ANDHRA PRADESH HIGH COURT

Mohammad Jaffer Ali

Vs

S. Rajeswara Rao

(N Kumarayya, C.J. H G R Ekbote and Sambasiva Rao, JJ.)

02.11.1970

JUDGMENT

Sambasiva Rao, J.

1. "Whether a lesses of a cinema theatre is a tenant, and not liable to be evicted otherwise than under the Act."

2. This is the question which has been referred to a Full Bench by Venkatesam and A. D. V. Reddy, JJ. The Act concerned is "the Andhra Pradesh Buildings (Lease, Rent and Eviction Control) Act (XV of 1960."

3. The facts are simple and are not in dispute. A cinema theatre situate in Saidabad, Hyderabad City, known as "Jagat Talkies" was given on lease by the vendors of the plaintiffs to the defendant on 7-1-1960 under a lease deed, marked as Ex. A-2. That lease was initially to be for a period of three years. The defendant however, had the option to extend the lease by another two years. The plaintiffs purchased the cinema house from the lessors under the sale deed. Ex. A-1, dated 4-7-1963. By his letter, Ex. A-4 of 11-7-63, the defendant attorney the lease in favour of the plaintiffs and since then was paying the rent to them alone. The defendant exercised the option and extended the lease period by two years. Even the extended period came to an end by 10-1-1965, because the defendant had been put in possession of the demised premises on 11-1-1960 in pursuance of Ex. A-1.

The defendant was to deliver possession to the plaintiffs on 11-1-1965 according to the terms of the lease, but did not do so. the plaintiffs filed a petition under the Act for eviction, but for reasons not now disclosed, it was withdrawn by them. It is stand by the defendant that the withdrawal had taken place even before he had filed his counter and the said statement is not denied. It can therefore, be safely inferred that the eviction petition had been withdrawn by the plaintiffs on their own initiative and not on account of any objection raised by the defendant.

Soon after the withdrawal of the petition, they filed the present suit on 24-4-1965 for eviction of the defendant from the demised premises, for possession of the premises with the machinery in working condition, for recovery of a sum of Rs. 6666-66 towards period from 11-1-1965 to 24-4-1965, and damages for the furture period from the date of the suit. It was alleged in the plaint that the lease in question was a composite lease of a cinema theatre with machinery and equipment including projectors for running cinematography picture and was, as such, outside the scope of the Act. On the other hand, the defendant averred that a civil Court had not jurisdiction to entertain the suit for eviction and the lease came within the purview of the At. The lower Court held that what was leased out to the defendant was the theatre along with its accessories solely for the purpose of running a cinema business. Since only purpose of exhibiting the films in the theatre for a particular period, the Act would not govern the lease and consequently the relieves of eviction and possession came within the purview of the ordinary Civil Court. Having taken that with some damages for use and occupation. Aggrieved by the said decision, the defendant brought the matter in appeal to this Court and while hearing that appeal, our learned brethren have referred the above said question for the opinion of a Full Bench.

4. Learned counsel for the appellant argues that the Lower Court has laboured under a misapprehension that the demise is one of a running business. In this reading of the lease deed, it is none other than a demise of the theatre with its appertaining structures, furniture and fittings like film projector, etc. The learned counsel for the respondents, however, endeavors, to sustain the conclusion of the Court below and to maintain that the lease outside the scope of the Act.

5. It is thus necessary to refer to the material clauses of the lease deed. It starts with saying in clause (1) that the lessors were the absolute and exclusive owners of the cinema theatre. Clause (2) then recites that the parties have agreed to enter into a lease in respect of the theatre, known as Jagath Talkies, inclusive of its machinery in good working order, furniture, hotel, pan shop, cycle stand and the entire area in the theatre. The rent fixed for the first two years of the lease was Rs. 1000/- per month. In case profits increased considerably, the rent also would be enhanced. The enhanced rent shall continue for the extended period, if the lessee opted to such an extension. The lessors themselves were liable for the payment of the property-tax and it was also their responsibility to attend to the maintenance of the building of the theatre, once in two years. Likewise, the lessors undertook the task of keeping the machinery of the theatre in good working order and if the expenses of such repairs exceeded Rs. 50, they themselves should bear them. If the theatre was 'closed by the Government underage objection and for any other reason whatsoever ", the lessors had no right to recievethe rentals for the period of closure and further, they alone were liable to meet the costs incurred to remove the objection and to reopen the theatre. It is significant that no schedule was attached to this lease deed. Another important feature of the lease deed should also be mentioned here. Time and again, the deed refers to the

lease of a theatre. For instance, clause (3) which dealt with delivery of possession to the lessee said that "the theatre shall be delivered to the lessee by the lessors on 11th day of January, 1960". Similarly, clause (4) declares that "the period of lease of the said theatre shall be three years". Likewise, clause (5) also refers to the lease as one of a theatre. The parties took care to place the responsibility of maintaining the buildings on the lessors.

6. From these recitals and features of the lease, it is difficult to infer that the demise is one of a business. Significantly, nowhere in the lease deed the word 'business' is mentioned. Had the parties intended to deal only with the business, and not with the theatre as such, it is natural and logical to except them to refer to the 'business' which was intended to be leased out. The absence of any reference in the lease deed to the good-will, which is always a necessary concomitant of a business, is very menaningful. the plaintiffs would have the Court believe that what was leased out was a running cinema which the previous owners had been running prior to the lease and therefore it was as of a running business the demise was contemplated. If such were the case, one would except the parties to also agree about the producers and distributors of films with whom the lessors had been doing business and from whom they were getting films for exhibition in the theatre. Not even the film that washing exhibited at the time of delivery to the lessee is mentioned in the deed. On the other hand several clauses in the lease deed in general and clause (2) in particular make the position very plaint, that what was demised was the theatre along with its machinery, furniture, hotel, pan shop, cycle stand and the entire area under the theatre. We have therefore no hesitation to construe the lease as essentially a demise of the building known as Jagath Talkies and the area covered by it with the accessories like furniture and machinery. It is its dominant part that decides the character of a demise. (Vide *Venkayya v. Subba Rao*[1]*, and Uttamchand v. S. M. Lalwani,).*

7. Learned Counsel for the plaintiffs-respondents, however, places great stress on the provision for enhanced rent, in case the lessee gained considerable profit from the third year onwards. He also emphasises on clause (2) whereunder the responsibility of removing al objections and keeping the theatre going is placed on the lessors. According to the learned counsel, these two features of the lease clearly lead to the conclusion that it is a demise of a business. We fail to understand how this inference follows from these two clauses. It is not unnatural for the parties to agree to pay and receive enhanced rents, if the circumstances changed. it is not uncommon for the rents being increased or decreased, if there is a material change in the circumstances in which the demised premises are leased. In fact, the Act itself provides for such adjustments in rents and also for fixation of fair rent. Nor the provision making the lessors responsible for removing all objections raised by the Government or arising from any other source leads to the inference that the cinematorgraph business is intended to be leased out. The theatre was taken lease by the defendant for putting it to use. It is, therefore, reasonable to assume that the parties had agreed to

put the loss on the shoulders of the lessors if the theatre had to be closed down for reasons for which they were responsible. We are, therefore, clear in our mind that these two clauses do not make the demise a lease of the business.

8. The plaintiffs themselves do not appear to have understood the lease in that what, at any rate, till they filed plaint they said that the businesses leased out. Time and again, they stated in the plaint that the suit was filed for recovery of possession of the leased premises, after evicting the defendant therefrom. the schedule to the plaint, significantly, describes the property leased an only the premises bearing certainmunicipal numbers knows as Jagath talkies together with buildings, theatre erections, constructions, out-house, compound walls, machinery, furniture, electric installations, fittings, telephone etc. This description of the leased property sets the controversy at rest. Indisputably, the plaintiffs were averring in their plaint that what they had leased out was only premises with its machinery, furniture and fittings and not the business. Indeed, in paragraph 7 they stated clearly that the demise was a composite lease of a cinema theatre with machinery. Having said so, they cannot afterwards turn round and contend that it was a lease of a business. That contention was obviously an afterthought, probably advanced for the first time during the trial of the suit. For these reasons, we reject the contention of the plaintiff-respondents that the lease is outside the scope of the Act, because it was a demise of a business.

9. The second ground on which the lease was said to be outside the purview of the Act is that the demise is not merely of a structure and furniture but is a composite one including the cinema apparatus like the projector and sound equipment. It is, therefore, contended that what was leased out is not a 'building' within the meaning of Section 2 (iii) of the Act. In other words, the contention is that the letting out of the cinema apparatus also along with the structures made a vital difference and excluded the demise from the meaning of the word 'building'. It is, therefore, necessary to read the definition of the word 'building' contained in the Act which is in the following terms."

"Section 2 (iii), 'Building' means any house or hut or part of a house or hut let or to be let separately for residential or non-residential purposes and includes:-

(a) the garden, grounds, garages and out-houses, if any, appurtenant to such house, but or part of such house or hut and let or to be let along with such house or hut or part of such house or hut:

(b) any furniture supplied or any fitting affixed by the landlord for use in such house, hut or part of a house or hut, but does not include a room in a hotel or boarding house."Breifly stated, the argument for the landlords is that apparatus and machinery are not mentioned in this definition and if they are included in any demise, such lease would be outside the scope of the definition.

On the other hand, it is argued for the tenant that the words "any fittings affixed by the landlord for use in such house" should be taken to include machinery and apparatus also and consequently a cinema theatre comes within the ambit of the definition. Thus the words "any fittings affixed by the landlord for use in such house" have become crucial in deciding the question.

10. The present Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, came into force on 21-4-1960. Formerly, the Andhra Area of the State of Andhra Pradesh was governed by the Madras Buildings (Lease and Rent Control) Act, 1949 and the Telangana Area by the Hyderabad Houses (Rent, Eviction and Leases) Control Act of 1954. The Madras Act of 1949 came in the place of a similar Madras enactment of 1946. In both the earlier Madras Acts the definition of a building did not contain the words "or any fittings affixed". The present Act introduces these words in the definition after the words "furniture supplied" and before the words "by the landlord." The definition in the former Hyderabad Act, however, was identical with the definition contained in S. 2 (iii) of the present Act. In the statements of the objects and reasons of the new Act it is explained:

> "In order to secure uniformity in the administration of the law on the subject, it is necessary to have unified law applicable throughout the State. The Government have, therefore, decided to integrate both the Acts. The have also decided to take the opportunity to incorporate some new provisions in the law so as to overcome certain difficulties experienced in the working of the existing Act. The Bill is intended to give effect to the above decisions."

Then, in bringing about uniformity, the Legislate has added the words "or any fittings affixed" to the definition. The preamble to the Act was made not only to control rents of buildings, but also to prevent unreasonable eviction of tenants therefrom. The Act deals with not only residential buildings, but also non-residential buildings. Besides, the definition of the word "buildings" takes within its purview gardens, grounds, garages and out-houses if any, appurtenant to the house, hut or part of the house or hut. Further, it included any furniture supplied or any fittings affixed by the landlord for use in the house, or hut. At the same time, the definition also has taken care to declare that a building within the meaning of the Act, does not include a room in a hotel or a boarding house. The exclusion of a room in a hotel or a boarding house is in our view very meaningful in the context it occurs. It denotes that barring a room in a hotel or a boarding house, all tenancies in respect of structures came within the ambit of the definition. It is, therefore, reasonable to infer that the intendment of the Act is to confer wide amplitude on the word 'building'.

11. Further, the words "any house or hut or part of a house or hut" occur throughout Section 2 (iii) and the scope of the definition is formulated around and with reference to these words. It is,

therefore, reasonable to infer that in order to have a 'building' within the meaning of the definition, there should be a house, hut or part of such house or hut in the first place. The word 'house' is not defined in the Act. It is not permissible to restrict its meaning to residential premises only, for the very obvious reason that the Act release not only with residential but also non-residential structures. Generally, the word 'house' has very wide import. Oxford dictionary defines it is "buildings for human habitation or occupation, building for keeping animals or goods; audience in theatre; performance in theatre etc., "while the chambers Dictionary defines the word as " a building for dwelling in : a building in general: a dwelling place: an inn: a public House: a house-hold..... a trading establishment: a legislative or deliberative body or its meeting place: a convent: a school boarding house: an audience, auditorium or performance." Thus, from the use of the word "house", the widerange of the definition of a building can be easily understood. When along with the house, huts and all accessories including other structures, vacant sites, furniture and fittings for use in the house are included in the definition of a building: the Act takes within its sweep all tenancies relating to structures.

12. The introduction of the words "any fittings affixed" which did not occur in the previous definition of the Madras Acts, certainly enlarges the scope of the definition and brings it on par with the definition contained in the Hyderabad Act. The meaning of the word "fittings" is given in the Oxford Dictionary as "fixture, apparatus, furniture." Stroud states the meaning of the word thus:

"1. Fittings for gas, includes all the apparatus for the supply or consumption of gas, including gas stoves used for heating

2. Water supply fittings fixtures and fitting up."

The word "fixtures" is said by Stroud as having no precise legal meaning. The learned author says:

"It is used by different writers to express different meanings: but it is always applied to article of personal nature which have been affixed to land. In its most extensivesense it means anything annexed to the freehold in such a manner as to become parcel of it."Proceeding on the lines formulated by these meanings of the word "fittings." it is manifest that it is so extensive that it takes within its amplitude anything annexed to the house or hut or part of a house or hut. Even apparatus, if it is fixed in the building for use therein, becomes a fitting within the meaning of the Act. Therefore, if a house which contains certain apparatus is leased out, there is no reason to exclude it from the definitions of the "building" contained in the Act. A cinema theatre is nothing but a large house with furniture supplied and cinema apparatus and other accessories affixed therein. It is reasonable therefore to construe the definition as inclusive of a cinema theatre.

13. If that is so, learned counsel for the plaintiffs-respondents argued that even a factory and an industrial establishment would become 'a building' within the meaning of the Act and would be governed by it. It is not possible to lay down a hard and fast rule in such matters. Each case will necessarily depend upon its own circumstances and the instance, machinery is the main and essential part of the demise, certainly it will not be a lease of a building within the meaning of the Act. If, on the other hand, the parties intend by the lease to have a demise of a house or part of a house mainly, and incidentally include its furniture, equipment, fittings and accessories, then clearly it would be a lease of a building within the meaning of the Act. It is obvious that each case will have to be judged individually according to its terms and in the light of the provisions of the Act.

14. Sri Rajeswara Rao appearing for the landholder-respondents contends that some of the provisions of the Act would not be compatible with the construction of the word 'building' as it collusive of cinema theatre. As illustrations of this argument he has pointed out Sections 4 (4), 12, 14 and 19. Section 4 deals with determination of fair rent. Sub-section (4) thereof refers to the rates that are to be allowed for non-residential buildings. It says that if the rate of rent or rental value referred to in sub-sec (20 does not exceed fifty rupees per menses an increase not exceeding 561/4 per cent on such rate or rental value and if the rate of rent or rental value exceeds fifty rupees per menses, as increase not exceeding 75 per cent on such rate on rental value. can bellowed. Fixation of fair rent on this basis for cinema theatre also I not difficult, There is no doubt that the same principles can be applied to cinema theatre as well. Section 12 provides for recovery possession 12 provides for recovery of possession of a building by landlord for repairs, alterations etc. Like other building , recovery of possession of cinema theatres also can be sough jet under Section 12. There does not appear to e any impediment in the way. Section 14 declares that no landlord shall without just or sufficient cause. cut off or without just or sufficient cause, cut off or withhold any of the amenities enjoyed by the tenant. How a cinema theatre could be different from other varieties of buildings is this respect is not pointed out. Likewise, the applicability of Section 19 to cinema theaters is easily conceivable. There is nothing in the way of tenants invoking Sec. 19 to their aid and making such repairs are are permissible under law to a cinema theatre. His thus fails to see how the above provisions are incongruous with the construction of Section 2 (iii) as including a cinema theatre.

15. Now coming to the decided cases, they were not of one view even before the Act of 1960 was made and the words 'any fitting affixed' were incorporated in the definition. Though these words were in the definition of the buildings contained in the Hyderabad Act,. it appears, that there are no decided cases construing that definition. We are, therefore, left with the Madras decision alone.

16. The first of them is Raja Chetty v, Jagannathadas Govindas, This is a case which arose under the Madras Act (XV of 1946) and was concerned with a lease of a cinema theatre with furniture, fittings, talkies equipment., machinery etc. One of the terms of the lease agreement was that the rent should be paid each month before the 10th of the succeeding month and if the rent remained unpaid for two tenancy months after it became payable the landlord was free to re-enter the premises. The argument advanced in the case was that the parties knew or must be deemed to have been parties knew or must be deemed have been aware of the provisions of the Madras Act (XXV of 1949) and it was open. to the to enter into a contract containing terms manifestly inconsistent with the provisions of the Act. and there was nothing illegal in such a course. The Court upheld this contention and held that the parties must be presumed to have known of the provisions the Act and contracted out of the terms of the Act. While saying so, the learned Judges further held that the Act was but applicable as the lease was not one of a mere building and furniture only. The learned Chief Justice observed that the lease was of a talkie house with every thing that is necessary to run cinema shows and to sport up such a composite lease as this into separate contracts of lease and hire is t destroy is altogether. But, it should be noted that this view was adopted, when the definition of the expression 'building' did not contain the words, any fittings affixed by the landlord.'

17. Even then, in the Gaiety Theatre case, AIR 1959 Mad 650, another Division Bench, of the same Court, expressed the opinion that where the object of the lease was to run the cinema business in the building then in existence together with the other buildings used as booking offices. office rooms, garges. latrines and so on, it is impossible to escape the conclusion that what was let was a 'buildings'.

18. The High Court of Andhra Pradesh considered the question on more than one occasion before the new act was enacted. In Venkayya v. Subba Rao. AIR 1957 Andh Pra 619, a Division Bench was considering whether the lease of a factory comprising of site, building and machinery in buildings came within the purview of the Madras Buildings (Lease and Rent Control) Act of 1949. While holding that the provisions of the Act do not govern the rights of the parties under a lease of a running factory comprising costly machinery intended to be used for and manufacture of oil, the learned Judges laid down the rule that-

> "The question in each case would be what is the dominate part of the demise and what is the purpose for which the building was construed and let out".It should be noted that lease as one of a running factory comprising costly machiner intended to be used in the manufacture of oil. Such a lease was contused as being outside the scope of the Rent Control Act of 1949.

19. Another Division Bench of this Court consisting of Umamaheswaram and Krishna Rao. JJ (it

should be noted that the latter learned Judge was a member of the Bench which decided AIR 1957 Andhra Pra 619 (supra), had to consider whether the definition of the expression 'building' occurring in the Madras act (XXV of 1949). That is Amrital N. Shah v. Annapurnamma, Andh learned Judges. following the earlier decision of the Madras High Court held that the lease of a cinema did not come within the purview of the Madras Act 25 of 1949. The learned appearing for the landlord in that case brought to the notice of the learned Judges a decision of the Saurashtra High Court in Karsandas v. Karasnji, AIR 1953 Sau 113, and that of the Supreme Court in Karnai Properties Ltd. v, Mills Augugstine, . In the said two cases, the Courts were considering the scope of a definition which included the words "fittings affixed by the landlord". Unamheswaram J., distinguished the two cases by pointing out that the definitions of 'premises' in the Statute which the Supreme Court as well as the High Court of Saurasthtra had to consider, included not only furniture but also fittings etc. Since those words did not occur in the Madras Act, the learned Judges stated that the case were distinguishable from the one before them. From these observations it is reasonable to infer that had these words so occurred in the Madras Act also, the learned Judges would have taken a different view and held that a cinema theatre also was covered by the definition of a 'building'.

20. In AIR 1953 Sau 113, the Saurashtra High Court has to decide the question as to whether a lease of a talkie house came within the definition of the expression 'premises' contained in the Bombay Rents, Hotel and Lodging House Rtes control Act, 1947. The definition there in addition to being analogous to the definition in the Madras Act, further contained the words 'also including any fittings affixed to such buildings or part of a buildings for theme beneficial enjoyment thereof.' The learned Judges held that the lease of the theatre which included furniture, electric fittings and also a generator for generating electricity came with the scope of the expression 'premises' occurring in the Bombay Act.

21. Kali Prasad v. Jagadish Pada, , is another case where a similar view was taken by the Calcutta High Court. In that case, the High Court was construing the expression 'premises contained in Section 2 (8) of the West Bengal Premises Rent Control (Temporary Provisions) Act , 1950. In clause (b) of Section 2 (8) occurred the words 'any furniture supplied or any fitting affixed night the landlord for these of the l tenant in such building or hut or part of a buildings or hut.' In the light of this definition, the Court held that a cinema house with it furniture and talkie equipment came within the purview of the Rent Control Act.

22. This view was approved and retired in a later decision of a Division Bench of the same Court in *D.S. Jain v. Maghamala Roy*[2]. Mukerjee J., speaking for the Bench observed:

> "Where the letting is of a furnished and well equipped cinema show house and the building the furniture and the machines and machines, etc., all constitute its essential and

> integral parts or components. They cannot be regarded separately or as distinct or different units. They are linked up together by the lease itself and the entire lease is the lease of a 'premises' under the W.B. Premises Tenancy Act. The mere fact that the different parts or components belong to different persons, who granted the lease as joint lessors would not affect the position under the Act."

It should be noted that the material part of the definition of 'premises' occurring in the West Bengal Premises Tenancy Act, so far as this point is concerned, was the same as the definition in the earlier Kali Pradad's case, .

23. The Supreme Court itself considered the cope of the expression 'premises' defined in Section 2 (8) of the West Bengal Premises Rent Control (Temporary Provisions)Act, 1950 in . As we said, the definition in S.2 (8) materially tallies with the definition contained in the Andhra Pradesh Act and in the Andhra Padesh Act and in addition contains the words 'any fitting affixed by the land lord for the use of the tenant....."The landlord in that case had let a number of flats for accommodation and shop rooms and that the tenant of each of those tenements had a separate bath-room and a covered verandah, and there were also, fans, plug points towel racks, besides a basin, a commode and glass shelf, etc. The landlord, according to the terms of the lease, had to supple, without any additional change, electrical energy for consumption by the tenant for the use of lamps, fans, radio, ovens for cooking etc. The tenants applied under Section 9 of that Act for fixation of fair rent. The landlord resited that claim on the ground that the Act did not apply because the petitioners could not be considered to bee 'tenants' of 'premises' as defied in Section 2 (8).Apparently the defined contention was that the expression ;premises' did not include tenements with special facilities and conveniences of the an true supplied by the landlord. Sinha J. (as he then was) speaking for the Court, dealing with this argument of the landlord, observed at page 31:

> "The definition of 'premises' set out above is in wide terms and includes not only gardens, grounds and out houses. if any, appertaining to a building or part of a building or part of a building, but also furniture supplied by the landlord for the tenants' use and any fittings affixed to the building, thus indicating that the legislature was providing for all kinds of letting. The definition of 'premises' and 'hotel or lodging house' between them almost exhaust the whole filed covered by the relationship of landlord and tenant, subject to the exceptions noted in the definition of premises."

The learned Judge, in the following passage, later observed:

> "Under this head the question reduces itself to this; whether if by a stipulation between the landlord and the tenant the landlord agrees to provide for additional amenities like electric

> power for consumption and such other facilities the case is taken out of the operation of the Act. The Act is intended "to make better provision for the control of rents of premises". It has defined 'premises' in very wide terms, if not impossible, to accept the connotation that the legislature intended the provisions of the Act to have a limited application depending upon the terms which an astute landlord may be able to impose upon his tenant. In order fully to give effect to the provisions of the statute, the Court has to give them the widest application possible within the terms of the statute. Having those considerations in view, we do not think that the supply of the amenities aforesaid would make any difference to the application of the Act to the premises in question."

These observations, in our opinion, give full support to the view we have taken.

24. A Full Bench of the Kerala High Court in Govindan v. Kunhilekshmi Amma, , expressed a similar view. The word 'buildings' was defined in Section 2 (1) of the Kerala Buildings (Lease and Rent Control) Act of 1959 and was amended by Act 29 of f1961. That definition is practically identical with the definition in the Adhra Act of 1960 and includes the words 'any fittings affixed by the landlord'. Vaidialingam J., speaking for the Full Bench after an elaborate review of the entire case law, exposed the view that the lease of a cinema theatre including furniture, fittings, electrical installations, machinery and equipment came within the ambit of the definition. This fully accords with the view we are now taking.

25. Learned Counsel for the landlords, however attempts to distinguish this case by pointing out that the legislature introduced the words "or any fittings affixed" in clause (b) of sub-section (1) of Section 2 of the Kerala Act by the amendment Act 29 of 1961, the declared object of which was to include cinema theatres also and bring them within the ambit of the Act. Inview of this stated object, the ambit of the Act was wide enough to include cinema theatres. It is, therefore, contended that the words 'or any fittings affixed' had no separate significance and merely followed the object of the amendment. This, we are afraid, is a misreading of the judgment of the Full Bench of the Kerala High Court. In paragraph 20 of the judgment Vaidialingam J., specifically referred to this aspect of the matter and explained why he had referred to the objects and reasons of the amendment Act., In that connection he pointed out:

> "We are referring to this aspect only for a limited purpose, namely the legislature felt that cinema theatres should also be brought within the ambit of the expression 'building' occurring in sub-section (1) of Section 2 of the Act; and it was for that purpose that the Legislature has included in clause (b) of sub-sec. (1) of Section 2 the words 'or any fittings affixed." As to whether by the addition of these words, the leases in these cases, will come within the definition of the Act or whether the provisions of the Act will apply or not is a totally different point. Therefore the avowed object of the legislature whether

> that object was achieved or not, is a different point annexing the Amendment Act, was to bring, within the expression 'buildings' cinema theatres also."

After stating this the learned Judge proceeded to ultimately hod that the words 'or any fitting affixed' enlarged the ambit of the expression 'building', and brought within it cinema theatres also. From a reading of the judgment, it is obvious that the Full Bench felt that the object of the amendment Act of bringing cinema theatres also within the operation of the Rent Control Act was achieved by introducing the words 'or any fitting affixed'. In the view of the Full Bench, those words made all the difference and where adequate to bring in cinema theatres within the scope of the expression 'building'.

26. There is a single Judge's decision of the Madras High court in *Nanda Rao. v. Lakshmanaswami Mudaliar*[3] which also considered the question whether a particular lease of a take house fell within the ambit of the expression 'building' contained in section 2 (2) of the Madras Buildings (Lease and Rent Control) Act, 1960. The definition included the words 'any fittings affixed by the landlord.' Natesan J., who decided the case reviewed some of the cases we have referred to above and finally, at page 162 made the following observation:

> "In the case of a composite lease, where substantial part of the rent goes in hire of machinery and plant, and Act cannot apply, what is thereby leased is not a theatre simplicities, but a running cinema business with all its accessories. The Act controls and regulates only the letting of buildings and not transfer of business concerns and running business. for periods together with the buildings. The question for consideration in each case would be whether what is leased is a theatre buildings with its normal adjuncts as a building constricted to serve a a theatre, or something more than a buildings an equipped cinema house."

After thus stating the law, the learned Judge held that the property demised in the case before him came under the control of the Madras Rent Control Act. entailing the tenant to seek its protection against eviction.

27. The latest case on the subject is that of a Division Bench of this Court (of which one of us, viz., Gopal Rao Ekbote J., was a member) in *Ramanathan v. Seeta Maha Lakshmi*[4], The learned Judges were disposing of a writ appeal brought against an order of our learned brother Vaidya J. There, furniture and fittings affixed in the premises were let out with a cinema hall for a certain period. The contention raised before the single Judge, as well as the Division Bench, was that a lease did not come within the purview of the expression 'buildings; occurring in Section 2 (iii) of the Andhra Pradesh Act of 1960. Repelling that contention and affirming the view of the learned Single Judge, Gopal Rao Ekbote J., speaking for the Court, observed:

> "The furniture supplied or any fittings affixed by the landlord in the premises and let out along with the cinema hall the entire thing comes within the definition of building and consequently the provisions of the Act would govern the relationship of landlord and tenant, the result of which is that although the term of the lease deed has expired, the landlord would not be in a position to evict the tenant, except for anyone of the grounds mentioned in Section 10 of the grounds mentioned in Section 10 of the Act. The relationship of landlord and tenant till then continues."

While arriving at this conclusion, the Division Bench followed the Supreme Court decision in . We have no doubt whatever that this is the correct statement of the legal position.

28. Our attention was, however invited to another decision of the Supreme Court in Uttamchand v.S. M. Lalwani, . There a Dal mill building with fixed machinery in sound working order and accessories was leased out an an annual rent. The intention of the lessee in accepting the lease was to us the building as a Dal Mill. The question which fell for consideration before the Supreme court was whether the Dal Mill was an 'accommodation' within the meaning of Section 3 (a) of the Madhya Pradesh Accommodation Control Act, 1955. The expression, 'accommodation' in that Act, in so far as it related to the fittings, is a follows:

'S. 3 (a) (y), Any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof."

Gajendragadkar, C.J., speaking for the the Court held that the character of a lease has to be determined by asking the question as to what was the dominant intention of the parties in executing the document. Then proceedings to consider the terms of the lease, the learned Chief Justice stated at page 719:

> "As we have already noticed, Section 3 (a) (y) (3) takes within the definition of accommodation any building any fittings affixed to such building included any fittings affixed to such building or part of building for the more beneficial enjoyment thereof. There can be n doubt that the fittings of the machinery in the present case cannot be said to be fitting which has been fixed for the more beneficial enjoyment of the building. The fittings of which Section 3 (a) (y) (3) refers are obviously fitting made in the building to afford incidental amenities for the person occupying the building. That being so, not fall under Section 3 (a) (y) (3). if the fittings in question had attracted the provisions of Section 3 (a) (y) (3) there would have been no difficulty in holding that the lease is in respect of accommodation as defined by the said provision."

Having thus stated the legal position, the learned Chief Justice probed into the question as to

what the dominant intention of the parties was and ultimately found that-'The fixtures described in the schedule to the lease are in no sense intended for the more beneficial enjoyment of the building. The fixtures are the primary object which the lease was intended to cover and the building in which the fixtures are located comes incidentally. That is why we think the High Court was right in coming to the conclusion that the rent with the appellant had agreed to pay to the respondent under the document in question cannot be said to be rent payable for any accommodation to which the Act applies."It should be noted that the fixtures the learned Chief Justice was referring to were the machinery relating to the Dal Mill. It is obvious that this decision, in the light of the peculiar definition it had to interpret, has no bearing on the problem before us. The definition in that case specially limited the nature of the fitting as those intended for the mere beneficial enjoyment of the building. That requirement undoubtedly makes very material difference between the case before the Supreme Court and the case on hand. In the definition in the Andhra Pradesh Act, the amplitude of the definition has been rendered very wide by using the words any fitting affixed by the landlord for the use in such house. The cinema projector and the sound equipment and other fitting in the cinema theatre we are considering were certainly affixed for use in the house let out to the lessee.

29. This is all the case law on the point which has been brought to our notice. We fell no doubt whatever that all of them point to only one conclusion that the demise on hand is one of a 'building' within the meaning of Sec.2 (3) of the Act, It , therefore, follows that the lessee is a tenant within the meaning of the Act and is not liable to be evicted otherwise then under the Act. The question referred to us in answered accordingly. The matter will not go back to the Division Bench for further and final disposal of the appeal.

30. Costs of this reference will abide the result.

ORDER CHINNAPPA REDDY, J.

31. In view of the answer given by the Full Bench this appeal has to be allowed. At this stage the plaintiff has filed an application for amendment of the plaint. He wants to introduce the words 'and the cinema business" in paragraph 7 of the plaint after the words "cinematographic pictures" and before the words "it is outside the scope". The Full Bench interpreted the agreement between the parties and came to the conclusion that the agreement was not a lease of the business. The Full Bench also stated:

> "The plaintiffs themselves do not appear to have understood the lease in that way, at rate till they filed their plaint, because no where in the plaint they said that the business was leased out. Time and again. They stetted in the plaint that the again. they stated in the plaint that the suit was filed for recovery of possession of the leased premises, after

evicting the defendant therefrom,"

It appears to us that it is to get over the effect of this statement in the judgment of the Full Bench that the plaintiff is now seeking this amendment. We do not think that he can permitted to do so, at this belated state. The petition for amendment of plaint is, therefore dismissed. The appeal is allowed with costs. The appellant will be entitled to get a refund of all the amounts deposited in excess of the rent payable by him. The Memorandum of Cross-objections is dismissed. No costs.

32. Appeal allowed.

Cases Referred.

1AIR 1957 Andh Pra 619
2(1964) 68 Cal WN 1136
3(1969) 1 Mad LJ 153
4(1970) 2 Andh WR 112