso since it refers to the construction of buildings and not removal, though it negatives all right to compensation to which he would be entitled under s. 3. Such a stipulation being valid and enforceable, on a suit for ejectment being filed, the tenant would not be entitled to compensation and would therefore be outside s. 9 because s. 9 applies only to cases where the tenant is entitled to compensation. Now, does it make any difference if the deed stipulated that the buildings erected by the tenant should be removed, without any claim to compensation in the event of non-removal. We can see no sensible distinction between the two cases, and if the one is a stipulation in respect of "erection of buildings", the other is equally so.

Next we shall take the case which the respondent asserts is precisely the one intended to be covered by the proviso viz : a stipulation that the lessee shall not construct a building in excess of a particular plinth area, or beyond a ground-floor, or in excess of a specified number of rooms. Obviously the question about the applicability of the proviso would come in only if the tenant broke the covenant and we shall therefore assume that in breach of the stipulation, the tenant erects buildings contrary to his undertaking. In such an event it is said that when the compensation to which the tenant is entitled under s. 3 is computed, the amount would be confined to what he would have got, if he had abided by the contract. But this is to ignore the basic feature of the Act, under which the tenant who is entitled to compensation under s. 3, and certainly the limited compensation that the tenant obtains even when he breaks a covenant would still be compensation under that section, is entitled to purchase the lease land under s. 9. The construction suggested therefore comes to this that though under the proviso to s. 12 there might be stipulations which might reduce the quantum of compensation to which a tenant would be entitled under s. 3, there cannot be a stipulation apart possibly from a covenant against any erection of buildings which we have already dealt with, which would preclude a tenant from his right under s. 9. If as must be conceded the first

limb of s. 12, save the statutory rights of tenants both under ss. 3 & 9 from the operation of any contract, it appears to us to stand to reason that the proviso which saves rights under contracts from the rights conferred by the Act should be construed to be co-extensive with and operate on the same field as the opening portion of s. 12.

We are, therefore, clearly of the opinion that the learned Judges of the High Court were in error in their construction of the proviso to s. 12. In this view the question as regards the constitutional validity of s. 9 would not really arise for consideration, and we express no opinion on it. We would accordingly allow the appeal and decree the suit for ejectment filed by the appellant.

ORDER

In accordance with the majority opinion, the appeal is dismissed. No order as to costs.

Appeal dismissed.

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