KERALA HIGH COURT

K. Kungu Govindan

Vs

Parakkat Kunhilekshmi Amma

Writ Appeals Nos. 66 and 67 of 1964 and A. S. Nos. 97, 188 and 280 of 1962

(A. Vaidialingam, S. Velu Pillai and T.S. Krishnamoorthy Iyer, JJ.)

17.11.1965

JUDGMENT

Vaidialingam, J.

1. The point referred by the learned Chief Justice and Madhavan Nair, J., for adjudication by this Full Bench, in substance is one relating to the question as to whether the letting of the two picture houses in these cases, to which we will refer later, and evidenced by the lease deed Ex. A-1 in respect of one theatre, and by a compromise decree, in respect of the other threatre, come within the ambit of the Kerala Buildings (Lease and Rent Control) Act, 1959, Act 16 of 1959 (hereinafter to be referred to as the Act).

2. It is necessary to set out in brief, the circumstances which led to this reference being made to the Full Bench. It will be seen that the subject-matter of the leases are two cinema houses, situated in Kozhikode one the Coronation Threatre, and the other the Badha Picture Palace. Both these picture houses belong to the Pootheri family. It is also seen that the Coronation Theatre was leased out on 28-8-1956, by the owner of the premises, one Krishna Menon, in favor of the first respondent in A. Section 188/1962. The lease deed regarding the said transaction is Ex. B-1. The total rent per month in respect of the items mentioned in the three schedules, come to about Rs. 1600. There is also a provision in the lease deed for payment of enhanced rent after one year. The landlord demanded surrender of the properties, after terminating the lease, on 25-7-1960. But inasmuch as the lessee did not comply with the demand, the lessor had to institute a suit for eviction and recovery of possession, before the Subordinate Judge's Court, Kozhikode as O. S. No. 49/1960. In that suit, ultimately a compromise decree was passed on 31-1-1961, in and by which, the lessee agreed to surrender possession of the properties on 1-11-1961, and also further agreed to pay an enhanced rent of Rs. 2100. But before the expiry of the period, within which the surrender was to be made, the Kerala Buildings (Lease and Rent Control) Amendment Act, 1961, Act 29 of 1961, had come into force, amending the original Act of 1959. The Amendment Act was published on 31-8-1961, though it is seen, that the Act itself was to take effect from the date of the Parent Act, namely 3-4-1959. In consequence, the lessee, claiming protection from eviction, on the basis of the Act, filed an application before the lower Court, E. P. 879/1961, for a declaration that in consequence of the Amendment Act. Act 29 of 1961, he could not be evicted

and, therefore, the decree could no longer be put in execution. The learned Subordinate Judge, by his order, dated 25-11-1961, accepted the claim made by the lessee, and passed an order to the effect that the landlord is not entitled to get possession of the properties. Against that order, the landlord has filed A. S. No. 188/1962 before this Court.

3. Similarly, in respect of the other picture house, namely the Radha Picture Palace, it was the subject again of a lease, by the owner, in favor of the respondent in A. Section 280/1962, under Ex. A-1, dated 7-3-1956. To have a general idea of the nature of the clauses contained in both the lease deeds, which are substantially the same, we will have to refer, in the latter part of this judgment, to some of the clauses in Ex. A-1. But it is enough at this stage to note that the term provided in Ex. A-1 expired on 16-3-1961; and inasmuch as surrender of possession was not obtained, the landlord, in turn had to institute O. S. No. 26/1961 before the lower Court, for eviction. Here again, the defense raised by the lessee was that he cannot be evicted; and his line of defense was also similar, to the defense raised by the lessee, under Ex. B-1. The lower Court in this case accepted this contention of the lessee. But ultimately on 31-1-1962, the lower Court, while passing a decree for eviction, in favor of the landlord, qualified it by saying that the said decree for eviction is subject to execution under the provisions of the Act. Against that decree, the lessor has filed A. Section 280/1962; and the lessee has filed another appeal-more by way of cross appeal-viz., A. S. No. 97/1962. Both the lessor and the lessee seem to be challenging the decree on several grounds.

4. In the meanwhile one of the lessees, filed O. P. No. 1548/62 in this Court, challenging the constitutional validity of the Act, on several grounds, with which this Full Bench is not now concerned. But later on, it is seen that the lessor raised another contention, in the said writ petition, to the effect that the Act does not apply to leases of the kind in question; that is, in short, the Act does not apply to leases of cinema houses. Therefore, the lessors asked for a declaration that the Act does not apply. To this writ petition, it is seen, that the lessees of both the cinema houses were made respondents. But inasmuch as certain constitutional points were also taken on behalf of the lessors, the State Government was made a party to the original petition. Our learned brother, Govindan Nair, J., has disposed of the original petition by his judgment, dated 20-12-1963. The learned Judge has not gone into the constitutional questions that were raised before him; but, on the other hand, considered the one and only question, namely as to whether the provisions of the Act apply to the leases, in question, and on that aspect, the learned Judge, ultimately, held in favor of the landlords, and came to the conclusion that the leases, in question, do not attract, the provisions of the Act. We will have to advert a little later, to the reasons given by the learned Judge for coming to this view; because the view expressed by the learned Judge, is very strongly supported, and pressed for our acceptance by Mr. V.K.K. Menon, learned counsel for the lessors.

5. Against the decision of our learned brother, in O. P. 1548/1962, the two lessees have filed two appeals, namely writ appeals 66 and 67 of 1964, the former by the lessee of the Radha Picture Palace, and the latter by the lessee of the Coronation Theatre. All the three first appeals, namely A. S. Nos. 97, 188 and 280 of 1962, as well as the two writ appeals, W. A. 66 and 67 of 1964, came up for hearing before the learned Chief Justice and Madhavan Nair, J. The learned Judges have expressed their opinion on certain aspects. In considering the question as to whether the two transactions evidenced by Exs. A-1 and B-1 are really leases or licenses, the learned Judges have also stated that the leases, evidenced by Exs. A-1 and B-1, are really leases of the buildings, the

furniture fittings and electric installations, and the machinery and accessories described in Schs. A, B and C appended to those instruments. The learned Judges have also held that these transactions are not mere licenses. Then the learned Judges after expressing their opinion on certain other contentions that were taken before them, ultimately dealt with the contention of the lessors, that the leases in question, do not come within the provisions of the Act. So far as that is concerned, the learned Judges' opinion appears to be that it involves a substantial question of law as to the scope and applicability of the Act : accordingly they have referred the following question for our decision :

> "Do the letting of the Radha Picture Palace, Kohzikode, evidenced by Ext. A-1 dated 7-3-1956 in O. S. No. 26 of 1961 of the Court of the Subordinate Judge, Kozhikode, which arises for consideration in A. S. Nos. 97 and 280 of 1962; and the letting of the Coronation Theatre, Kozhikode, evidenced by the compromise decree dated 31-1-1961 in O. Section 49 of 1960 of the Court of the Subordinate Judge, Kozhikode which arises for consideration in A. Section 188/62 and W. A. No. 67 of 1964, come within the ambit of the Kerala Buildings (Lease and Rent Control) Act, 1959 ?"

6. It is necessary to refer to the enactments, which have a bearing on the point in question, and which may be necessary for the purpose of appreciating the contentions that have been taken before us by Mr. V.K.K. Menon, learned counsel for the lessors, the learned Advocate General to whom notice appears to have been issued by the Division Bench during the hearing of the appeals and writ appeals, and also by Mr. A.S. Krishna Iyer and Mr. V. Harihara Iyer learned counsel appearing for the lessees of the theatres, in question.

7. The earliest enactment in force, which we have to refer to, is the Kerala Buildings (Lease and Rent Control) Act, 1959, Act 16 of 1959. As provided, in Sub-Section (4) of Section 1 of the said Act, the Act has come into force on the 3rd day of April 1959. The preamble to the Act states three purposes for which the statute provides, namely, (1) to regulate the letting of buildings. (2) to control the rents of such buildings, and (3) to prevent unreasonable eviction of tenants therefrom. Section 2 contains the definitions of the various expressions occurring in the Act. Sub-Section (1) of Section 2 defines the expression 'building', and it is as follows :

> "(1) "building" means any building or hut or part of a building or hut, let or to be let separately for residential or non-residential purposes and includes -
> (a) the garden, grounds, wells, tanks and structures, if any, appurtenant to such building, hut or part of such building or hut, and let or to be let along with such building or hut;
> (b) any furniture supplied by the landlord for use in such building or hut or part of a budding or hut; but does not include a room in a hotel or boarding houses;"

It will be seen that Clause (a) of Sub-Section (1) of Section 2, as it originally stood, took in the garden, grounds, wells, tanks and structures, if any, appurtenant to such building, hut or part of such building or hut. and let or to be let along with such building or hut; and Clause (b) of Sub-Section (1) of Section 2 took in only am furniture supplied by the landlord for use in such building or hut or part of a building or hut. And the definition also clearly shows that the

expression 'building' will not include a room in hotel or boarding house.

8. That Act was amended by the Kerala Buildings (Lease and Rent Control) Amendment Act, 1961, Act 29 of 1961. It is only necessary to refer to two provisions of the Amendment Act, namely Sub-Section (2) of Section 1 to the effect that the provisions of the Amendment Act shall be deemed to have come into force on the 3rd day of April 1959-the date of coming into force of the principal Act itself. Pausing here it may be stated that the Amendment Act itself was published in the State Gazette on 31st August 1961. Section 2 of the Amendment Act, amended Section 2 of the Principal Act, particularly Clause (b) of Sub-Section (1) of Section 2, by providing that after the words "any furniture supplied", occurring in that clause, the following words shall be inserted viz., "or any fittings affixed". Therefore, it will be seen that Clause (b) of Sub-Section (1) of Section 2 of the Principal Act, after it has been so amended, will read thus :

> "any furniture supplied or any fittings affixed by the landlord for use in such building or hut or part of a building or hut; but does not include a room in a hotel or boarding house."

9. Before we close the discussion on this aspect, it may also be stated that a new Act, which is now in force, namely, the Kerala Buildings (Lease and Rent Control) Act, 1965, Act 2 of 1965, has been enacted; and it has come into force with effect from 1st day of April, 1965. The provisions in the new Act are substantially the same as those contained in the parent Act, as amended by the 1961 Act. In particular, it will also be seen that the expression 'building' occurring in Sub-Section (1) of Section 2 of the new Act, is identical with the definition of that expression, as contained in the Parent Act, as amended by the Act of 1961.

10. It is really based upon the amendment effected to the Act by the Amendment Act, Act 29 of 1961, that the lessees appear to have taken up the plea that cinema houses are also included within the expression of 'building' as defined in Sub-Section (1) of Section 2 of the Act. In the Statement of Objects and Reasons to the passing of the Amendment Act, it is only necessary to refer to this aspect namely that "the definition of 'building' in the Kerala Buildings (Lease and Rent Control) Act, 1959, is found to be not comprehensive enough, inasmuch as, it does not take in building with fittings affixed by the landlord, as in the case of cinema theatres, though the definition takes in any furniture supplied by the landlord. The definition is enlarged to include such fittings affixed to building also. The other matters in the Statement of Objects and Reasons need not be adverted to. We are only referring to the Statement of Objects and Reasons, regarding the object of the amendment, being to take in buildings with fittings affixed by the landlord, as in the case of cinema houses. As to for what purposes the court can refer to the Statement of Objects and Reasons, is a matter which will be dealt with by us in the latter part of this judgment. It is only necessary to note at this stage, that the object of the amendment was for the purpose of including cinema theatres also and bring them within the ambit of the Act.

11. Our brother Govindan Nair, J., in his judgment in the original petition referred to above, after considering the nature of the leases in these matters, has taken the view, that though the building is let along with the furniture and machinery, the purpose for which the building is let was for running a cinema theatre; and the dominant part of the demise is, according to the learned Judge, the demise of the cinema theatre, namely a business venture, which has normally nothing to do with the letting of a building as such. The learned Judge again states, after referring to "any

furniture supplied or "any fittings affixed by the landlord", as mentioned in Clause (b) of Sub-Section (1) of Section 2 of the Act, that such furniture and fittings can only be furniture and fittings which normally go along with a building. Ultimately the learned Judge is of the view that the furniture and the fittings must form part of the building and intended for the more convenient, or more beneficial enjoyment of the building; and are such, as will afford better amenities, in the use and enjoyment of the building. The learned Judge, after taking note of the fact that the two leases in question are composite leases, held that essentially the letting of the accessories is necessary for carrying on a business. The learned Judge has no doubt distinguished some of the decisions relied on, on behalf of the lessees; and ultimately held that the leases, in question, do not amount to letting of buildings, within the meaning of that term, in Section 2(1) of the Act. The reasons given by the learned Judge are no doubt very strongly urged for our acceptance by Mr. V.K.K. Menon, learned counsel for the lessors.

12. Mr. V.K.K. Menon has broadly raised three contentions before us, namely (1) that the Statement of Objects and Reasons for passing the Amendment Act, 29 of 1961 though for making the Act applicable to cinema theatres cannot be taken into account, as an aid for construing the provisions in Section 2(1) of the Act. The learned counsel alternatively also urged that even if that was the object of the Legislature, in enacting Act 29 of 1961, that object has miserably failed, as will be seen from the various other provisions contained in the Act itself. (2) The second contention of the learned counsel is that the preamble to the Act, which provides a key to the understanding of the Act itself has dealt with only buildings intended for residential purposes; and according to the learned counsel, they do not apply to buildings let for carrying on an industry or businesections (3) The third and last contention of the learned counsel is that even as per Section 2(1), as it stands after the amendment, fittings affixed for use in the building must be such fittings, which are intended for the more convenient or more beneficial enjoyment of the building itself, and must be in the nature of additional amenities, so to say, provided by the landlord. According to the learned counsel, fittings of machinery, as in these cases, may enable the lessees to run an industry or business, namely the cinema business; but those fittings cannot by any stretch of imagination, be considered as and by way of providing additional amenities for the better and more convenient enjoyment of the buildings. Therefore, according to the learned counsel, the Act itself does not apply to the leases on hand.

13. On the other hand, the learned Advocate General, to whom as already mentioned, notice was issued by the Division Bench inasmuch as certain constitutional questions were raised by the lessees,-urged that the Statement of Objects and Reasons can certainly be referred to for the purpose of understanding as to why exactly the Legislature thought it necessary to bring an amended measure, as also the mischief the Legislature aimed at remedying in passing the said statute. The learned Advocate General also referred us to certain decisions, to which we will advert later. The learned Advocate General pointed out that, in the preamble to the Act, there is absolutely no restriction which will indicate that the Act is intended only for the purpose of controlling the rents of residential buildings. On the other hand the learned Advocate General pointed out that the preamble is couched in very wide terms; and the definition of the expression 'building' occurring in Sub-Section (1) of Section 2 of the Act makes it very clear that it takes in not only buildings which are let or to be let for residential purposes, but buildings that arc let or to be let for non-residential purposes also. Therefore, according to the learned Advocate General, the contention of Mr. V.K.K. Menon that the preamble to the Act gives a clear indication that the Act applies only to residential buildings, should not be accepted. Regarding the contention of Mr.

V.K.K. Menon that Sub-Section (1) of Section 2 of the Act does no apply, the learned Advocate General pointed out that Sub-Section (1) of Section 2 is very clear and unambiguous; and it provides that any furniture supplied or any fittings affixed by the landlord, for use in such building, or hut, or part of a building or hut, should also be included in the definition of 'building' occurring in Sub-Section (1) of Section 2 of the Act. Therefore the learned Advocate General pointed out, that the only ingredient that is necessary for the purpose of bringing a particular item as 'building' as defined in Section 2(1) of the Act, is that it must be lease of a building, including any furniture supplied or fittings affixed by the landlord for use in such building. The learned Advocate General in this connection pointed out that the fact that there are items of furniture supplied and fittings affixed by the landlord for use in the buildings in question, is not controverted by the lessees. If that is so, the learned Advocate General pointed out that going by the natural interpretation to be placed on the clear wording contained in Section 2, Sub-Section (1), Clause (b) of the Act the leases in question are leases of buildings, and in consequence, the Act will stand attracted to them.

14. The contentions of the learned Advocate General are supported by Mr. A.S. Krishna Iyer learned counsel appearing for the lessee in A. Section 188/1962, and by Mr. V. Harihara Iyer, learned counsel, appearing for the respondent in A. Section 280/62 and who is the appellant in A. Section 97/62, and who is also the lessee of the Radha Picture Palace. Both the learned counsel have drawn our attention to the provisions contained in the various clauses of the lease deeds. They also emphasised the fact that Schedule A really relates to the buildings and they are described in full; Schedule B deals with the various articles of furniture, fittings, electrical installations etc.; and Schedule C relates to the various items of machinery and other equipments, which have been fitted in the two buildings.

15. The first question that arises for consideration will be as to what exactly is the ambit of the preamble to the Act. We have already referred to the preamble and also indicated the three matters which arc sought to be regulated under the Act. In this connection it is necessary to refer to the decision of the Supreme Court reported in *K.K. Kochunni v. States of Madras and Kerala*[1], as to what use the court can make of matters contained in the preamble to a statute. At page 1097 of the report. Subba Rao, J., states that the preamble of a statute is a key to the understanding of it" and it is well established that "it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt". The point to be noted in the above observation of the Supreme Court is that the preamble is a key to the understanding of the Act. Having that in view, we can very well dispose of the second contention raised by Mr. V.K.K. Menon namely that as per the preamble to the Act it is very clear that the Act is intended to apply to and control only the letting of buildings for residential purposes and that it does not apply to non-residential buildings at all.

16. A perusal of the preamble to the Act, will make it very clear that there is absolutely no such restriction indicated at all. On the other hand, the expressions used are of a very general nature, that the Act is to regulate the lease of buildings and to control the rents of such buildings, in the State of Kerala. It is also stated that it is found expedient to regulate the letting of buildings and to control the rents of such buildings and to prevent unreasonable eviction of tenants therefrom in the State of Kerala. Therefore, the expressions have been used in very wide terms. And so far as we could see, we do not find any scope for placing any restriction whatsoever in respect of the use of the expressions in the preamble. But whatever it is, coming to Section 2(1) of the Act,

which defines the expression 'building' that deals specially with buildings or huts or part of buildings or huts which are let or to be let separately (a) for residential purposes, and (b) for non-residential purposes. And there are various other provisions in the statute itself which deal with the rights of parties in respect of residential and non-residential accommodation. Therefore we are not inclined to accept the contention of Mr. V.K.K. Menon that the preamble to the Act or the definition of the expression 'building' occurring in Section 2(1) of the Act, or any other Section of the Act, leads to a conclusion that the Act does not take in letting of non-residential buildings. Therefore, if the Act will otherwise apply to cinema theatres, in our opinion, it must be held that inasmuch as such letting is for non-residential purposes, the Act has to be made applicable. Therefore this contention of Mr. V.K.K. Menon will have to be rejected.

17. We have already pointed out that Mr. V.K.K. Menon, learned counsel for the lessors, has raised the point that the Statement of Objects and Reasons for the purpose of enacting the Kerala Buildings (Lease and Rent Control) Amendment Act, 1961, Act 29 of 1961, which amended the Principal Act, should not be taken into account for the purpose of finding out as to what exactly is the connotation of the expression 'Building' occurring in Section 2(1) of the Act. In our opinion this contention of the learned counsel, that the Statement of Objects and Reasons cannot be considered, for the purpose of aiding the court to construe the section or statute itself, appears to be

[1] AIR 1960 SC 1080

well founded. But that does not, as we will immediately show, preclude the court from referring to the Statement of Objects and Reasons, as pointed out by the learned Advocate General at any rate for a limited purpose. We will refer to the decisions of the Supreme Court on this aspect. In AIR 1960 SC 1080, the Supreme Court had to consider the Statement of Objects and Reasons for the Constitution (Fourth Amendment) Act, 1955. In that connection. Subba Rao, J., at p. 1086 of the report, after referring to the earlier decision of the Supreme Court reported in *Aswini Kumar Ghose v. Arbinda Bose*[2], observes that "This Court has held in AIR 1952 SC 369, that the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute". But the learned Judges have referred to the Statement of Objects and Reasons, and therefore it became necessary for the learned Judges to throw a word of caution, which is in the following words : "But we are referring to it only for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced, and the purpose for which the amendment was made". Mr. V.K.K. Menon relied upon the earlier part of the extract quoted above, namely that the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute. Even the learned Advocate General did not demur to this proposition; but the learned Advocate General-and, in our opinion, quite rightly-pointed out that the latter extract referred to above, will clearly show that the Court can consider the Statement of Objects and Reasons for the limited purpose of enabling the Court to understand the purpose for which the amendment was made by the Legislature.

18. In *Gujarat University v. Shri Krishna*[3], Shah, J., had to deal with the same aspect. At p. 713 of the report, the learned Judge observes : "Statements of Objects and Reasons of a statute may and do often furnish valuable historical material, in ascertaining the reasons, which induced the Legislature to enact a Statute, but in interpreting the statute, they must be ignored." The same point that was reiterated in the earlier decision of the Supreme Court, has been reaffirmed by it in this decision; so, that is, that the Statement of Objects and Reasons cannot certainly be taken info account for the purpose of construing a particular statute. But from this decision also it will be

seen that it is open to the Court to consider the Statement of Objects and Reasons for a limited purpose, namely to ascertain the reasons which induced the Legislature to enact the amending measure. Sinha, C.J., in the decision reported in *State of West Bengal v. Union of India*[4], has again reaffirmed the same position At p. 1247 the learned Chief Justice observes : "It is however well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used, except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment. . . .". Therefore from these decisions, it will be seen, that the Statement of Objects and Reasons can only be looked into for a limited purpose. The learned Advocate General has drawn our attention to another observation of Das, J., in *S.C. Prashar v. Vasantsen*[5], At p. 1367. His Lordship observes : "It is indeed true that the Statement of Objects and Reasons, for introducing a particular piece of legislation cannot be used for interpreting the legislation, if the words used therein are clear

[2] AIR 1952 SC 369 [4] AIR 1963 SC 1241
[3] AIR 1963 SC 703 [5] AIR 1963 SC 1356

enough. But the Statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation, in order to find out what was the mischief, which the legislation aimed at." Therefore, it is very clear that the Court can have regard to the Statement of Objects and Reasons in order to understand the background leading to a particular legislation, as well as the purpose which the Legislature intended to achieve by amending the measure. And, as pointed out in the latest decision referred to above, the court can look into it for the purpose of finding out what exactly was the mischief the Legislature was trying to aim at when passing the amending measure.

19. No doubt there is another principle, which is well established and which has been laid down in the recent decision of the Supreme Court reported in *Regional P. F. Commissioner v. Shibu Metal Works*[6], wherein the Supreme Court has stated that if two constructions are possible of particular words occurring in a statute, the Court should prefer the construction, which would help the furtherance of the object of the Act.

20. It is, having due regard to these principles laid down by the Supreme Court, that we have now to consider as to what exactly is the effect of the matters obtained in the Statement of Objects and Reasons when the Legislature passed the Amendment Act, 29 of 1961. 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-Section (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-in enacting the Amendment Act, was to bring, within the expression 'building cinema theatres also. And it is for that purpose that we are referring to the Statement of Objects and Reasons; and in our opinion, we are justified in so referring, as per the views of the Supreme Court, in the various decisions referred to above.

21. The learned Advocate General has drawn our attention to more in less identical legislations

enacted by various States, and it is necessary to refer to the same just to have a general idea of the nature of the legislation in the sister States. For example, in Bombay. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, is in force. Section 5. Sub-Section (8) of that Act defines the expression "Premises". But it is necessary to state that under sub-clause (iii) of Clause (b) of Sub-Section (8) of Section 5 of the said Act, premises will include any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. And the definition also states that it will not include a room or other accommodation in a hotel or lodging house. Similarly, the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 (Act 3 of 1947), defines the expression 'accommodation' in Section 2(a). It will be seen that the said expression takes in residential and non-residential accommodation in any building or part of a building; and under Clause (iii) of Section 2(a), it will include any fittings affixed to such building or part of building for the

[6] AIR 1965 SC 1076

more beneficial enjoyment thereof. The definition also clearly states that it will not include any accommodation used as a factory or for an industrial purpose where the business carried on in or upon the building is also leased out to the lessee by the same transaction. The Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, is a recent one. Section 2(iii) thereof defines the expression 'building', and there again it will be seen that 'building' means any houses or hut or part of a house or hut, let or to be let separately for residential or non-residential purposes, and includes under Clause (b) "any furniture supplied or any fittings affixed by the landlord for use in such house or hut or part of a house or hut, but does not include a room in a hotel or boarding house". It may be pointed out that this definition, is Identical with the definition contained in our statute. The West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, (West Bengal Act 17 of 1950), defines the expression "premises" in Section 2(8) thereof. The main definition takes in "any building or part of a building or any hut or part of a hut let separately", and includes, in Clause (b) "any furniture supplied or any fittings affixed by the landlord for use of the tenant in such building or part of a building or hut or part of a hut". Then it excludes certain other types of accommodation from the definition. It may be stated that the definition in Section 2(8), read with Clause (b) thereof, the expression 'premises' is substantially in accordance with the definition of 'building' given in Section 2(1) of our statute. It may also be stated that the expression "premises" as defined in Section 2(8) of the West Bengal Act, has been the subject of consideration in three decisions of the Calcutta High Court, as well as of the Supreme Court, to which we will be referring in the latter part of this judgment. We are only adverting to this aspect, because the interpretation of this Section, which is more or less identical with the Section in our statute, came up before the Calcutta High Court as well as before the Supreme Court. There is another statute in West Bengal, namely The West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 (West Bengal Act 38 of 1948). There again, Section 2(8) defines the expression 'premises' in substantially the same manner as that defined in the 1950 Act, to which reference has been made earlier. The only other statute that requires to be noted is the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (United Provinces Act 3 of 1947). In the said Act, the definition of "accommodation" is contained in Section 2(a). The main part of the definition takes in "residential and non-residential accommodation in any building or part of a building" and includes, under Clause (iii), "any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof".

22. It will be seen, by a reference to the various enactments referred to above, that the Legislature, in each of the States has adopted different methods of bringing in 'fittings'. That is, in

some cases it is tacked on to any furniture supplied by the landlord for use in the building, in certain other cases it is given under a different sub-clause and in some Sections referred to above, when dealing with fittings, there is provision made to the effect that the fillings affixed to buildings are for the more beneficial enjoyment thereof. But in most of the statutes referred to above, the expression that is used is substantially in accordance with the wording of our Section, namely "any furniture supplied or any fittings affixed by the landlord for use in such building or hut or part of a building or hut."

23. It is now necessary to have a general idea of the nature of the decisions. The earliest derision, dealing with the West Bengal Act, is the decision of the Calcutta High Court reported in *Residence Ltd. v. Surendra Mohan,*[7] No doubt, the learned Judges did not have, in that case, occasion to consider as to whether a cinema theatre is included in the expression 'premises'. But the learned Chief justice and Banerjee, J., had to consider whether in respect of the particular lease in question, it is a lease of the "premises" as defined in Section 2(8) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (West Bengal Act 17 of 1950); because, if it is only a premises, the tenant can apply for fixation of fair rent. The definition of the expression 'premises' in Section 2(b) of the Act has been extracted by the learned Judges at p. 127 of the report. That will clearly show that the said definition is almost in pari materia with the definition of 'building' contained in Section 2(1) of our Act. Ultimately foe learned Judges have held that the fact that the landlord was providing certain amenities, such as electrical fight, hot water, and such like, in that case, will not take it away from the definition of the expression 'premises' as defined in the Act. The learned Judges also held that a lease in respect of a premises, wherein fittings have been affixed by me landlord, for use of the tenant, will come within me definition of 'premises' as defined in Section 2(8). It is only for this limited purpose that this judgment of the Calcutta High Court is useful and we are referring to it. Apart from it, the definition of the expression 'premises' has also been quoted by the learned Judges of the Calcutta High Court; and that expression was again considered in the decision reported in *Kali Prasad v. Jagadish Pada*[8]*,* In that decision the learned Chief Justice and C.N. Das, J., had to consider, directly the question as to whether the lease of a cinema house or talkie house is lease of a premises as defined in Section 2(8) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 (West Bengal Act 17 of 1950). Section 2(8), which is dealt with by the learned Judges in that decision, has been extracted in the earlier decision in AIR 1951 Calcutta 126, referred to earlier. The contention that was taken before the learned Judges appears to be that the lease in that case, which related to a cinema business, is not a 'premises' as defined in Section 2(8) of the West Bengal Statute C.N. Das, J., delivering judgment on behalf of the Bench, has adverted to the definition of the expression 'premises' in Section 2(8) of the West Bengal Act, and has expressed the view that the word 'premises' is wide enough to include any building including any furniture and fittings therein. The learned Judge is also of the view that the word 'building' in Section 2(8), is not restricted in any way as being confined to residential houses alone. Ultimately the learned Judge expresses the view that Section 2(8) of the Act, is wide enough to include a case, where premises, on which a cinema was being carried on are let out, and therefore the Rent Controller in that case had jurisdiction to consider the question of fixation of fair rent.

24. Therefore, a Division Bench of the Calcutta High Court had occasion to consider squarely the question as to whether a lease of a cinema house with all the equipment and machinery, as is the case before us. is taken in by the definition of the expression 'premises' as defined in Section 2(8) of the West Bengal Act 17 of 1950 which provision, as we have already pointed out, is identical

with the expression 'building' as defined in Section 2(1) of our statute. And the learned Judges of the Calcutta High

[7] AIR 1951 Cal 126

[8] AIR 1953 Cal149

Court, have held that a lease in respect of a cinema business will conic within the definition of that expression. That decision has been followed by a later Division Bench of the same High Court, by Mookerjee, and D. Basu, JJ., in the recent decision reported in *D.S. Jain v. Meghamala Roy*[9], No doubt, in that decision the learned Judges had to consider the provisions contained in the West Bengal Premises Tenancy Act, XII of 1956. But a reading of the judgment, will clearly show that the definition of the expression "premises" contained in the 1956 Act, is almost identical with the definition of that expression, as contained in the 1950 Act which the learned Judges had to consider in AIR 1953 Calcutta 149. Mookerjee, J., takes note of the fact that the lease in that case, is of a furnished and well equipped cinema house, comprising a building with furniture, machines, and machineries, etc., necessary for a cinema show house. No doubt in that case it is seen that the cinema house and the machines and machinery etc., included in the lease, were owned by different lessors. That, according to the learned Judges, will not make any difference for the purpose of considering as to whether it is a lease of a "premises" or not. The contention that appears to have been taken before the learned Judges is that the lease in that case, was not a lease of a "premises" under the Act, and therefore the tenant has no right to approach the Rent Controller for fixation of fair rent. So far as that aspect is concerned, the learned Judges have referred to the definition of "premises" contained in Section 2(f) of the Act. The learned Judges have also adverted to the fact that there is an earlier decision reported in AIR 1953 Calcutta 149, wherein the learned Judges had to consider, identical provisions contained in Section 2(8) of the 1950 Act and wherein it was held that the definition of the expression 'premises' will take in leases of cinema houses also. Therefore the learned fudges overruled the contention that was taken before them and ultimately held that lease of a cinema house, furnished and well-equipped, as mentioned by the learned Judges in the judgment, is a lease of 'premises' under the West Bengal Act 12 of 1956. Therefore the Division Bench judgment of the Calcutta High Court rendered earlier in AIR 1953 Calcutta 149, was approved and reiterated by the learned Judges, in the decision reported in (1964) 68 Cal WN 1136.

25. There is another decision, which directly deals with the question as to whether a lease of a talkie house, will come within the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, Bombay Act 57 of 1947. That question arose for decision before the learned Judges of the Saurashtra High Court, in the decision reported in *Karsandas v. Karsanji*[10] The learned Judges had to consider, in that case, the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, Bombay Act 57 of 1947. The learned Judges had in particular to consider the definition of the expression 'premises' in Section 5(8) (b) of the Act. The learned Judges refer to the fact of the expression 'premises' defined in Section 5(8)(b) as meaning any building or part of a building let separately (other than a farm house), including, among other things, any furniture supplied by the landlord for use in such building or part of a building, and also including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. Pausing here, it may be stated, that no doubt in the particular definition which the learned Judges had to consider, it was provided that "any fittings affixed to such building for the more

[9] 68 Cal WN 1186

[10] AIR 1953 Saur 113

beneficial enjoyment thereof". Ultimately the learned Judges held that the lease of the theatre in that case which included the furniture and electric fittings and also a generator for generating electricity, were all affixed to the building and have been fitted to the theatre, and therefore it was a lease of a premises, coming within the meaning of Section 5(8)(b) of the Bombay Act. These are the decisions which directly deal with the question, as to whether a transaction by way of lease, in respect of a cinema house, will come within the purview of the particular enactment dealt with by the learned Judges.

26. In *Venkayya v. Venkata Subbarao*[11], Viswanatha Sastri and Krishna Rao, JJ., had no doubt to consider the question as to whether a lease regarding the running of a factory will come within the ambit of the Madras Buildings (Lease and Rent) Control Act, Madras Act 25 of 1949, and whether it will be a 'building' as defined in Section 2 of the said Act. The learned Judge, no doubt ultimately held, having due regard to the particular definition contained in Section 2, which is materially different, from the definition occurring in our statute, that Section 2 of the Madras Act will not take in lease of a running factory. But it is seen that later on, another Division Bench of the Andhra Pradesh High Court, consisting of Umamaheswaram and Krishna Rao, JJ., bad to consider, again under Madras Act 15 of 1949; as to whether a lease of a talkie house, in that case will come within the definition of the expression 'building' under Section 2 of the said Act. That decision is reported in *Amrit Lal N. Shah v. Annapurnamma*[12], By that time it may also be stated, that a decision of the Supreme Court in 1957, to which we will have to refer later, had also been rendered; and on the basis of that Supreme Court decision, it was argued that the definition of 'building' with fixtures, which include also fixtures affixed to it, will take in cinema theatres also. But so far as that aspect is concerned, it is seen that the learned Judges, after referring to the decision of the Supreme Court reported in *Karnani Properties Ltd. v. Miss Augustine*[13], *(S)* have stated that the said decision was rendered under the provisions of the West Bengal Premises Rout Control (Temporary Provisions) Act of 1950, wherein the expression 'premises' has been defined, as including the furniture supplied, as also the 'fittings' affixed by the landlord for use of the tenant in such building or part of the building etc. The learned Judges have also stated that it was in view of that definition, that Sinha, J., (as he then was) held that the term was comprehensive to take in not only the building and its appurtenances but also of the furnishings, electric installations and other amenities provided by the landlord. We will have to refer to this Supreme Court decision immediately, after adverting to the reasoning of the learned Judges of the Andhra Pradesh High Court for distinguishing that judgment of the Supreme Court. Then the learned Judges ultimately refer to the definition of the term 'buildings occurring in the Madras Act; and they also take note of the fact that the said definition is differently worded from the definition, which the Supreme Court and to consider. The learned Judges also refer to the decision of the Saurashtra High Court reported in AIR 1953 Saurashtra 113; and the learned Judges particularly emphasise that the definition of 'premises' contained therein, is distinguishable from the one Andhra Pradesh High Court had to consider. Ultimately Umamaheshwaram, J., winds up the discussion on this aspect by stating that the definition of 'premises' in the statute, which the Supreme Court, as well the High

[11] AIR 1957 And Pra 619
[12] AIR 1959 And Prad 9
[13] AIR 1957 SC 309

Courts of Saurashtra and Calcutta had to consider included not only furniture but also fittings etc. Then the learned Judge states that that expression, namely 'including any furniture supplied or fittings affixed by the landlord' does not occur in the Madras Act. Therefore the learned Judges of

the Andhra Pradesh High Court ultimately say that they follow the decisions of the Madras High Court which have held that lease of cinemas do not come under the lease of buildings under the Madras Act, as well as the decision of the Andhra Pradesh High Court in AIR 1957 Andhra Pradesh 619.

27. We have already referred to the fact that the State of Andhra Pradesh, has enacted the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, which defines the expression 'building' in Section 2(iii), and that the said definition is almost substantially in accordance with the definition of the expression 'building' in our statute. Obviously that definition has been introduced, in the Andhra Pradesh Act, after the decision was rendered by the Division Bench in AIR 1959 Andhra Pradesh 9, particularly pointing out that the Madras Act, which was so long applicable to the Andhra Pradesh State, did not contain the expression 'any fittings affixed by the landlord for use in such house or hut or part of a house or hut'. Our attention has not been drawn to any decision of the Andhra Pradesh High Court, interpreting the provisions of the Andhra Pradesh Act referred to above.

28. These decisions have been relied on by the learned Advocate General and learned counsel appearing for the two lessees in these cases, in support of their contention that in view of the definition occurring in our Act, as amended by the 1961 Act, it will clearly bring these leases within the ambit of the definition 'building' occurring in Section 2(1) of the Act. Mr. V.K.K. Menon, learned counsel for the lessors urged that those decisions are distinguishable, especially in view of the recent decision of the Supreme Court, on which he placed considerable reliance, namely *Uttamchand v. S.M. Lalwani*[14], But before we refer to this decision of the Supreme Court, it is necessary to advert to the earlier decision of the Supreme Court reported to AIR 1957 SC 309. We have already stated that the Supreme Court in this decision had to construe the expression 'premises' occurring in Section 2(8) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950. West Bengal Act 17 of 1950, which was the subject of consideration in three Division Bench decisions of the Calcutta High Court, namely AIR 1951 Calcutta 126; AIR 1953 Calcutta 149 and (1964) 68 Cal WN 1136, to which decisions, we have already made a reference.

29. In (S) AIR 1957 SC 309, the question that the Supreme Court had to consider was as to whether the tenant in that case, was a tenant of a 'premises' as that expression is defined in Section 2(8) of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, West Bengal Act 17 of 1950. We have already extracted that definition, and it has also been extracted by the Supreme Court at p. 311 of the report. The learned Judges refer to the fact that 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 separate bath room and a covered verandah, and there were also fans, plug points, towel racks, besides a basin a commode and a glass shelf. There was also provision that the landlord was to supply, without any additional charge, electrical energy for consumption by the tenant for the use of lamps, fans, radio, ovens for

[14] AIR 1965 SC 716

cooking, for ironing, laundering and refrigerators. In that case, the tenant applied under Section 9 of the Act for fixation of fair rent. The landlord resisted the claim of the tenant, on the ground that the Act does not apply, because the tenants cannot be considered to be tenants of the 'premises' as that expression is defined in Section 2(8) of the West Bengal Act. The contention of the landlord appears to be that the definition of the expression 'premises' under Section 2(8) of

the Act, does not include tenements with the special facilities and conveniences agreed to by the landlord to be supplied to the tenants. The learned Judges, refer to the particular definition of that expression and ultimately hold that the definition of the expression as contained in Section 2(8) of the Act which they had to construe, is couched in very wide terms and includes not only gardens, grounds, and outhouses, if any appertaining to 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. Then their Lordships express their opinion that the wide definition, clearly indicates that the Legislature was providing for all kinds of letting. The Supreme Court categorically states that "the definitions of 'premises' and "hotel or lodging house'", which have been excluded from the definition in Section 2(8) -"between them almost exhaust the whole field covered by the relationship of landlord and tenant, subject to the exceptions noted in the definition of 'premises' ". That is, according to the Supreme Court, the entire relationship of landlord and tenant has been covered by the very wide definition of 'premises', and if the expression 'premises' as defined in Section 2(8) satisfies the requirements mentioned therein and does not come within the excluded category, the relationship of landlord and tenant is established, and it will be "premises" as defined in that Section. The same idea is again reiterated by the learned Judges in the latter part of the judgment, wherein they again emphasize that the expression "premises" occurring in the statute has been defined in very wide terms and that they have dealt with that aspect very elaborately. Therefore their Lordships ultimately hold that "it is difficult, if not impossible, to accept the contention 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 tenants". In this connection the learned Judges emphasize that "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". And ultimately, having laid down these principles, the Supreme Court finally held that, in that case, the supply of the amenities aforesaid, in respect of the equipments and fittings, which formed part of the premises, would not take any difference to the application of the Act to the premises in question, inasmuch as the places where the amenities have been supplied are "premises" under Section 2(8) of the West Bengal Act.

30. Mr. V.K.K. Menon, learned counsel for the lessors in this case, no doubt urged that the decision of the Supreme Court, referred to above must be understood on the principle that according to the Supreme Court various amenities are to be afforded for the beneficial enjoyment of the buildings, and in that view the Supreme Court has held that the rent payable by the tenant, is for such premises as defined in Section 2(8) of the West Bengal Act. It is not possible for us to accept this contention of learned counsel for the lessors. On the other hand, the three decisions of the Calcutta High Court referred to above, as well as the Supreme Court decision had to consider the connotation of the expression 'premises' occurring in the same statute; and the Supreme Court has categorically taken the view that the definition of the expression 'premises' in Section 2(8) of the Act and the exclusion of "hotel or lodging house" in the definition, between them, almost exhaust the whole field covered by the relationship of landlord and tenant. Therefore, in our opinion, this decision of the Supreme Court practically concludes the case as against the landlords, when they urged that the leases in question do not come within the ambit of Section 2(1) of the Act.

31. We will now refer to the decision of the Supreme Court reported in AIR 1965 SC 716 on which considerable reliance was placed by Mr. V.K.K. Menon. The Supreme Court, in that case, had to consider the proper interpretation to be placed on the expression 'accommodation'

occurring in Section 3(a) of the Madhya Pradesh Accommodation Control Act, M.P. Act 23 of 1955. In fact, the Supreme Court had to consider whether the lease in that case was a lease of accommodation, as defined in Section 3(a)(y)(3) of the Act. Section 3(a) Itself has been extracted at p. 717 of the report. Section 3(a) defines the term 'accommodation', and it will be seen that clause (y) of Section 3(a), which takes in "any building or part of a building", includes by sub-clause (3) of Section 3(a)(y), "any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof". It is of particular significance to note that sub-clause (1) of Clause (y) of Section 3(a), includes also within the definition of 'accommodation' "any garden, open land and outhouses, if any, appurtenant to such building or part of a building", which provision is also found in our statute. More than that while sub-clause (2) of Section 3(a)(y) deals with any furniture supplied by the landlord "for use in such building" or part of a building, when we come to sub clause (3), which relates to any fittings, it is seen that provision made in the Act is not "for use in such building or part of a building", as is found in our enactment, but "for the more beneficial enjoyment thereof". In that case the Supreme Court had to consider the lease granted to a Dal Mill in Bhopal. The learned Judges have referred to the various clauses contained in the lease deed. They also note the contention of the tenant in that case that the lease in question is a lease of the building itself and that it only incidentally takes in the machinery in the building. In considering that contention the learned Judges refer to Section 3(a)(y)(3) of the Act and advert to the fact that "accommodation" will take in any building or part of a building, including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. Then the learned Judges advert to the fact, after referring to the 15 items annexed to the schedule to the lease, that the fittings of the machinery in that case cannot be said to be "fittings for the more beneficial enjoyment thereof". In particular the learned Judges state that the fittings referred to in Section 3(a)(y)(3), are obviously fittings made in the building to afford incidental amenities for the person occupying the building. Ultimately the learned Judges express the view that the 15 items referred to as machinery in that case cannot be considered to be fittings which satisfy the requirements of Section 3(a)(y)(3). Having positively found in that manner, the learned Judges also state that "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". In the earlier part of the judgment the Supreme Court, has referred to the observation of the Andhra Pradesh High Court in AIR 1957 Andhra Pradesh 619, wherein Viswanatha Sastri, J., speaking on behalf of the Court in considering the provisions of the Madras Act, 25 of 1949, had held that the question in each case would be what is the dominant part of the demise and what is the purpose for which the building was constructed and let out. The Supreme Court also states that they must determine the character of the lease which arises for consideration before them, by posing the question as to what was the dominant intention of the parties in executing the document. We are particularly referring to this aspect, because it was very strenuously urged by Mr. V.K.K. Menon, learned counsel for the lessors, that in the case of the leases on hand which we have to construe, we have to determine the character of the leases, and for that purpose we have to consider what was the dominant intention of the parties in executing those documents. So far as that is concerned, in our opinion it is not possible to accept this contention of the learned counsel. That question became necessary for the Supreme Court to consider because of the contention raised by the appellant in that case that the lease in that case was essentially and mainly of the building itself and that it only incidentally took in the machineries which had been affixed in the building. The Supreme Court had also to consider the question as to whether it satisfies the requirements of the definition of accommodation in Section 3(a)(y)(3), of the statute, namely any building or part of a building

including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. That is why the Supreme Court particularly refers to the various items of machinery which had been fitted in the building, and described in the schedule attached to the lease, and ultimately comes to the conclusion that those items of machinery cannot be considered to be for the more beneficial enjoyment of the building in question. Later on, the learned Judges also state, after referring to the lease deed itself, that "it is not a case where the subject-matter of the lease is the building, and along with the leased building, incidentally passes the fixture of the machinery in regard to the mill". On the other hand the Supreme Court emphasises that "in truth it is the Mill which is the subject-matter of the lease, and it was because the Mill was intended to be let out, that the building had inevitably to be let out along with the Mill". Then the Supreme Court again reaffirms the same proposition, when they observe in the latter part of p. 719 to the effect that "the fixtures are the primary object, which the lease was intended to cover, and the building in which the fixtures are located, comes in "incidentally". Therefore the Supreme Court ultimately held that the lease in that case, cannot be considered to be a lease of accommodation as defined in Section 3(a)(y)(3) of the Act.

32. In our opinion, though Mr. V.K.K., Menon has placed considerable reliance on the principles laid down by the Supreme Court in the decision referred to above, that decision does not at all in any manner come into the picture, when we have to construe the provisions in our statute after having due regard to the nature of the lease transactions in these cases. In the first place, it will be seen that the provisions contained in Section 3(a)(y)(3) of the statute which the Supreme Court had to consider, are not identical with the provisions contained in our statute. The provision in our statute is only to the effect that in order to bring a lease of a building with any furniture supplied or any fittings affixed by the landlord, it is enough that there is a provision in the lease deed to the effect that they are supplied by the landlord for use in the building. We have already indicated that the furniture and other accessories, which are the subject of the leases Exts. A-1 and B-1, are supplied by the landlord for use in such building and there is no controversy o that matte".
Therefore, we are not called upon to embark on an inquiry further than what the statute requires, as the Supreme Court had to do in view of the special provisions contained in Section 3(a)(y)(3) of the statute they had to consider; because they had particularly to consider the question as to whether the building in which there were the fittings, satisfied the definition of accommodation as defined in Section 3(a)(y)(3) of that Act, and that is why the Supreme Court had to consider rather elaborately the question, as to whether the fitting affixed to the building, in that case were for the more beneficial enjoyment thereof. The position in the cases, on hand, is entirely different.

33. We will now advert to the salient clauses of the lease deed Ext. A-1. Though the other lease deed, Ext. B-1, has merged in the compromise decree dated 31-1-1961 in O. Section 49/1960 substantially, in all respects the terms and conditions mentioned in both the lease deeds are the same, excepting for the slight difference, that Ext. B-1, which has ended in a compromise decree, does not contain any clause regarding the liability of the lessee to pay the lessor any amount for insuring the premises and other articles, or the liability of the lessee to pay the expenses, that may be incurred for keeping a watchman in the premises. In all other respects the two lease deeds are substantially the same. In Ext. A-1, after referring to the fact that the properties described in the schedules annexed to the document, namely the immovable properties described in Schedule A, the articles of furniture, fittings, electrical installations etc., described in Schedule B, and the

articles of machinery and other equipment described in Schedule C, belong to the lessor, and after reciting the fact that they were in the possession and enjoyment of another lessee, and that the said lessee has surrendered possession of the properties, the lessor, after stating that he is in possession of the properties described in Schedules A, B and C, agrees with the lessee to grant, by mutual understanding, a lease of the properties described in Schedules A, B and C. The lessee also agrees to pay a rental of Rs. 350 a month for the properties described in Schedule A; Rs. 550 a month for the properties described in Schedule B; and Rs. 850 a month for the articles of machinery described in Schedule C, totaling a sum of Rs. 1750 a month. Then the lease deed further provides the period, and the dates, within which the rents are to be paid for the A, B and C schedule properties. There is a provision to the effect in Clause 3 that the lessor and lessee agree that the lessee will pay a further fixed amount of Rs. 150 a month to the lessor every month during the subsistence of the lease, to cover the risk to the lessor in respect of the properties in question. Then there are provisions regarding the lessor's covenant to the effect that he will carry out the seasonal repairs to the properties including white-washing the premises once a year. There is also a provision to the effect, that if any structural alterations to the Hall or additions or alterations to the equipment etc., are made costing more than Rs. 250 at a time, the lessee is made liable to pay an additional rental, equivalent to 9 per cent interest per annum on the amount so spent. The lessor is also to pay the property tax and the Government revenue over the A schedule property. Similarly, the lessee also covenants, agreeing to pay the rents for the properties very promptly and without default; and in default agrees to pay 6 per cent interest as mentioned in Clause 7. He also agrees to keep the demised premises in order and good condition, subject only to reasonable wear and tear. There is also a further provision to the effect that the lessor or his agents will be entitled to enter the demised premises for such purposes, as the lessor considers necessary. There is a prohibition against the lease putting up any additional buildings or making improvements on the demised premises. The lessee also agrees that if he makes such additions or alterations, he will remove the same on demand by the lessor. There is a provision in Clause 10 to the effect that the articles of furniture, equipment, fittings, machinery and fixtures, described in schedules B and C shall not be removed from the premises; nor shall the lessee allow them to be removed from the premises at any time without the written permission of the lessor. The lessee undertakes not to sub-let or re-lease the premises, including the furniture and the machinery or any part thereof, to any other person or persons without the written consent of the lessor. There are also certain other provisions which are not necessary to be considered, excepting to note that the lessee undertakes to pay all the entertainment and other taxes due on account of the cinema shows or any other entertainment carried on by him in the demised premises. There are three schedules to the lease deed : Schedule A contains the description of the properties of the Radha Cinema or Radha Picture Palace, as it is called, and describes in great detail the cinema hall, out-houses etc.; Schedule B gives the description of the various items of furniture on the floor, balcony, and fittings electrical installations, etc.; and Schedule C fives a list of the machinery which have been fitted in the theatre in question. This is broadly the scheme of the lease under Ext. A-1. Excepting in respect of the total rent and in the matter of the rent payable regarding the properties, mentioned in the lease deed Ext. B-1, and also in respect of the two provisions regarding insurance and keeping a watchman for the premises, to which we have already made reference, the conditions in the lease deed Ext. B-1 are almost the same. But by virtue of the compromise decree passed on 31-1-1961, there is a provision to the effect that the lessee will pay a consolidated rent for the properties described in Schedules A, B and C. But, in our opinion, that by itself does not make any difference because both the transactions, namely under Ext. A-1 and under Ext. B-1 which has now become a decree of court in the compromise

decree dated 31-1-1961, must be considered to be leases of buildings, let for non-residential purposes including the furniture supplied and fittings affixed by the landlord for use in such buildings.

34. Mr. V.K.K. Menon, learned counsel for the lessors, we have already pointed out, urged that the interpretation to be placed upon the expression "or any fittings affixed", which has no doubt been included in the Parent Act by the Amendment Act of 1961, must be such type of fittings as will enable the tenant or person in possession of the properties, to more conveniently or more beneficially enjoy the building. That is, according to the learned counsel, the fittings affixed in the building, in order to attract the provisions of Section 2(1) of the Act, read with Clause (b) thereof, must be fittings which are provided as a sort of additional comforts or for the more convenient enjoyment of the premises. No doubt that is the interpretation which is sought to be placed by Mr. V.K.K. Menon, and that has found acceptance at the hands of our learned brother Govindan Nair. J., in O. P. 1548 of 1962 (Ker). But with great respect, we are not inclined to accept the view expressed by the learned Judge. If that contention is accepted, we will be reading into the statute words which are not there, or interpreting the provisions of the statute, which is not in accordance with the clear provisions of the statute itself. On the other hand, we have referred to the provisions of other statutes, particularly the statute which the Supreme Court had to consider in AIR 1965 SC 716, wherein the provision specifically was "any fittings affixed by the landlord for the more beneficial enjoyment" of the premises. In the absence of any such provision used by our Legislature in the enactment in question, in our opinion, we must have due regard to the clear wording of the statute, and the natural interpretation that has to be put upon the words that have been used by the Legislature. If we go by that normal rule of interpretation, having due regard to the various recitals made in the lease deeds in question, they must be considered to be leases of buildings, let for non-residential purposes, including any furniture supplied or any fittings affixed by the landlord for use in such buildings. The requirement of clause (b) of Section 2(1) of the Act will be satisfied if the furniture supplied or the fittings affixed by the landlord are only for use in such buildings.

35. We have already stated that no controversy is raised by the landlords to the effect, that the furniture supplied and the fittings affixed by them, are for use in the buildings in question. In fact, it will be seen, by a reference to Clause 10 of Ext. A-1, to which we have already adverted, that there is a prohibition against the lessee removing the articles of furniture, equipment, fittings, machinery and fixtures described in schedules B and C, outside the premises, without the permission of the landlord. Therefore that will clearly show, that the furniture supplied and fittings affixed, are for use in the buildings; and the requirement of Section 2(1) of the Act read with Clause (b) thereof, is perfectly satisfied. No doubt our learned brother Govindan Nair, J., is of the view that the leases in these cases must be considered to be demise of a business venture, which has normally nothing to do with the letting of a building as such. With great respect to the learned Judge, we are not inclined to accept this line of reasoning. On the other hand, in our opinion there is no question of lease of a business venture in these cases; and the only question that the Court had to consider is as to whether the leases, in question are leases of buildings, as defined in Section 2(1) of the Act road with Clause (b) thereof.

36. We have already pointed out that expression, identical with provisions, occurring in our statute, have been the subject of consideration, in three Division Bench decisions by the Calcutta High Court and also by the Supreme Court in (S) AIR 1957 SC 309. If we may say so with

respect, we are in entire agreement with the interpretation placed on similar provisions by the Calcutta High Court in the decisions reported in AIR 1951 Calcutta 126, AIR 1953 Calcutta 149 and (1964) 68 Cal WN 1136. If we may respectfully adopt the observation of the Supreme Court, the position in these cases also is that when the Legislature has defined the expression 'building' in Section 2(1) of the Act and also excluded from the definition a room in a hotel or boarding house, the definitions of 'building' and 'hotel or boarding house' between them exhaust almost the whole field, covered by the relationship of landlord and tenant, subject of course to the exceptions noted in the definition of 'building'.

37. Therefore the ultimate position is that the lease in these two cases, must be considered to be leases of building within the meaning of Section 2(1) of the Act, as amended by Kerala Act 29 of 1961. If they are leases under those Acts, it is needless to state that they will be leases which attract the provisions of the Kerala Building (Lease and Rent Control) Act, 1965, (Kerala Act 2 of 1965). Our answer to the reference is that the letting of the Radha Picture palace, Kozhikode, evidenced by Ext. A-1 dated 7-3-1965 in O. S. No. 26 of 1961 of the Court of the Subordinate Judge, Kozhikode. which arises for consideration in A. S. Nos. 97 and 280 of 1962, is a lease of a building to which the provisions of Kerala Act 16 of 1959, as amended by Kerala Act 29 of 1961, are attracted : and the letting of the Coronation Trieatre, Kozhikode, evidenced by the compromise decree dated 31-1-1981 in O. Section 49/1960 of the Court of the Subordinate Judge, Kozhikode, which arises for consideration in A. Section 188/1962 and Writ Appeal No. 67/1964, also conies within the ambit of Kerala Act 16 of 1959, as amended by Kerala Act 29 of 1961, inasmuch as it is a lease of a building as defined in Section 2(1) of the Act.

38. The papers will now go back to the Division Bench for further hearing, with our opinion.

39. JUDGMENT : (of the Division Bench) (25-11-1965) : The Full Bench having answered the question against the landlord and held the lettings concerned to come within the purview of the Kerala Buildings (Lease and Rent Control) Act-Rent Control Act, for short-formerly Act 16 of 1959 as amended by Act 29 of 1961, but now President's Act 2 of 1965 in identical expression W. A. Nos. 66 and 67 of 1964 have to be allowed and O. P. No. 1548 of 1962 dismissed.

40. The challenge delivered to the constitutionality of the Rent Control Act on the ground that it violated Article 19(1)(f) of the Constitution has been dealt with in Para. 7 of our judgment dated 28th July 1964. The reasoning given therein will apply to the challenge now advanced under Article 19(1)(g) as well. In regard to the President's Act 2 of 1965, the attack fails on account of the current Proclamation of Emergency which, by virtue of Article 358 of the Constitution, suspends the operation of Article 19 against all legislative measures.

41. The apprehension that the definition of a "building" in the Rent Control Act is discriminatory in that it takes in cinema theatres but not factory-houses is unwarranted as the scope of an enactment has to be understood by its own expression and not by what is stated in the relative statement of Objects and Reasons. If the Rent Control Act is valid and applies to the instant lettings. A. S. No. 280 of 1962 has to fail.

42. A further point raised in A. S. No. 188 of 1962 is that the defendant-tenant has waived the benefit of Section 11 of the Rent Control Act of 1959 when he compromised the suit (O. S. No. 49 of 1960) and undertook to surrender the theatre on 31st December 1961. Reliance was placed

on *Raja Chetty v. Jagannathadas*[15], and *T.K. Sivarajan v. Official Receiver. Quilon District Court*[16], cannot avail the landlords in this case because the expression in Section 11 of the Rent Control Act relevant here is "Notwithstanding anything to the contrary contained in any .... contract" which was not in the Acts considered in the above-said Madras and Travencore-Cochin rulings. The inhibition against eviction, even in execution of a decree, in the Rent Control Acts of 1959 and of 1965 is in terms imperative. It may be that a tenant may waive the benefit of the Act and surrender the building; but, whatever be his contract, if he refuses to surrender the building and

[15] AIR 1950 Mad 284

[16] AIR 1953 Trav Coc 205

forcible eviction becomes necessary, the matter is within the taboo of Section 11 of the Act now. The decree for eviction made in O. S. No. 49 of 1960 is not therefore available for execution. A. S. No. 188 of 1962 also fails.

43. In A. S. No. 97 of 1962, three points have been raised :

> (i) the validity of the term of extension of the lease on the expiry of Ext. A-1;
> (ii) the propriety of the direction to deliver certain movables; and
> (iii) the legality of the decree for eviction passed in the suit (O. S. No. 26 of 1961). Counsel for appellant, Shri C.K. Viswanatha Iyer, stated that, in view of the prohibition of eviction in execution of a decree enacted in Section 11 of the President's Act 2 of 1965, points Nos. (i) and (ii) are not pressed; and that, in view of a decision of a Division Bench of this Court in *Thresia v. Ayppunni*[17], point No. (iii) is also not pressed. The applicability of the dictum in (1962) 2 SCR 159 : AIR 1961 SC 1596 to O. S. No. 26 of 1961 is therefore not considered here, and A. S. No. 97 of 1962 is dismissed as not been pressed.

44. In the result, W. A. Nos. 66 and 67 of 1964 are allowed and O. P. No. 1548 of 1962 dismissed. A. S. Nos. 188 and 280 of 1962 are dismissed; and A. S. No. 97 of 1962 is dismissed as not been pressed. As the landlords were, at the time of the institution of the respective suits, entitled to decrees for eviction, and reliefs are denied here on account of subsequent legislations affecting those rights, we do not order costs in these appeals.

Order accordingly.

[17] 1958 Ker LT 1047