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HARIDAS GIRDHARDAS & ORS.

v.

VARADARAJA PILLAI & ANR.*August 18, 1971*

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[S. M. SIKRI, C.J., A. N. RAY AND D. G. PALEKAR, JJ.]

*Madras City Tenants Protection Act, 1921 (as amended in 1955)—
Applicability of s. 12 proviso.*

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The plaintiffs who were landlords leased to defendant No. 1 a plot of land in Madras under a duly registered lease deed dated November 17, 1938 for a period of 15 years 3 months from March 1, 1939 at a rent of Rs. 560 per month on the terms and conditions set out therein with an option for renewal in favour of defendant No. 1 for a period of 10 years from March 1, 1954 but at an enhanced rent of Rs. 630 per month, and subject to the other stipulations except the clause for renewal. Under

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cl. 2 of the deed defendant No. 1 was entitled to raise a cinema building and other structures at a cost of not less than Rs. 50,000. Clause 4(d) provided that at the expiration or sooner determination of the tenancy the lessors had the option of buying the buildings in question for a sum of Rs. 50,000, less depreciation. This option was to be exercised within one week of the termination of the tenancy. Defendant No. 1 in accordance with the stipulations in the lease deed constructed a theatre on the said plot and exercised his option to renew the lease for a further period of 10 years from March 10, 1954. Shortly before the expiry of the

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period of lease on March 1, 1964 the plaintiffs exercised the option of buying the buildings erected on the demised land and sent by cheque to defendant No. 1 the amount of Rs. 50,000 mentioned in cl. 4(d) of the deed, waiving their claim to deduction of depreciation. Defendant No. 1 however refused to accept the preferred sum. In the consequent suit the question for determination was whether cl. 4(d) of the deed could be enforced by the plaintiffs in view of the Madras City Tenants' Protection Act, 1921 as amended by the Amending Act of 1955.

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HELD: The Madras City Tenants' Protection Act, 1921 was passed in 1922 to give protection to certain classes of tenants who had constructed buildings on others' land in the hope that they would not be evicted as long as they paid fair rent for the rent. It was not the object of the Act to cover a hope if the 'hope' was entertained contrary to express stipulations as to erection of buildings. Accordingly proviso to s. 12 exempted any stipulations made by the tenant in writing registered as to the erection of buildings in so far as they related to buildings erected after the date of the contract. [296F-G]

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Clauses 2 and 4 of the lease deed amounted to a stipulation as to the erection of buildings and consequently the proviso to s. 12 was applicable to the case. Accordingly the plaintiffs were entitled to enforce cl. 4 (d) of the deed against defendant No. 1. [296A-B]

Mylapore Hindu Permanent Fund Ltd. v. K. S. Subramania Iyer, A.I.R. 1970 S.C. 1683 at 1691-92, applied.

N. Vajranani Naidu v. New Theatre Carnatic Talkies, [1964] 6 S.C.R. 1015, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 74 of 1971.

Appeal from the judgment and order dated June 17, 1970 of the Madras High Court in O. S. Appeal No. 35 of 1967. B

M. C. Chagla, *R. V. Pillai* and *P. Kesava Pillai*, for the appellants.

K. Parasaran, *K. Rajendra Chawdhary* and *Hari Singh* for respondent No. 1. C

A. V. Rangam, for respondent No. 2.

The Judgment of the Court was delivered by

Sikri, C.J. This appeal is directed against the judgment of the Madras High Court (Veeraswami, C.J., and Gokulakrishnan, J.) dismissing the appeal filed by the plaintiffs-appellants against the judgment and decree of Kunhamed Kutti, J.; dated February 20, 1967, made in the exercise of the ordinary original civil jurisdiction of the Madras High Court. D

The plaintiffs had filed a suit on the following allegations. E
The plaintiffs who were landlords leased to defendant No. 1 the plot of land on Mount Road, Madras, under a duly registered lease deed dated November 17, 1938, for a period of 15 years 3 months from March 1, 1939 at a rent of Rs. 560/- per month on the terms and conditions set out therein with an option for renewal in favour of defendant No. 1 for a further period of 10 years from March 1, 1954 but at an enhanced rent of Rs. 630/- per month, and subject to the other stipulations except the clause for renewal. F
For our purpose the following clauses are important.

“2. The Leasee covenants with the Lessors as follows :— G

(c) Within a reasonable period from the date hereof, at his own cost and charges, under the supervision of the Lessors and in accordance with plans, elevations, sections and specifications to be first approved by the Lessors erect, cover in and complete in a substantial and workmen like manner on the demised plot of land, a theatre with all proper H

A officers and out buildings such as bazars, restaurants,
motor and dunamo sheds etc., and fences, drains,
sewers to be used for production and exhibition
of films and for staging Drama therein and to
B expend in building such theatre a sum of not less than
Rs. 50,000/-. The Lessee shall be at liberty to put
up other buildings in addition to the above.

(d) Not to have an entrance for the theatre
going public from the General Peters Road, so
long as the Police authorities do not permit such
access from the said road.

C (f) In the erection and completion of such
buildings to do all acts and things required by
and perform the works conformably in all res-
pects with the provisions of the statutes applicable
thereto and with the by laws and regulations of
D the Corporation of Madras to pay and keep the
Lessors indemnified against all claims for the fees,
charges, fines, penalties and other payments what-
soever which during the progress of the works may
become payable or be demanded by the said authori-
ties in respect of the said works or of anything
E done under the authority herein contained and from
time to time discharge and pay all claims, assess-
ments, outgoings now or at any time hereafter
chargeable against an owner by Statute or other-
wise in regard to the said plot of land or any buildings
thereof, save and except the property tax and quit
F rent levied on the demised plot of land which alone
shall be borne by the Lessors.

(g) Not at any time to cause or permit any public
or private nuisance in or upon the demised plot
of land or anything which shall cause unnecessary
annoyance inconvenience or disturbance to the
G Lessors or to the occupiers of any adjoining or
neighbouring premises or which shall lead to inter-
ference by the Police or Local authorities and at all
times to comply with all Municipal and Police
requirements.

H (n) Not to install or cause to be installed on the
demised land or any part thereof any petrol pump,
without getting the Lessor's previous permission in

writing and without providing sufficient safeguards to the Lessors' neighbouring owners and their other tenants.

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(o) Not to put up a compound wall on the southern side of the demised plot but to put up only iron railings or bars with a low wall if necessary, not exceeding three feet in height."

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It was further agreed between the lessor and lessee:

"4. (d) At the expiration or sooner determination of the tenancy, the Lessors shall have the option of buying the buildings to be erected on the demised land the basis of valuation being as follows :

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The buildings shall be valued at Rs. 50,000/- irrespective of the actual cost of construction and the Lessee shall allow a depreciation of 3 per cent per annum, the period being calculated for the purpose of this valuation from 1st March, 1939. If within a week from such termination of tenancy the Lessors do not signify their willingness to purchase the building or erections at the aforesaid valuation from the Lessee, the Lessee shall within three months thereafter remove and carry away any buildings or erections on the demised plot of land and shall cause to be restored to its original or natural level state and condition the demised plot of land."

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Defendant No. 1 in accordance with the stipulations in the lease deed, constructed a theatre on the said plot and the same has been used for exhibition of cinema films by him. Defendant No. 1 exercised the option of renewal of lease for the further period of 10 years from March 1, 1954 and has been continuing in possession for a full further term of 10 years from March 1, 1954 expiring with the month of February, 1964.

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In accordance with the terms of clause 4 (d) of the lease deed, the plaintiffs exercised the option of buying the buildings erected on the demised land by letter dated February 27, 1964 and sent alongwith the full amount of Rs. 50,000/- by cheque in payment for all the superstructures without deducting any amount for depreciation, as provided in the said clause of the lease deed, stating that

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A they had decided not to stand on their strict legal rights to deduct depreciation but to pay the full price of Rs. 50,000/- as the buildings had been maintained and kept in good repair. Defendant No. 1 however, refused the sum of Rs. 50,000/- and contended that the plaintiffs were not
 B entitled to claim any rights on the footing of clause 4 (d) of the lease deed or to offer the sum of Rs. 50,000/- as the price for purchasing the superstructure put up by him on the land leased to him.

C The question that arises before us is whether the plaintiffs were entitled to enforce clause 4 (d) of the lease deed in view of the Madras City Tenants' Protection Act, 1921, as amended by the Amending Act of 1955.

D This Court construed the said Act and its various provisions in *N. Vajranani Naidu v. New Theatre Carnatic Talkies*⁽¹⁾ and in *The Mylapore Hindu Permanent Fund Ltd. v. K. S. Subramania Iyer*⁽²⁾. The second decision was not before the High Court when the Letters Patent Bench rendered its judgment. It seems to us that the case is covered by the judgment in the *Mylapore Hindu Permanent Fund* case⁽²⁾. In that case Vaidialingam, J.,
 E speaking for the Court, observed :

F "Therefore, in our opinion, the decision in *Vajranani's* case (supra) has been misunderstood by the learned Judges of the Letters Patent Bench and the said decision is no authority for the proposition that the stipulation contained in the lease deed before us cannot come within the proviso to section 12. The case before us is not one under which the tenant has in any manner contracted himself out of the rights conferred on him by the statute. On the other hand, by allowing the building
 G to stand on the property and agreeing to receive the amount of compensation provided for in the lease deed, the object of the legislation is fully satisfied. It must also be emphasized that the first part of Section 12 protects a tenant against the deprivation or limitation of his rights under the Act and the rights conferred by the Act do not directly
 H relate to covenants relating to erection of buildings."

(1) [1964] 6 S.C.R. 1015.

(2) A. I. R. 1970 S. C. 1683 at 1691-92.

Considering the facts of that case this Court held that clause 2, in the deed, read with clause 4, amounted to stipulations as to the erection of buildings and, in this view the proviso to s. 12 applied. A

We have set out the relevant clauses of the lease deed in this case and it seems to us that these clauses amount to a stipulation as to the erection of buildings and consequently the proviso to s. 12 applies. B

Mylapore Hindu Permanent Fund case⁽¹⁾ was sought to be distinguished by the learned counsel for the respondent on the ground that in the present case the defendant was entitled to put up the building beyond the value of Rs. 50,000/-. But clause 2 (c) of the lease deed, set out above, clearly shows that the plaintiffs required "a theatre with all proper offices and out buildings such as bazars, restaurants, motor and dunamo sheds etc., and fences, drains, sewers to be used for production and exhibition of films and for staging drama therein" to be erected. The plaintiffs wanted to ensure that the cost of the building would not be less than Rs. 50,000/- in order that the building would be of a proper quality of construction. There is no evidence as to what other buildings the defendant had put up. On these facts we cannot say that these were not stipulations as to the erection of buildings within the meaning of the proviso to s. 12. C
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It must be remembered that the Madras City Tenants' Protection Act, 1921, was passed in 1922 to give protection to certain classes of tenants who had constructed buildings on others' lands in the hope that they would not be evicted so long as they paid a fair rent for the land. It was not the object of the Act to cover a hope if the 'hope' was entertained contrary to express stipulations as to erection of buildings. Accordingly proviso to s. 12 exempted any stipulations made by the tenant in writing registered as to the erection of buildings, in so far as they related to buildings erected after the date of the contract. F
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The plaintiffs-appellants applied for amendment of their plaint dated April 15, 1964, by adding the following words in the Prayer Clauses : H

"(a) after the words : as from 1-3-1964

(1) A.I.R. 1970 S.C. 1683.

A “and direct the defendant No. 1 to deliver possession to the plaintiffs of the sites leased out to the defendant No. 1 under the aforesaid lease deeds and the buildings and superstructures built thereupon in good and satisfactory condition.”

B (b) Delete Prayer (b) and in its place substitute the following :

C “That the defendants do pay the plaintiffs the sum of Rs. 12,000 (twelve thousand) per month as *mesne* profits for use and occupation of the buildings and superstructures built upon the demised premises from 4-8-1968 till possession is handed over to the plaintiffs.”

D We allowed the amendment to be made. The learned counsel for the defendant objected to the prayer regarding *mesne* profits but as the plaintiffs are limiting the *mesne* profits for use and occupation from August 4, 1968, i.e. three years before the date of the application for amending the plaint, the defendant can have no just cause to complain.

E In the result the appeal is allowed, the judgments of the Single Judge and the Division Bench set aside and the suit decreed in terms of prayers (a) and (b) as amended. The case will now go back to the Trial Judge to determine the *mesne* profits for use and occupation from August 4, 1968 till the possession is handed over to the plaintiffs in accordance with law. The parties will bear their own costs throughout. Possession will be handed over within six months from today. In the meantime respondent No. 1 will not induct any tenant or other person or otherwise create any interest in the property.

G.C.

Appeal allowed.