B. KANDASAMY REDDIAR ETC.

*v.*

O. GOMATHI AMMAL

MARCH 27, 2001

[A.P. MISRA AND D.P. MOHAPATRA, JJ.]

*Rent Control & Eviction :*

*Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 :*

*Section 14(1)(b) and 10(3)(c)—Landlady filing eviction petition on ground of demolition and reconstruction—Raising ground of additional accommodation alternatively—Held, alternate ground can be raised by way of an amendment.*

*Section 14(1)(b)—Relief under—Held, though not pressed for—Landlady could get a decree for additional accommodation.*

*Section 2(2) and 10(3)(c)—"Building" "part of the building"—Fictionally includes various structures which otherwise could not be building.*

*Words and Phrases—"Building", "part of a building"—Meaning of.*

**The respondent filed eviction petitions against the appellants on the ground of demolition and reconstruction, under Section 14(1)(b) of the Tamil Nadu Buildings Act, 1960 and subsequently through amendment, raised the ground of requirement of additional accommodation under Section 10(3)(c). The Rent Controller dismissed respondent's petition on both the grounds. The Rent Controller held that landlady wants only to demolish a portion of the accommodation in question and not to construct a new building hence it will not be a case covered under Section 14(1)(b). The landlady's case of requirement of additional accommodation under Section 10(3)(c) was rejected and with reference to the comparative hardship it was held that hardship caused to the appellant-tenant will outweigh the advantage to the landlady. Respondent-landlady appealed against this order and the appeal was allowed by the appellate authority. The revision application filed by appellant before the High Court was rejected. In appeal to this Court the case was remanded back to the appellate authority since the High Court held that the appellate authority erred in considering**

A the evidence compositely while considering the case under two provisions, namely under Section 14(1)(b) and Section 10(3)(c) simultaneously, though they are two separate and independent statutory provisions.

After remand the appellate authority allowed the eviction petition of the respondent as against the present appellant. The appellant's revision B application before the High Court was rejected. In appeal this Court again remanded the case back to the High Court, as it felt that the High Court has not taken into consideration the proviso to Clause (c) of Section 10(3). The High Court again dismissed the claim of tenants and upheld that of the landlady.

C

In the present appeal, the Appellant contended that once the landlady withdrew her claim under Section 14(1)(b), her claim under Section 10(3)(c) should not have been allowed; that Section 14(1)(b) is applicable when landlord requires for erection after demolition and if this is withdrawn, then landlady cannot claim her relief under Section 10(3)(c) for D additional accommodation, and since on the facts of this case it cannot be satisfied without demolition no relief can be granted. The appellants in connected Appeals contended that the definition of 'building' as defined under sub-section (2) of Section of the Act, which includes 'part of building' to be building to submit that the word 'building' used under Section E 10(3)(c), the landlords could only invoke relief under it if he is occupying part of a building; that since the tenants are on the ground floor while landlady is on the first and second floors, the landlady could not be termed to occupy part of the building as defined in sub-section (2) of the Section 2; and that since the 'building' is defined to be a 'part of building', the same meaning has to be given to it under Section 10(3)(c) and that requirement F of additional accommodation under Section 10(3)(c) cannot be merely for desire and it would not cover cases where it is for augmenting the income.

Dismissing the appeals, the Court

HELD : 1. Both Sections 14(1)(b) and Section 10(3)(c) of the Tamil G Nadu Rent Control Act operate in two different fields. Section 14(1)(b) covers the field where the *bona fide* requirement of landlord is for immediate demolition of the building for the purpose of erecting a new building on its site. In other words it refers to a case of erection of new building after demolition on the same site. This would not cover a case of mere alterna- H tion or changes to be brought in through internal constructions in an

existing building even if it requires through partial demolition. In such cases erection is for a new building. On the other hand Section 10(3)(c) covers the field, where landlord requires an additional accommodation, residential or non-residential, where question of demolition of the whole building does not arise. Thus, even if some alteration by demolition of a part of the existing building is to be made, it would not be a case covered under Section 14(1)(b). Thus the landlady could get a decree under Section 10(3)(c) of the Act even if she did not press her relief under Section 14(1)(b). [840-G-H; 841-A-B]

2. The respondent-landlady has made specific pleadings about the additional accommodation. Hence amendment by introducing Section 10(3)(c) was justified and valid. [841-C]

3. "Building" as defined in sub-section (2) of Section 2 is an inclusive definition. This fictional definition is for a purpose that 'building' as commonly understood in a general sense may not be construed in all situations as one composite whole. Under Section 2(2), 'building' is defined as building, or hut or part of a building or hut and includes, gardens, grounds, outhouses etc. The definition of building does not give a go-by to the whole structure of building as 'building' as generally understood, as it opens with the definition of 'building' to mean 'any building'. In other words both building and 'part of building' independently is to be construed as 'building' within this definition clause. This statutory definition fictionally includes various structures, huts, including part of a building, which otherwise could not be a building to be 'building', to be applied as such in the various statutory provisions of the Act for subserving the objects of the Act. If part of the building occupied by the tenant is construed to be a building then landlord could never be in a position to occupy other part of the building. Such interpretation forgets that definition clause itself is flexible to make a 'building' to be a 'building' and a part of building to be a building also to be used accordingly wherever necessary. If interpretation sought to be given on behalf of the appellant is accepted, this would completely dismantle the purpose engrafting of opening word of Section 10(3)(c), namely, 'the landlord who is occupying only part of the building'. [844-D-E; 845-D-E]

*Lalchand (dead) by LRs. & Ors.* v. *Radha Krishnan*, [1977] 2 SCC 88 and *Ganapathi Pandian* v. *Sheik Mohammed and Bros*, (1957) 74 Law Weekly 45, referred to.

A *A. Mohammed Jaffar Saheb* v. *A. Palaniappa*, **(1964) MLJ 112, approved.**

**4. The very word 'part of the building' in the definition clause admits to the meaning of the word 'building' to be understood as in the general sense. When it refers to 'building' also in the definition clause to be B a building it refers to 'building' as understood commonly. Unless it is, so, part of building could not be conceived. Part means out of whole. The artificial definition is for a purpose. Thus the submission made on behalf of the appellant that the landlady cannot be said to occupy another part of the building as part occupied by the tenant is itself a building, is rejected. C The word 'building' used in sub-clause (c) of Section 10(3) is building as commonly understood and cannot be restricted to the limited definition of 'part of building' as defined under Section 2(2) of the Act. [846-B-C]**

*P. Ramanatha Aiyer "Law Lexicon"; Stroud's "Judicial Dictionary"*, **referred to.**

D

**5. There is nothing on record to construe that requirement is merely out of desire. Neither this nor the other submission, viz. Augmenting income was made nor there is anything on record to show both in law and on fact, about the non-applicability of Section 10(3)(c) on this court. Finally, the submission is with reference to the proviso to sub-clause (e) to E Section 10(3) about the hardship of the tenants. On the facts and circumstances of this case it has been found that advantage of the landlady outweighs the hardship of the tenants. This finding does not require any interference. [846-F]**

*P. Annakili Ammal & Anr.* v. *H.C. Hussain and Hussan & Anr.*, **(1984) 1 F MLJ 340, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2397 of 2001.

From the Judgment and Order dated 20.4.2000 of the Madras High Court in C.R.P. No. 979 of 1994.

G

WITH

Civil Appeal Nos. 2398/2001 and 2399 of 2001.

K.K. Mani for the Appellant in C.A. No. 2397/2001.

H S. Balakrishnan and S. Prasad for the Appellant in C.A. No. 2398/2001.

V. Prabhakar, A. Radhakrishnan and Revathy Raghavan for the Appellant in C.A. No. 2399/2001. A

K.B. Sounder Rajan for the Respondent.

The Judgment of the Court was delivered by

B

**MISRA, J.** Leave granted.

The aforesaid appeals raise common questions except few others in individual cases, which we shall be referring, hence are being disposed of by means of this common judgment.

C

The questions up for consideration in these appeals are namely :

(i) Whether the landlady could exclusively get a decree under Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control Act), 1960 (hereinafter referred to as 'the Act') when she did not press her relief under Section 14 (1)(b), on the facts and circumstances of this case? D

(ii) Whether landlady initially filing petition under Section 14(1)(b) of the aforesaid Act then could she by way of an amendment introduce Section 10(3)(c) without making necessary pleadings?

(iii) What would be the true meaning of the word 'building' used in clause (c) of sub-section (3) of Section 10 of the Act? E

In order to appreciate the controversies we are hereunder giving certain essential facts.

The respondent-landlady is the owner of a building known as Gomathi Lodge and in its first and second floors she runs lodging house. In the ground floor there are three shops of which one is Betal shop and the other is door no. 147 in which a restaurant is run by the appellant of C.A. No. 2397 of 2001 (@ SLP © No. 9797 of 2000). The respondent filed eviction petitions against the appellants on the ground of demolition and reconstruction, under Section 14 (1)(b) of the said Act and subsequently through amendment, also on the ground of requirement of additional accommodation under Section 10(3)(c). So far as Door No. 147 she wants for car parking. After contest, the Rent Controller dismissed respondent's suit on both the grounds. The Rent Controller held that landlady wants only to demolish a portion of the accommodation in question and not to construct a new building hence F G H

A it will not be a case covered under Section 14(1)(b). He also rejected landlady's case of requirement of additional accommodation under Section 10(3)(c) and also held with reference to the comparative hardship that hardship caused to the appellant-tenant will outweigh the advantage of the landlady. Respondent-landlady appealed against this order which was allowed by the appellate authority on 7th March, 1984. The same was challenged by B the appellant (tenant) in the revision before the High Court which was rejected. Thereafter appellants filed appeal before this Court which remanded the case back to the appellate authority because High Court felt that the appellate authority erred in considering the evidence compositely while considering the case under two provisions, namely, under Section 14(1)(b) C and Section 10(3)(c), simultaneously though they are two separate and independent statutory provisions.

After remand the appellate authority allowed the eviction petition of the landlady against the present appellant. Thereafter the appellant's revision before the High Court was also rejected. Then the appellants came to this D Court through C.A. No. 4952 of 1998 in which this Court remanded the case back again but this time to the High Court, as it felt that the High Court has not taken into consideration the proviso to Clause (c) of Section 10(3) (comparative hardship). After remand, through impugned judgment, the High Court again dismissed the claim of tenants and upheld that of the landlady. E Aggrieved by that the present appeals have been preferred.

Pressing appeal arising out of S.L.P. (C) 9797 of 2000, learned counsel Mr. K.K. Mani submits, once the landlady withdrew her claim under Section 14(1)(b), her claim under Section 10(3)(c) should not have been allowed. The submission is Section 14(1)(b) is applicable when landlord requires for F erection after demolition and if this is withdrawn, then landlady cannot claim her relief under Section 10(3)(c) for additional accommodation, if it could only be satisfied after demolition and since on the facts of this case it cannot be satisfied without demolition no relief can be granted. This submission in our considered opinion is misconceived. Both sections 14(1)(b) and Section G 10(3)(c) operate in two different fields. Section 14(1)(b) covers the field where the *bona fide* requirement of landlord is for immediate demolition of the building for the purpose of erecting a new building on its site. In other words it refers to a case of erection of new building after demolition on the same site. This would not cover a case of mere alteration or changes to be brought in through internal constructions in an existing building even if it H requires through partial demolition. In such cases erection is for a new

building. On the other hand Section 10(3)(c) covers the field, where landlord requires an additional accommodation, residential or non-residential, where question of demolition of the whole building does not arise. Thus, even if some alteration by demolition of a part of the existing building is to be made, would not be a case covered under Section 14(1)(b). Thus we have no hesitation to answer the first question referred by us above by holding that the landlady could get a decree under Section 10(3)(c) of the Act even if she did not press her relief under Section 14(1)(b).

So far as aforesaid second question, we have perused the pleadings and found respondent landlady has made specific pleadings about the additional accommodation hence amendment by introducing Section 10(3)(c) was justified and valid. Hence this question is held against the tenant.

Now we proceed to examine the aforesaid third question. In Civil Appeal No. 2398/2001 (Arising out of S.L.P. (C) No. 11515 of 2000), learned senior counsel Mr. S. Balakrishnan, referred to the definition of 'building' as defined under sub-section (2) of Section 2 of the Act, which includes 'part of building' to be building to submit that the word 'building' used under Section 10(3)(c), the landlords could only invoke relief under it if he is occupying part of a building. As the tenants are on the ground floor while landlady is on the first and second floors, the landlady could not be termed to occupy part of the building as defined in sub-section (2) of Section 2. The submission is, since the 'building' is defined to be a 'part of building', the same meaning has to be given to it under Section 10(3)(c) also. He referred to *Lalchand (dead) by L.Rs. and Ors.* v. *Radha Krishan*, [1977] 2 SCC 88 :

> "The rule is well settled that where the same expression is used in the same statute at different places the same meaning ought to be given to that expression, as far as possible".

Based on this the submission is, since the landlady is occupying another part of the building which under the definition clause itself would be a building, it would not constitute to be a part of the building within the meaning of sub-clause (c) of Section 10(3). If it is not part of a building, then the landlady fails to qualify for any relief under sub-clause (c) prerequisite of which is that landlord should be in possession of a part of the building.

He further submits there is a conflict of opinion in the Madras High Court on the interpretation of this sub-clause (c) of Section 10(3). *A.*

A *Mohammed Jaffar Saheb* v. *A. Palaniappa Chettiar*, (1964) MLJ 112 refers and relies on the earlier decision of the same court *Veerappa Naidu* v. *Gopalan*, (1961) MLJ 223 to hold :

> "There is no warrant to deprive the words in section 7(3)(c) of the Madras Buildings (Lease and Rent Control), Act 1949 (corre-
> B sponding to section 10(3)(c) of Act (XVIII) of 1960) of their ordinary and natural meaning by engrafting upon them the artificial definition of the word 'building' in section 2(1) of the Act. The definition itself is restricted in its operation only when there is nothing repugnant in the subject or context. A part of a building means physically and
> C structurally a limb or portion of a building and it will not cease to be so because of the definition of the word 'building'..... The word "part of a building" in section 7(3) (c) of the Act should receive their ordinary meaning without in any way being influenced by the definition of the word "building" in section 2. We would also like to point out that the definition in section 2 itself is hedged in by the
> D following words "unless there is anything repugnant in the subject or context."

This decision considered the dissenting decision of Justice Mack in *A. Arunachala Naicker v. V. Gopal Stores*, (1955) 2 MLJ 206, which is said to
E be the conflicting judgment. The dissenting note of Justice Mack which is considered in this case is quoted hereunder :

> "The position is not free from difficulty in view of the statute defining a building as also part of a building. It is in the light of this, that section 7(3)(c) has to be applied to the present case. As I see it,
> F the position is in no way different to that of a landlord doing business in one building purchasing a building next to his and seeking to eject from it a long-standing tenant doing business there for twenty-five years. To such a case section 7(3)(c) would in my opinion not apply. Nor will it apply to the present case merely by reason of the fact that the portions of this building in which petitioner and respondent did
> G business separately are comprised in one structural building the whole of which was purchased by the respondent".

Disagreeing with the view of Justice Mack the Court held :

> "In substance, the view of the learned Judge is that what is
> H physically a part of the building would become artificially a separate

building because of the operation of the special definition of "building" in the Act. We must observe, speaking with respect, that the logic and reasoning of the learned Judge do not appear to be sound."

In fact in another decision in *Ganapathi Pandian v. Sheik Muhammad and Brothers*, (1957) 74 Law Weekly 45, Madras High Court was confronted with the same dissenting judgment of Justice Mack, which again was dissented by the Court. This decision was also considering the word 'building' as used under Section 7(iii)(c) of the Madras Buildings (Lease and Rent Control) Act, 1949 (corresponding to Section 10(3)(c) of the aforesaid Act) with reference to the definition clause of section 2 in which it is held :

> "He (counsel for the respondent) said that the ruling in question would not apply to this case, and that the definition of a 'building as including a portion of building' in section 2, will not prevent 'the building' in section 7(iii)(c) being construed in a different way. There is no doubt whatever in my mind that he is right ..... It is clear, therefore, to me that the word 'building' which is defined in section 2 as meaning 'any building or portion of a building let or to be let separately' cannot have the same meaning as the word, 'building' in section 7(iii)(c) where the phrase 'who is occupying only a portion of a building' will have a wider connotation. It is absurd to say that 'building' should always mean 'a portion of a building'."

This decision also considered the judgment of Mack, J. in *Arunachala Naicker*, (supra) and dissented through the following words:

> "With great respect to the learned Judge, Mack, J. I am unable to agree with the latter proposition. A part of a building in occupation of the landlord will not be building as defined by the Act, though the part in the occupation of the tenant will be one. Section 2(1) which defined building creates a fiction in regard to certain cases, whereby a part of a building is deemed to be a building. A part of building to which that fiction would not apply obviously constitutes a building under the Act but would still be called a part of the building. Section 2(1) states that '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, etc. Therefore, a part of a building will be deemed to be building for the purpose of the Act only if it is let or intended to be let. A portion in the occupation of the landlord cannot

A be said either to be let or intended to be let. Therefore, that portion will not constitute a building under the Act, and could only be termed a part of the building."

Finally, the Madras High Court held in *A. Mohammed Jaffar Saheb* (Supra) that there is no warrant to deprive the word in Section 7(iii)(c) of B the 1949 Act of its ordinary and natural meaning by engrafting the artificial definition of the word 'building' in Section 2. It further held, the definition itself is restricted in its operation only when there is nothing repugnant in the subject or context. It held, it cannot be assumed that part of the building which means physically or structurally a limb or portion ceases to possess C that character because of the definition and finally it followed the decision in *Veerapa Naidu* (Supra) and disagreed with the decision of the Mack J. in *Arunachala Naicker* (Supra). This principle as deduced by the Madras High Court is reasonable view which we approve.

In addition we find, 'building' as defined in sub-section (2) of Section D 2 is an inclusive definition. This Fictional definition is for a purpose that 'building' as commonly understood in a general sense may not be construed in all situations as one composite whole. There may be a situation that a 'tenant' may occupy a part of as building, so for the purposes of the Act by virtue of the definition clause this may be construed as building. Under Section 2(2), E 'building' is defined as *building*, or hut or *part of a building* or hut and includes, gardens, grounds and outhouses etc. The definition of building does not give a go-by to the whole structure of building as 'building' as generally understood, as it opens with the definition of 'building' to mean '*any building*'. In other words both 'building' and part of building' independently is to be F construed as 'building' within this definition clause. This statutory definition fictionally includes various structures, huts, including part of a building, which otherwise could not be a building to be 'building', to be applied as such in the various statutory provisions of the Act for subserving the objects of the Act. When building takes various forms it has to be used differently in different provisions of this statutes. How only one form of definition viz., 'part of a G building' to be carried and used restrictively in sub clause (c) of Section 10(3). The 'tenant' is also defined under sub-section 8 of section 2 to mean, 'tenant means any person by whom or on whose account rent is payable for a 'building' and includes surviving spouse, or any son or daughter, or the legal representative of a deceased tenant..... If this artificial definition was not given H to the word 'building' then rent payable for a building as referred in the

definition of tenant could only be for the whole building and not part of the building. Here 'building' as referred would include 'part of a building'. So tenancy could be of part of a building. In fact, various provisions of the Act would stand testimony and legitimacy of this wider definition clause of the word 'building'. When definition clause itself gives artificial meaning of 'building' to be not one but more than one, then how only one form of definition clause, viz., 'part of a building' be said to be understood for a 'building' in every provision of this statute wherever the word building is used.

It may be examined from another angle, when Section 10(3)(c) refers to the landlord occupying a part of the building it inherently refers to another part of the building being occupied by the tenant. It is true that part of the building occupied both by the tenant and the landlord would by itself constitute to be a 'building' under the definition clause. This itself reveals, which is under current that there is another part of the building or may be more than one part of the building either with tenants or landlord. If part of the building occupied by the tenant is construed to be a building then landlord could never be in a position to occupy other part of the building. Such interpretation forgets that definition clause itself is flexible to make a 'building' to be a 'building' and a part of building to be a building also to be used accordingly where ever necessary. If interpretation sought to be given on behalf of the appellant is accepted, this would completely dismantle the purpose engrafting of opening word of Section 10(3)(c), namely, 'the landlord who is occupying only part of the building'. According to Stroud's Judicial Dictionary the 'building' has been defined as :

> "*Building:* What is a "building" must always be a question of degree and circumstances: its "ordinary and usual meaning is, a block of brick or stone work, covered in by a roof' (per *Esher M.R. Moir* v. *Williams*, [1892] 1 Q.B. 264. The ordinary and natural meaning of the word "building" includes the fabric and the ground on which it stands (*Victoria City* v. *Bishop of Vancouver Island*, (1921) A.C. 384, at p.390."

Similarly, P. Ramanatha Aiyar in Law Laxicon defines 'building' as :

> "*Building :* What is a "building" must always be a question, of degree, and circumstances : its "ordinary and usual meaning is, a block of brick or stone work, covered in by a roof' (per *Esher M.R. Moir* v. *Williams*, [1892] 1 Q.B. 264)".

A Under Section 10(3)(c) when it refers, landlord occupying a part of the building, it refers to the 'building' as understood commonly and also as defined. When it refers to part of building it reveals there is some other part of which is in the possession of tenant may be one or more than one. The very word 'part of the building' in the definition clause admits to the meaning of the word 'building to be understood as in the general sense. When it refers B to 'building' also in the definition clause to be a building it refers to 'building' as understood commonly. Unless it is, how can part of a building could be conceived. Part means out of whole. The artificial definition as we have said is for a purpose. Thus we have no hesitation to reject this submission made on behalf of the appellant that the landlady cannot be said to occupy another C part of the building as part occupied by the tenant is itself a building. So we answer the aforesaid third question by holding that the word 'building' used in sub clause (c) of Section 10(3) is building as commonly understood and cannot be restricted to the limited definition of 'part of a building' as defined under Section 2(2) of the Act.

D Finally in Civil Appeal No. 2399/2001 (Arising out of SLP (C) No. 12100 of 2000), Mr. V. Prabhakar, learned counsel referred to *P. Annakili Ammal and Another* v. *H.C. Hussain and Hassan and Another*, (1984) 1 MLJ 340 that requirement of additional accommodation under Section 10(3)(c) cannot be merely for desire and it would not cover cases where it is for E augmenting the income. This submission is misconceived. On the facts and circumstances of this case, it has been found that additional need of the landlady is *bonafide*. There is nothing on record to construe that requirement is merely out of desire. Neither this nor the other submission, viz., augmenting income was made nor there is anything on record to show both in law and on fact, about the non-applicability of section 10(3)(c) on this count. F Finally, the submission is with reference to the proviso to sub-clause (e) to Section 10(3) about the hardship of the tenants. On the facts and circumstances of this case it has been found that advantage of the landlady out weighs the hardship of the tenants. This finding does not require any inference.

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For the aforesaid reasons, we find there is no merit in the aforesaid appeals and the same are, accordingly, dismissed. Costs on the parties.

V.M. Appeals dismissed.