The Mylapore Hindu Permanent Fund Ltd., Madras

Vs

K. S. Subramania Iyer

Civil Appeal No. 596 of 1967

(S. M. Sikri, V. Bhargava, C. A. Vaidialingam JJ)

06.05.1970

JUDGMENT

VAIDIALINGAM, J. –

1. The Short question that arises for consideration in this appeal, by certificate, is whether a term in a registered lease deed, in and by which the lessee of a vacant piece of land, agrees to surrender, on termination of the lease, not only the land but also the super-structure put up by him for the price agreed to between the parties and provided for in the lease, is "a stipulation made by the tenant in writing registered as to the erection of buildings" so as to attract, in favour of the landlord, the proviso to Section 12 of the Madras City Tenants' Protection Act, 1921 (Madras Act III of 1922), as amended by the Madras City Tenants' Protection (Amendment) Act, 1955 (Act XIX of 1955) - hereinafter called the Act. In this appeal we are not concerned with the later amendments made to the Act.

2. The appellant was the owner of a vacant site bearing No. 4/7, Ponnambala Vathiar Street, Mylapore, Madras-4. The respondent made a request to the appellant, by his letter Exhibit A-2, dated January 30, 1947, to lease in his favour the said vacant site for a period of ten years on a monthly rental of Rs. 30/-. In that letter the respondent stated that he wanted to put up a building on that site at a cost of not more than Rs. 6,500/- and that, after the expiry of the lease period it was open to the appellant to continue the lease or not; but, in case the lease period was not extended, the respondent made a request that he should be paid back the amount of Rs. 6,500/- or any less amount that might have been incurred for putting up the super-structure on the plot. After further correspondence between the parties, the appellant finally wrote, on April 22, 1947, to the respondent a letter, Exhibit A-6, by which they intimated to the respondent that on vacating or giving possession of the land and building that may be put up by the lessee, the appellants will pay the valuation of the building on the dated of surrender or a sum of Rs. 5,000/-, Whichever is less. The appellant further intimated that if the respondent was agreeable, the draft lease agreement sent by them might be approved for being finalised. It was, under those circumstances, that finally the lease arrangement, Exhibit A-1, was jointly entered into by the parties by a registered document, dated April 30, 1947.

3. Under Exhibit A-1 the respondent took the land on lease for a period of ten years commencing from May 1, 1947. The document provided that the lessee was to pay a ground rent Rs. 45/- per month. Clauses 2, 4 and 9 of the lease deed are relevant and may be set out :

> "2. The lessee is permitted to put up a building at a cost of not more than Rs. 10,000/- on the plot leased to him, after approval of the plan of the proposed building

> by the Board of Directors of the Lessors, and the construction to be put up must be in accordance with the plan approved by the Directors of the Lessors.
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> 4. The lease shall be in force for a term of ten years commencing from the first day of May, 1947 and on the expiry thereof the lessee shall surrender possession of the entire property and the constructions, if any thereon. On vacating of giving possession as above the lessors shall pay the valuation thereof, then current or the sum of Rs. 5,000/- whichever is less.
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> 9. In case of breach or infringement of any of the conditions above-mentioned by the lessee, the lessors are at liberty to determine the lease irrespective of the period provided herein by giving three months' notice to the lessee and the lessors may take possession of the property themselves without any compensation."

There were other clauses relating to the payment by the lessee of all taxes that may be imposed on the property so long as he was in possession and prohibiting the lessee from sub-letting, assigning or transferring the plot to any one without the permission in writing of the lessors. There were also provisions regarding payment of advance rent and also the date within which the monthly rent was to be paid.

4. There is no controversy that the respondent put up a building at his own cost for the purpose of his business in accordance with the terms and conditions of the lease deed. On the expiry of the lease period of 10 years, the appellant, by notice, dated August 1, 1957 (Exhibit A-36) called upon the respondent to surrender possession of the land as well as the building in accordance with the provisions of the lease deed, dated April 30, 1947 and offering to pay a sum of Rs. 5,000/- for the building. The respondent sent a reply, Exhibit A-37, dated August 27, 1957, declining to surrender possession either of the land or the building. He stated that in view of the rights conferred on him as a tenant of the land under the Act as amended by Act XIX of 1955, he was entitled to continue in undisturbed occupation as a tenant of the leasehold and that if eviction proceedings are taken by the appellant he will be obliged to apply under the Act for directing the landlord to convey to him the land at a price to be fixed by the Court as per the provisions of the Act. The respondent declined to accept the amount of Rs. 5,000/- offered by the appellant as the value of the house put up by him on the property.

5. The appellant instituted on April 22, 1958, O.S. No. 796 of 1958 in the City Civil Court, Madras, seeking to recover possession from the respondent of the land and building and also offering to pay the sum of Rs. 5,000/- as the value for the building in according in accordance with the terms of the lease deed. There was also a claim for mesne profits. The respondent contested the suit on various grounds. In particular, the respondent pleaded that under the Act he is not bound to surrender possession of the land with the building, as claimed by the plaintiff. On the other hand according to the respondent, notwithstanding the expiry of the lease period, he was entitled to continue in possession of the land and that he had a right under Section 9 to call upon the plaintiff to sell the land to him for a price to be fixed by the Court in accordance with the provisions of the Act. For this purpose, the respondent filed an application, I.A. No. 484 of 1958, under Section 9 requesting the Court for an order that the landlord be directed to sell the land for a price to be fixed by the Court.

6. The learned City Civil Judge, by his judgment and decree, dated December 10, 1959, upheld the contentions of the respondent. The learned Judge held that notwithstanding the agreement entered

into by the tenant to surrender the and also the building on receiving the value mentioned in Exhibit A-1 after the termination of the lease period, such an agreement no longer held good in view of the protection conferred on tenants by the Act. The learned Judge further held that the respondent was entitled to exercise his option under Section 9 to purchase the land for the price fixed by the Court. In this view the learned Judge disallowed the plaintiff's prayer for recovery of possession of the land and building and allowed I.A. No. 484 of 1958, filed by the respondent under Section 9. But the learned Judge however directed that it was only if default was committed by the respondent in paying the value that may be fixed by the Commissioner in I.A. 484 of 1958, the appellant would be entitled to get a decree for possession on payment of Rs. 5,000/- to the respondent as compensation for the super-structure, under Section 3 of the Act.

7. The appellant carried the matter in appeal to the Madras High Court in A.S. No. 208 of 1960. By judgment, dated January 30, 1963, the learned single Judge, Ramakrishnan, J., set aside the decree of the City Civil Judge after holding that the tenant was bound by the terms and conditions under Exhibit A-1 and, as such, was liable to surrender possession not only of the land but also of the building, on receipt of the sum of Rs. 5,000/- from the landlord as per Clause 4 of Exhibit A-1. That is, the learned Judge took the view that the terms contained in Clause 4, read with Clause 2 of Exhibit A-1 amounted to stipulations as to the erection of buildings, attracting the proviso to Section 12 and those stipulations will have to be enforced as against the tenant. Ultimately, the learned single Judge decreed the plaintiff's claim for recovery of possession of the land and building on his depositing the sum of Rs. 5,000/- representing the value of the super-structure. There was a further direction given to the Trial Court for ascertaining the quantum of mesne profits.

8. The respondent carried the matter in appeal before the Division Bench of the High Court under Clause 15 of the Letters Patent. By decree and judgment, dated December 1, 1964, the Letters Patent Bench reversed the decree of the learned single Judge and dismissed the appellant's suit, with costs throughout. According to the learned Judges of the Letters Patent Bench, Clause 2 and 4 of the lease deed did not deprive the rights conferred on a tenant under the Act, of claiming compensation for the building under Section 3 or his exercising the option to purchase the and under Section 9. The further view of the Division Bench is that the matters referred to in Clause 2 and 4 in Exhibit A-1 cannot be considered to be "stipulations as to the erection of buildings", so as to attract the proviso to Section 12 of the Act.

9. It may be stated, at this stage, that the Division Bench has, by and large, taken the view that the position is concluded against the appellant-landlord by the decision of this Court in N. Vajrapani Naidu v. New theatre Carnatic Talkies ((1964) 6 SCR 1015), wherein this Court had upheld a decision of the Madras High Court that a stipulation in the lease for demolition of the building and surrender of vacant possession of the site was not one within the proviso to Section 12 of the Act. We shall refer to that decision at the appropriate stage and consider whether the point in issue before us is covered by the same, as assumed by the Letters Patent Bench of the High Court. But we may indicate that the appellant had raised a contention in the suit, as well as before the High Court that the lease in favour of the respondent was not of a vacant piece of land but of a land together with a building and hence the Act had no application to that lease arrangement. So far as this aspect is concerned, it has been now concurrently held by all the Courts that the lease under Exhibit A-1 was of only a vacant piece of land. Therefore we have to discuss the problem arising before us on the basis that the lease was only of vacant land. If Clause 4 read with clause 2 of the lease deed Exhibit A-1, is construed as a stipulation 'as to the erection of buildings' within the proviso to Section 12, the appellant will have succeed. If not, the respondent will be entitled to the rights conferred on him under the Act and pursue the relief asked for by him in the application filed by him under Section 9

of the Act.

10. The Act was passed with a view to give protection to tenant who, in certain areas, had constructed building in others' lands in the hope that they would not be evicted so long as they paid fair rent of the land. Originally the Act applied only to tenancies of land created before its commencement, viz., February 8, 1922. But, by the Amending Act XIX of 1955, which came into force on September 10, 1955, the Act has been made applicable in the City of Madras to tenancies of land created before the commencement of the Amendment Act of 1955. Therefore it follows that the suit lease is one to which the Act will apply. It is not really necessary for us to elaborately consider the scheme or the various provisions of the Act as amended from time to time, as they have all been referred to in decisions of this Court to which we will advert later. It is enough to note that under the Act, 'land' does not include buildings [Section 2(2)]; 'Landlord' means any person owning any land [Section 2(3)]; 'Tenant' in relation to any land is a person liable to pay rent in respect of such land, and includes any person who continues in possession of land after the determination of the tenancy agreement [Section 2(4)]. Section 3 provides that every tenant shall, on ejectment, be entitled to be paid as compensation the value of any building which may have been erected by him and for which compensation has not already been paid. Section 4 provides, among other matters, for the Court ascertaining the amount of compensation payable under Section 3 in a suit for ejectment of a tenant in which the landlord succeeds. Section 5 deals with computation of the compensation awardable under Section 4. Section 9(1) provides that a tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted may, within the time prescribed therein, apply to the court for an order that the landlord should be directed to sell the whole or part of the land for a price to be fixed by the Court. Section 12 provides :

> "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."

Section 13 provides that in its application to the City of Madras and to other notified areas, the Transfer of Property Act, 1882 shall, to the extent necessary to give effect to the provisions of the Act, be deemed to have been repealed or modified.

11. Mr. M. Natesan, learned counsel for the appellant, urged that in this case, Clause 2 and 4 of the lease deed, read together would amount to a 'stipulation as to the erection of buildings' within the proviso to Section 12 of the Act and, as such, the respondent is bound to surrender, on expiry of the lease period, possession of the land and also the building after receiving the sum of Rs. 5,000/- as the value of the super-structure. The counsel pointed out that in this case the respondent-tenant in Exhibit A-1, a document which is in writing, registered, has agreed to surrender possession of the entire property and the constructions thereon, on the expiry of the period of the lease, on receiving the sum of Rs. 5,000/- as the value of the super-structure. In this case, that term really relates to the building which has been put up by the tenant after the date of the contract and clauses 2 and 4 amount to a stipulation made by the tenant as to the erection of buildings. That is, according to the learned counsel, the tenant's agreement to receive the sum of Rs. 5,000/- as the value of the super-structure that may be put up by him on the land demised under the lease and to surrender possession of the land and building, is a stipulation as to the erection of buildings, coming under the proviso to Section 12 and, as such, the respondent is not entitled to any rights under the Act. The counsel also pointed out that the Letters Patent Bench has not properly appreciated the scope of the decision of this Court in Vajrapani's case (supra). Counsel further urged that in this case, as the tenant had

agreed to receive the particular amount of compensation under Exhibit A-1, there was no question of his claiming any further right to compensation under Section 3 in which case alone Section 9 would apply. As section 3 did not apply, he pointed out, the application filed by the respondent under Section 9 was not maintainable.

12. Mr. S. C. Manchanda, learned counsel appearing for the respondent-tenant, on the other hand, urged that the clauses in the lease deed, Exhibit A-1, relied on by the appellant, cannot be considered to be stipulation as to the erection of buildings, so as to attract the proviso to Section 12 and that, on the other hand, the opening part of Section 12 which preserves the rights conferred on a tenant under the Act, has full force and effect. The counsel further urged that neither the right to claim compensation in the manner provided under the Act, by Section 3, nor the right to exercise the option to purchase the land, conferred on a tenant under Section 9 can be either taken away or limited by any co contract and, if so, the respondents application, filed under Section 9 to direct the appellant to sell the land, was properly entertained and allowed by the Letters Patent Bench. The counsel also pointed out that the decision in Vajrapani's case (supra) fully covers the point is issue and concludes the case in favour of the tenant.

13. Before we proceed to discuss the above contention of the learned counsel, it is necessary to point out that on the date when registered lease arrangement was entered into between the parties (April 30, 1947), the Act did not apply to such leases. It is only by the Amendment Act XIX of 1955, which came into force on September 10, 1955, that the Act has been made applicable to the present lease. Therefore, on the date when the lease arrangement was entered into, neither party would have contemplated entering into any arrangement taking away or limiting the rights conferred on a tenant by the Act. Now that the Act has been made applicable to the present lease, without anything more - and as is made clear by the opening words of Section 12 - the respondent-tenant will be entitled to avail himself of the rights conferred on him under the Act and any contract limiting or taking away such rights will have no effect, unless the appellant-landlord is able to establish that his claim for recovery of possession of the land and building is saved by the proviso to Section 12 of the Act.

14. We shall now consider what the rights given to a tenant under the Act are. Broadly speaking, two kinds of rights have been conferred on leases under tenancies falling within the scope of the Act. The first is a right to be paid compensation for the buildings erected by them on the leased land before they are evicted under Section 3 of the Act. The second right is the once conferred under Section 9 to the tenant to exercise the option to require the landlord to sell to him the land covered by the lease for a price to be computed in accordance with the said section. It should be further pointed out that under Section 9(1)(a) 'any tenant who is entitled to compensation under Section 3' is alone made eligible, when a suit in ejectment against him has been instituted, to exercise the option given to him under the said Section. Therefore, before a tenant can apply to the Court for an order that the landlord should be directed to sell the land for a price to be fixed by it, he must satisfy the essential requirement that he is a 'tenant who is entitled to compensation under Section 3'. Without anything more if a land has been leased to a tenant and if the latter puts up a building on the property, he will be entitled on ejectment to be paid compensation for the value of the building under Section 3, to be computed in the manner prescribed under the Act. Or, in the alternative, he can fall back upon his right to have the land sold to him in accordance with Section 9 of the Act.

15. Therefore, the question naturally arises whether the respondent, in this case, having entered into an agreement with the landlord under Exhibit A-1, to receive the amount specified therein as the value of the building and surrender possession of the land and the said building, is entitled to ignore

those terms and fall back upon Section 3 of the Act and claim compensation in accordance with the Act. If he can, then it is needless to state that he will be eligible to file an application under Section 9. Ultimately the question resolves itself to this : Whether a stipulation made by a tenant in the registered lease-deed limiting the quantum of compensation payable to him in respect of the building constructed by him of the land is covered by the proviso to Section 12 of the Act.

16. There is no controversy that in this case the tenant has entered into a written agreement which has been registered and he has put up the building on the land after the date of the contract.

17. Section 12 of the Act consists of two parts. The first part is a general provision saving to tenants comprehended by the Act the rights conferred by its operative terms notwithstanding any contract. Such rights would, amongst others, include the right to claim compensation under Section 3 and 4 and the right to exercise option to purchase the land from the lessor by an order of Court under Section 9 of the Act. The second part consists of the proviso which, so to say, makes an inroad into the generality of the saving, by saving contradictory stipulations from the operation of the statutory rights created by the Act. It is needless to state that if Section 12 had stopped with the first part, the respondent would be entitled to be benefit of every right conferred upon tenant by the Act. There is no controversy that the proviso is intended to cut down the scope of that saving; so to say, from and out of the prohibition against the operation of any stipulation in a contract limiting the rights conferred on tenant by the Act, an exception is carved out. The controversy before us is centered round and scope and limits of that exception.

18. We have already referred to the fact Section 13 provides that in its application to the City of Madras and to any other area to which the Act is extended, the Transfer of Property Act, 1882, shall, to the extent necessary to give effect to the provisions of the Act, be deemed to have been repealed or modified. If the provisions of the Act do not apply, the position would be that normally, under Section 108 of the Transfer of Property Act, before the expiry of the lease a lessee can remove all structures and buildings erected by him on the demised land. Further, under Section 108 there is nothing to prevent the lessee's contracting to hand over any building or superstructure erected on the land by him to the lessors, without receiving any compensation. That is, though under Section 108 the lessee has a right to remove the building, by contract he may agree to hand over the same to the lessor without the right to receive compensation at the end of the lease, the matter being entirely one of contract between the parties. But this normal rule under the Transfer of Property Act will not apply to the case before us as the provisions of the Act govern the rights of the parties.

19. With the background mentioned above, we shall now proceed to refer to the decision to which our attention has been drawn, by learned counsel on both sides. Quite naturally, Mr. Manchanda placed considerable reliance on the decision of this Court in Vajrapani's case (supra), which decision, we have already stated, has been treated by the Letters Patent Bench also as concluding the case against the appellant-landlord. On the other hand, Mr. Natesan, for the appellant, has urged that the question that arose before this Court in the said decision was a very limited one, viz, whether a stipulation, made by a tenant, for giving vacant possession of the land after demolition of the building which he had been authorised to construct thereon, is not one 'as to the erection of buildings' within the proviso to Section 12 and it was answered in the negative. That decision, according to the counsel, has no application to the facts of this case where, the object of the Act, viz., of preserving a building constructed on the land, has been given effect to by the terms of the contract entered into between the parties. As the Letters Patent Bench has proceeded on the basis that the said decision concludes the point against the appellant, it is necessary to refer to the facts of that case in some detail.

20. In Vajrapani's case (supra) the appellant had granted a lease of an open site in the town of Coimbatore to one Abirama Chettiar under a registered lease deed, dated September 19, 1934 for 20 years at an annual rent of Rs. 1,080/- for putting up a building suitable for use as theatre. 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 further 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 realising the arrears of rent due to them according to law, have the right to take possession though Court of the site in which the aforesaid buildings are put up after dismantling the construction and demolishing the building therein'. The original lessee constructed a theatre on the site and assigned his right to the New Theatre Carnatic Talkies Ltd., which was the respondent in the said appeal. The assignee was recognised as tenant under the original possession of the site on the expiry of the lease period and, on the lessee declining to comply with the said requisition, a suit was instituted by the lessors for recovery of possession of the land. During the pendency of the litigation the Act, as amended by Madras Act XIX of 1955, was extended to Coimbatore and the tenant filed an application under Section 9 for an order directing the lessors to convey the site covered by the lease deed for a price to be fixed by the Court. The learned single Judge of the Madras High Court allowed the application of the tenant under Section 9, on payment of full market-value of the land. The landlord unsuccessfully appealed to a Division Bench under Clauses 15 of the letters Patent and came up to this Court on certificate granted by the High Court.

21. The question that was debated before this court, on behalf of the appellant-landlord was that the application filed by the tenant under Section 9 was not maintainable as the proviso to Section 12 is attracted to the stipulation made by the tenant to demolish the building and surrender vacant possession of the land. After stating that the Act was passed to prevent loss to tenants upon the enforcement of the strict provisions of the Transfers of Property Act, this Court considered the scheme of the Act with particular reference to Section 3, 9 and 12. It was contended on behalf of the landlord-appellant that the stipulation relating to delivery of vacant possession of the site on the expiry of the period of lease, after removing the building is a stipulation as to the erection of buildings, coming within the proviso to Section 12 and, as such, the restriction on the liberty of contract between the landlord and tenant imposed by the opening clause of Section 12 stood removed. It was further contended on this basis that the lessee was bound by the terms of the lease and that he was not entitled to claim the benefit of Section 9 of the Act.

22. The majority constituting the Bench did not uphold this contention of the landlord, and said :

> "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 south 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 is 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 building would not, according to 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 Section 9. The stipulations not protected in Section 12 are only those in writing registered and related 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 utilised."

Based upon the concluding portion of the above extract, Mr. Manchanda has urged that the proviso to Section 12 will apply only to those stipulations as to the restrictions as to the size, the nature of the building constructed, the building material to be used therein and the purpose for which the building is to be utilised. The Letters Patent Bench has also adopted the same test for holding against the appellant.

23. The minority judgment, on the other hand, in the said decision, held that a stipulation by the lessee to remove the buildings, which he has been permitted to erect, when surrendering the land on the termination of the tenancy, is a stipulation as to the erection of buildings coming within the proviso to Section 12 of the Act. A perusal of the minority judgment further shows that it was conceded by Mr. Setalvad, learned counsel appearing for the appellant-landlord, that a stipulation limiting the quantum of compensation payable in respect of buildings constructed by tenant, provided for by Section 3 is within the meaning of the proviso to section 12 as being one with respect to the erection of buildings. This concessions is no doubt not referred to in the majority judgment but, apart from the concession, the minority judgment has discussed this aspect further and it was held ultimately that the stipulation in the lease deed before them where under the tenant agreed to dismantle the buildings put up by him on the leased land was a stipulation as to the erection of buildings and covered by the proviso to Section 12. But, in accordance with the majority view, the appeal was dismissed.

24. Though Prima facie the last part of the extract in the majority judgment, quoted above, and relied on by Mr. Manchanda, may appear to support his contention as also the view taken by the Letters Patent Bench, we are however not inclined to hold that the majority judgment in the above decision intended to lay down that only stipulations regarding restrictions about the size, nature of the building constructed, the building materials to be used therein and the purpose for which the building is to be utilised, exhaust completely all the stipulations that are protected by the proviso to Section 12. Those observations cannot be taken out of the context in which they appear. A reading of the extract quoted above from the majority judgment clearly shows that the object of the statute was to protect 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. Having regard to this object, the learned Judges have come to the conclusion that stipulations to vacate and deliver possession of the land after demolishing the building constructed by the tenant will not amount to a stipulation as to the erection of building, coming under the proviso to Section 12. On the other hand, the majority view is that the stipulation, that came up for consideration before them; would really amount to a stipulation, that came up for consideration before them; would really amount to a stipulation by a tenant giving up his right to enforce the statutory right conferred on him under Section 9. It is also significant to note that in the earlier part

of the judgment, the majority judgment has emphasized that on account of the inflationary pressure in the wake of the First World War many tenants who evicted by the landlords and, with a view to prevent loss to such tenants, the Act was passed. The concluding part of the observations in the extract, relied on by Mr. Manchanda, will have to be read in this background and, so read, in our opinion the position becomes clear that the learned Judges were only referring to the size and nature of building, materials used for building, etc., as illustrative examples of stipulations which will be covered by the proviso to Section 12 of the Act.

25. The provision in the lease deed which came up for consideration in the above decision, in and by which the tenant agreed to surrender possession of the land after demolishing the building, will, in our opinion, really amount to the tenant contracting himself out of the right to claim either compensation for the building under Section 3 or to exercise his option under Section 9 to purchase the land and that such a provision will be hit by first part of Section 12 which, as we have already indicated, preserves the rights given to tenant under the Act. Therefore, in our opinion, the decision in Vajrapani's case (supra) has been misunderstood by the learned Judges proposition that the stipulation contained in the lease deed before us cannot come within the proviso to Section 12. The case before us is not one under which the tenant has in any manner contracted himself out of the rights conferred on him by the statute. On the other hand, by allowing the building to stand on the property and agreeing to receive the amount of compensation provided for in the lease deed, the object of the legislation is fully satisfied. It must also be emphasized that the first part of Section 12 protects a 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.

26. We may add that Clause 2 of Exhibit A-1 clearly provides that the lessee can put up a building whose cost should not exceed Rs. 10,000/- and the plan of the proposed building has also to approved by Directors of the appellants and the construction to be put up by the tenant must be in accordance with the plant approved by the Directors of the lessors. Though Clause 2 does not, in so many words, refer to the size and nature of the building to be constructed or the building materials to be used therein, they are all implicit in the said clause where the cost has been mentioned and the plan of the building has to be approved by the Directors of the appellants. Apart from the fact that in view of the upper limit of the cost having been fixed, which itself will place a limitation on the size and nature of the building that could be constructed, as also the building materials that could be used therein, there is the further stipulation that the plan has to be approved by the Directors of the lessors as the plan will clearly and accurately give a correct idea about the size and nature of the building proposed to be put up on the land. It is only as per the plan so approved by the lessors that the building has to be put up on the land. This stipulation clearly shows that there is a restriction about the size and nature of the building. And it is in respect of such a building put up by the tenant in accordance with Clause 2, that the value is fixed under Clause 4. Therefore it follows that Clause 2 read with Clause 4 amount to stipulations as to the erection of buildings and, in this view the proviso to Section 12 will apply. This aspect has not been adverted to by the Letters Patent Bench.

27. In R. V. Naidu v. Naraindas ((1966) 1 SCR 110) this Court had to deal with a clause in the lease deed which provided that the tenants 'shall not rise any building whatsoever in the vacant site', but the lessee committed a breach of the covenant by putting up a building on the land. In the suit filed by the landlord for ejectment, the tenant claimed the right of option to purchase the land under Section 9 of the Act. The letters Patent Bench of the Madras High Court rejected the claim of tenant and declined to grant relief on his application filed under Section 9. In dealing with the claim of the tenant who was the appellant, this Court noted that the lease was not by a registered document and, therefore, the proviso to Section 12 has no application. But this Court has emphasised that a tenant

entitled to purchase under Section 9 must be a tenant entitled to compensation under Section 3. In view of the fact that the lease deed was not registered and as the proviso to Section 12 was ruled as not applicable, this Court held that the covenant in the lease deed prohibiting the tenants from putting up constructions will have to be ignored and the tenants declared entitled to compensation under Section 3 of the Act and in turn also to exercise the option to purchase the land under Section 9. Ultimately, this court held that the tenants, in that case, must be held entitled to their rights under Section 3 and 9, in spite of the covenant not to built and breach of it by them.

28. It is to be noted that this decision had to deal with a case where the lease deed was not a registered document and, as such, the application of the proviso to Section 12 was summarily ruled out. Hidayatullah, J. (as he then was), in his separate judgment, while agreeing with the conclusion reached by the other learned Judges, has emphasised that by the first part of Section 12, the tenant is protected against his own contract and the landlord is protected by the second part of the said section; but in the case before them the landlord could not seek protection of the second part because the lease deed was not registered.

29. In V. S. Mudaliar v. N. A. Raghavachary ((1969) 2 SCR 158) by a registered lease a vacant land was let to a tenant on the specific condition that the tenant 'should not erect any kind of permanent super-structures on the vacant site so as to entitle him to claim in future the value thereof in contravention of this stipulation and without any authority from the landlord, the tenant put up a permanent super-structure on the land. The lease was for a period of five years. As the tenant refused to vacate the land on the expiry of the lease term, the landlord filed a suit for recovery of possession of the land. The tenant claimed protection under the Act and also filed an application under Section 9. The High Court of Madras decreed the suit of the landlord and rejected the application filed by the tenant under Section 9. This Court, after again adverting to the scheme of the Act with special reference to Section 3, 9 and 12 distinguished the decision of this Court in Naidu's case (supra) on the ground that the stipulation by a tenant, made in a registered lease deed that he would not build any permanent structure on the land so as to entitle him to claim in future the value thereof, is a stipulation 'as to the erection of a building' within the proviso to Section 12 and, as such, upheld the decision of the High Court which declined to grant relief to the tenant. In the said decision, this Court again emphasised that Section 3 and 9 are subject to and controlled by the proviso to Section 12. Though Section 3 provides that a tenant shall, on ejectment, be entitled to be paid as compensation the value of any building erected by him, the right conferred on the tenant by Section 3 is controlled by the stipulation in the registered lease deed that he shall not erect permanent structures of any kind on the land so as to entitled him to claim in future the value thereof. This Court further held that the said stipulation in the registered lease deed over-rules the tenant's rights under Section 3 and that if a tenant erects a permanent structure in contravention of the stipulation, he is not entitled to any compensation under section 3. It was further held that as the said tenant was not entitled to any compensation under Section 3, he cannot claim the benefit of Section 9.

30. If a stipulation, contained in a registered lease deed that the tenant shall not erect structures on the land so as to entitle him to claim the value thereof and if such a stipulation over-rides the tenant's rights under Section 3 disentitling him to claim compensation under Section 3 in respect of buildings put up by him in contravention of the said stipulation, as held in Mudaliar's case (supra) we have no hesitation on holding that Clause 4, read with Clause 2 of Exhibit A-1, under which the respondent has agreed to limit the quantum of compensation payable in respect of building constructed by him is a 'stipulation as to the erection of buildings', attracting the proviso to Section 12 of the Act. In this view, we further hold that the said stipulation over-rides the tenant's rights

under Section 3, as he will not be eligible to claim compensation under the Act. It follows that as he is not entitled to compensation under Section 3, but only to the value of the building as per the agreement Exhibit A-1, the tenant cannot claim the benefit of Section 9. Therefore, it follows that the decree and judgment of the Letters Patent Bench under appeal has to be set aside.

31. Before we conclude we may also state that Mr. Natesan drew our attention to a Division Bench Judgment of the Madras High Court in Palaniappa Gounder v. Sridharan Nair ((1963) 2 MLJ 559). We do not propose to consider that decision as it is seen that the learned Judges had to consider the question whether a terms in the contract as to transfer of ownership of the building without any claim for compensation, at the termination of the lease, could be construed to be a stipulation made by the tenant as to the erection of buildings. The clauses that arise for consideration before us to which reference has been made, are entirely different. Though under Exhibit A-1 the respondent is bound to surrender possession of the land and the building, after receiving the sum of Rs. 5,000/- as the value of the building, during the arguments Mr. Natesan, learned counsel for the appellant-landlord has quite fairly stated that his clients are prepared to pay a sum of Rs. 10,000/- as the value of the building, provided the respondent-tenant surrenders vacant possession of the building and the land to the landlord within a period of six months from the date of this judgment, without putting the appellant to the necessity of taking out execution proceedings. We are of the view that the appellants' offer is quite reasonable. Accordingly, while allowing the appeal and setting aside the decree and judgment of the Letters Patent Bench, we restore the judgment and decree of the learned single Judge of the Madras High Court in A.S. No. 208 of 1960, dated January 30, 1963, subject to the following conditions :

> (1) The appellant will deposit in the Trial Court, within three months from this date the sum of Rs. 10,000/- (rupees ten thousand) as offered by their counsel as the value of the building.
>
> (2) The respondent is directed to surrender possession of the building within a period of six months from the date of this judgment.
>
> (3) If the respondent so surrenders vacant possession of the building and the land within six months or at any earlier time, on such surrender of possession he will be entitled to withdraw from Court the sum of Rs. 10,000/- (rupees ten thousand) deposited by the appellants.
>
> (4) If the respondent does not deliver possession of the land and building within the period mentioned above, the appellants can levy execution and recover possession of the properties; but, under that contingency the respondent will be entitled only to a sum of Rs. 5,000/- as the value of the building and the balance amount can be withdrawn by the appellants.
>
> (5) If the respondent surrenders possession of the building and the land within the period mentioned in this judgment, there will be no liability for mesne profits and the direction given by the learned single Judge in that regard will stand cancelled. If however, possession is not delivered within time, the enquiry into mesne profits, as ordered by the learned single Judge, will proceed.
>
> (6) If the respondent delivers possession of the land and the building within six months, parties will bear their own costs throughout. If on the other hand the

respondent commits default in the matter of delivery of possession, the appellants will be entitled to their costs throughout.

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