A

SURYAKUMAR GOVINDJEE

v.

KRISHNAMMAL AND ORS.

APRIL 26, 1990

B [S. RANGANATHAN AND A.M. AHMADI, JJ.]

Tamil Nadu Buildings (Lease and Rent Control) Act—Section 2(2)—'Building'—What is 'kaichalai'—Whether included.

C **On 9.6.1936 the predecessor-in-interest of the respondents executed a lease deed in favour of the predecessor-in-interest of the appellant, for a period of 15 years. The property leased out was vacant land, well and *Kaichalai*, and the lessee was permitted to construct on the vacant land and instal petrol selling business. It was further stipulated that after the expiry of the lease period the lessee shall at his own expense remove the structure put up by him and deliver possession of the vacant** D **land together with well and *Kaichalai*. The lease was extended from time to time.**

The lessor had filed petitions in 1962 and 1979 to evict the lessee under the Madras Buildings (lease and Rent Control) Act, 1950 but without success. Thereafter, in 1979 the present respondents instituted E **a petition for eviction of the lessee on the ground of demolition and reconstruction, and of wilful denial of title, within the meaning of Sections 14(1)(b) and 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act.**

In the meantime, the provisions of the Tamil Nadu City Tenants' F **Protection Act, 1922 were extended to the municipal limits of Udumalpettai. Taking advantage of this, the lessee filed petition claiming the benefit of compulsory purchase conferred on tenants of land under the said Act. The District Munsif-cum-Rent Controller allowed the lessor's petition for eviction and dismissed the lessee's petition for compulsory purchase. The Sub-Judge dismissed the appeals.**

G

The lessee filed two revision petitions before the High Court which declined to interfere.

Before this Court it was contened on behalf of the appellant that the original lease comprised only of the vacant site, well and *Kaichalai*; H **the *kaichalai* was merely in the nature of a shed put up for the tethering**

of cattle and it was not a 'building' within the meaning of Section 2(2) of the Rent Control Act; though the small *Kaichalai* was situated in a corner of the site, the lease intended by the parties was only that of the site. It was further contended that where a lease was a composite one of land and buildings, the court had to address itself to the primary or dominant intention of the parties; if the intention was to lease a building—the lease of land being adjunct or incidental, the Rent Control Act would apply; on the other hand, if the dominant intention was to lease a site—the presence of a building thereon not being considered material by either party—the lease would not be one of a 'building' covered by the Rent Control Act. A B

Larsen & Toubro case [1988] 4 SCC 260, relied upon. C

On behalf of the respondents it was contended that, in the case of a composite lease, the existence of a building or hut on the land (howsoever small, insignificant or useless it may be) was sufficient *per se* to bring the lease within the scope of the Rent Control Act. D

Irani v. *Chidambaram Chettiar,* AIR 1953 Madras 650 and *Salay Mohd. Sait* v. *J.M.S. Charity,* [1969] 1 MLJ—SC 16, relied upon.

Dismissing the appeals, this Court,

HELD: (1) The Tamil word "kaichalai" seems to denote a structure or a roof put up by hand. Whatever may be the precise meaning of the term, the definition in Section 2(2) of the Rent Act clearly includes the '*kaichalai*' in the present case. [789D] E

(2) Since the Rent Act applies to residential and non-residential buildings alike, the expression 'hut' cannot be restricted only to huts or cottages intended to be lived in. It will also take in any shed, hut or other crude or third class construction consisting of an enclosure made of mud or by poles supporting a tin or asbestos roof that can be put to use for any purpose, residential or non-residential, in the same manner as any other first class construction. [789E-F] F G

(3) In the case of composite lease of land and building, a question may well arise whether the lease is one of land although there is a small building or hut (which does not really figure in the transaction) or of a lease of the building (in which the lease of land is incidental) or a lease of both regardless of their respective dimensions. [790G] H

A **(4) It is not always necessary that there should be a dominant intention swaying the parties. There may be cases where all that is intended is a joint lease of both the land and the building without there being any consideration sufficient to justify spelling out an intention to give primacy to the land or the building. The test of dominant intention or purpose may not be very helpful in such cases in the context of this** B **legislation. [791F; 792B]**

Sivarajan v. *Official Receiver,* **AIR 1953 Trav. Co. 105;** *Nagamony* v. *Tiruchittambalam,* **AIR 1953 Trav. Co. 369;** *Official Trustee* v. *United Commercial Syndicate,* **[1955] 1 MLJ 220;** *Raj Narain* v. *Shiv Raj Saran,* **AIR 1969 RCJ 409;** *Venkayya* v. *Subba Rao,* **AIR 1957 AP 619;** *Uttam Chand* v. *Lalwani,* **AIR 1965 SC 716 and** *Dwarka Prasad* v. C *Dwarkadas,* **[1976] 1 SCR 277.**

(5) In the context of this case, we should be guided not by any theory of dominant purpose but by the consideration as to whether the parties intended that the building and land should go together or D **whether the lessor could have intended to let out the land without the building. [794B]**

Sultan Bros. P. Ltd. v. *C.I.T,* **[1964] 5 SCR 807, referred to.**

(6) Having regard to all the facts and circumstances, the correct E **inference appears to be that what the lessor intended was a lease of both the land and the building, this being a composite lease with a composite purpose. In these circumstances, this letting would come in within the scope of Rent Control Act. [795C]**

(7) Where a person leases a building together with land, it seems F **impermissible in the absence of clear intention spelt out in the deed, to dissect the lease as (a) of building and appurtenant land covered by the Rent Control Act and (b) of land alone governed by other relevant statutory provisions. What the parties have joined, the court cannot tear as under. [796B]**

G CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2044-45 of 1990.

From the Judgment and Order dated 18.8.1989 of the Madras High Court in C.R.P. Nos. 4797 and 4798 of 1984.

H C.S. Vaidyanathan, K.V. Vishwanathan, K.V. Mohan, S.R. Bhat and S.R. Setia for the Appellant.

K. Parsaran and V. Balachandran for the Respondents. A

The Judgment of the Court was delivered by

RANGANATHAN, J. Special leave to appeal is granted and the appeals are disposed of by a common order.

B

On 9.6.1936, Ramaswamy Gounder (the predecessor-in-interest of the respondents) executed a lease deed in favour of Gopal Sait (the predecessor-in-interest of the appellant). Certain passages from an English translation of the lease deed (which was in vernacular) are relevant for the purposes of the present case and they read thus:

> "*Whereas* the property viz. vacant land well and *Kaichalai* etc. belongs to the party of the First part as his ancestral property; C
>
> *Whereas* the said property was leased out to party of the Second Part on a monthly rental of Rs. 12-8-0 for 15 years and taken possession by the party of the second part from party of the First part on 3.12.1935 ..... and the party of the Second part for his convenience and at his own expenses and costs (was) permitted to construct in the said vacant land and instal petrol selling business ..... D
>
> (A)fter the expiry of lease period of 15 years i.e. on 12.2.1950 the lessee shall at his own expense remove the structure put up by him and deliver possession of the vacant land together with well and *kaichalai* in the present state.... E
>
> SCHEDULE F
>
> ..... vacant land situated in this bounded on the North by vacant land leased out for Burmah Oil Co. by the said Ramaswamy Gounder Gopalji Ratnaswami ..... all these vacant lands together with in the fourth plot measuring East to west 84 and North to South 16 together with half share in well therein together with tiled *Kaichalai* ... together with door, doorways etc. There is no number for Kaichalai. G

It is common ground that the total vacant area covered by the H

A lease was 3600 sq. ft. and that the *kaichalai,* referred to therein, was thirty seven and a half by sixteen and a half feet i.e. of the extent of about 600 sq. ft. It also appears that even though there was initially no door number for the *Kaichalai*, it was eventually given door No. 82 and the suit premises we are concerned with bear door Nos. 80, 81 and 82.

B

The lease was extended for a period of two years from 1.1.51 by a fresh deed dated 15.1.51 at an enhanced rent. This lease deed recited:

> "On the expiry of two years, i.e. on 31.12.52, the lessor has no objection for the removal of the structure put up by Burmah Shell petrol pump etc except the extent of
C structure of thirty seven and a half feet by sixteen and a half feet put up by the lessor....."

There was a fresh lease deed, again, executed on 2.1.53 for a further period of three years at a higher rent. This deed also required the
D lessee, when delivering possession back to the lessor on the expiry of the lease, to remove the structures put up by him or the Burmah Shell Co. Ltd. "except the structure measuring thirty seven and a half ft. by sixteen and a half ft.".

The lessee appears to have continued to occupy the property
E even beyond 31.12.55 at a further enhanced rent. In 1962, we are told, the lessor filed a petition to evict the lessee under s. 10(3)(a)(i) and 14(1)(b) of the Madras Buildings (Lease and Rent Control) Act 1960, alleging that he required the premises for personal occupation and for *bona fide* immediate demolition. "The lessee defended the petition saying that the premises do not require any immediate demolition,
F that the premises are used for non-residential purposes and kept in good condition and that the petitioner's requirement for personal occupation is not *bona fide*." The petition was dismissed by the Rent Controller observing that the premises did not need demolition and further that, as the premises had been leased out for non-residential purposes and the landlord could not seek its conversion into residen-
G tial use without the controller's application, the petitioner's allegation that he required it for personal use was neither tenable nor *bona fide*.

Ramaswamy Gounder filed a petition again in 1979 for the eviction of the respondent but he died in February 1979 and the petition filed by him was dismissed for default. Thereafter his legal representa-
H tives (the present respondents) instituted a petition for eviction

(R.C.O.P. 19/79 out of which the present proceedings have arisen) of the respondents on the grounds of demolition and re-construction and of wilful denial of title within the meaning of Ss. 14(1)(b) and 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. A

In the meantime, the provisions of the Madras City Tenants' Protection Act, 1922 (Later renamed the Tamil Nadu City Tenants' Protection Act) were extended to the municipal limits of Udumalpettai within which the premises in question were located. Taking advantage of this, the respondent filed O.P. 1/79 (in the same court of District Munsif-cum-Rent Controller) claiming the benefit of compulsory purchase conferred on tenants of land under the said Act. The District Munsif-cum-Rent Controller allowed the lessor's petition for eviction and dismissed the lessee's petition. The sub-judge, on appeal, dismissed the appeals with a slight modification. He was of the view that, except for the *kaichalai*, the other buildings had been put up by the respondents with the permission of the lessor and that, hence, he was entitled to obtain compensation therefor by institution of seperate appropriate proceedings. B C D

The respondent filed two revision petitions before the High Court which declined to interfere. The learned Judge held:

> "I do not see any reason to interfere with the orders of the courts below negativing the claim of the revision petitioner. In as much as admittedly the property situated in door No. 82 belonged to the landlord, this is a case to which section 14(1)(b) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 will apply. However, the property bearing door Nos. 80 and 81 belonged to the petitioner is the finding. On that all that the tenant could ask for will be for removal of the superstructure. Beyond that his claim for compensation also could not be ordered since there was no prayer for the same. The decision in *M/s. Larsen & Toubro Ltd.* v. *The Trustees of Dharmamoorthy Rao Bahadur, Calvala Cunnan Chetty's Charities by its Trustees,* [1988] 2 LW 380 is distinguishable because this is a case of only one and a half grounds wherein there is a *kaichalai* of 600 sq. ft. The removal shall take place within a period of three months from today. The Civil revision petitions are dismissed."

E F G

Hence these two appeals. H

A Though there have been claims made under the Rent Control Act by the lessor and under the City Tenants' Protection Act by the lessee, the claim under the latter has not been pressed before us by the learned counsel for the appellant who has confined his arguments before us to the only question whether the demised premises constitute a "building" within the meaning of s. 2(2) of the Rent Control B Act.

Sri C.S. Vaidyanathan, learned counsel for the appellants submitted that the first appellate court has found, modifying the trial court's findings in this regard, that the original lease comprised only of the vacant site, well and *kaichalai* and that all the other superstructures found in the demised premises had been put up by the appellant. C He contended that the '*kaichalai*' was merely in the nature of a shed put up for the tethering of cattle and that it was not a 'building' within the meaning of the Rent Control Act. Alternatively, he contended, even if the *Kaichalai* could be considered to be a building this was not a case of the lease of a building or hut with its appurtenant land: it was D really a case of the lease of a vacant site to the petitioner on which was situated a small hut in one corner. The lease deed itself recites that the appellant had taken the premises for putting up a petrol pump. In fact he did put in an underground storage tank, a petrol pump and other structures and carried on a petrol and kerosene business thereon. Though the small *Kaichalai* was situate in a corner of the site, the lease E intended by the parties was only that of the site. The *Kaichalai* was no doubt not demolished and, perhaps, the appellant also made use of it for the purposes of his business but, says Sri Vaidyanathan, this made no difference to the obvious and clear and dominant intention of both parties that it was the site that was leased out for a petrol pump business. Sri Vaidyanathan contended that the issue is directly gover- F ned by the decision in the *Larsen & Toubro* case [1988] 4 SCC 260, to which one of us was a party. He submitted that, where a lease is a composite one of land and buildings, the court has to address itself to the primary or dominant intention of the parties. If this is to lease a building—the lease of land being adjunct or incidental—as in the *Larsen & Toubro,* case (supra), the Rent Control Act would apply. On G the other hand, if the dominant intention is to lease a site—the presence of a building thereon not being considered material by either party—the lease would not be one of a 'building' covered by the Rent Control Act, whether or not it can be considered as a lease only of a vacant site governed by the City Tenant's Protection Act. Counsel contended that it is possible that there may be a grey area of leases H which might fall under neither Act and proceedings in respect of which

may continue to be governed by the Transfer of Property Act, unaffected by these special laws. A

The Rent Control Act contains a definition of the expression 'building' which reads as follows:

> "2(2) 'building' means any building or hut or part of a building or a hut, let or to be let separately for residential or non-residential purposes and includes— B
>
> (a) the gardens, grounds and out-houses, 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, C
>
> (b) any furniture supplied 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." D

We have not been able to get at the exact meaning of the Tamil word 'kaichalai'. It, however, seems to denote a structure or a roof put up by hand. Whatever may be the precise meaning of the term, we think that the definition in S. 2(2) clearly includes the *kaichalai* in the present case. Since the Act applies to residential and non-residential buildings alike, the expression 'hut' cannot be restricted only to huts or E cottages intended to be lived in. It will also take in any shed, hut or other crude or third class construction consisting of an enclosure made of mud or by poles supporting a tin or asbestos roof that can be put to use for any purpose, residential or non-residential, in the same manner as any other first class construction. The *kaichalai* is a structure which falls within the purview of the definition. Counsel for the appellant is F perhaps under-stating its utility by describing it as a mere cattle shed. The area of the shed is quite substantial and, as will be explained later, the parties also appear to have attached some importance to its existence on the site. It is very difficult to hold, in view of the above definition, that the *kaichalai* is not a 'building' within the meaning of S. 2(2). G

On behalf of the respondents, it is contended that, in a composite lease, the existence of a building or hut on the land (however small, insignificant or useless it may be) is sufficient *per se* to bring the lease within the scope of the Rent Control Act. It is suggested for the respondent that it would be unarguable, once it is admitted or held H

A that the *Kaichalai* is a building and that the same has been let out, that still there is no letting out of a building within the meaning of the Act. In support of his contention, Sri Parasaran, for the respondent, placed considerable reliance on *Irani* v. *Chidambaram Chettiar,* AIR 1953 Mad. 650. He pointed out that, in that case there was a vast vacant land with only some stalls in one corner and a compound wall but it B was nevertheless held to be a case of lease of a building. According to him, this case was not disapproved, but indeed indirectly approved, by this Court in *Salay Md. Sait* v. *J.M.S. Charity,* [1969] 1 MLJ—SC 16 though certain other cases (where leases of vacant sites with only the lessees' buildings thereon were held to be leases of buildings) were overruled in that decision. This case, according to him, decides that, once there is a building on the land, however insignificant, and it is let C out, the case will be governed by the Rent Control Act. We do not think this case is an authority for such an extreme position. It rather seems that the case was one decided on its own special facts. At the time of the original lease by the landlord there was only a vacant site and a few small stalls. But, by the time the relevant lease deed (which D came up for consideration) was executed, it had become the site of a theatre. No doubt the theatre did not belong to the lessor; nevertheless for several years the leased property had been sued as a theatre and the purpose of the parties was clearly that the leased premises should continue be used as a cinema theatre. It was in this special situation that the Court came to the conclusion that it was plausible to E hold the lease to be one of a building though if the structures not belonging to the landlord were left out of account, there was only a vacant site and a few stalls. We think it would not be correct to draw support from this decision for the extreme proposition contended for on behalf of the respondent. In our opinion, we have to travel beyond this solitary fact, go further to look at the terms of the lease and the F surrounding circumstances to find out what it is that the parties really intended.

There is no difficulty in determining the scope of the lease where a building and a piece of land are separately let out. But in the case of composite lease of land and building, a question may well arise G whether the lease is one of land although there is a small building or hut on it (which does not really figure in the transaction) or one of a lease of the building (in which the lease of land is incidental) or a lease of both regardless of their respective dimensions. In determining whether a particular lease is of the one kind of another, difficulties are always bound to arise and it will be necessary to examine whether the H parties intended to let out the building along with the lands or *vice*

versa. The decisions in *Sivarajan* v. *Official Receiver,* AIR 1953 Trav. Co. 105; *Nagamony* v. *Tiruchittambalam,* AIR 1953 Trav. Co. 369; *Official Trustee* v. *United Commercial Syndicate,* [1955] 1 MLJ 220 and *Raj Narain* v. *Shiv Raj Saran,* AIR 1969 RCJ 409, relied upon by Sri Vaidyanathan, were instances where what the parties had in mind was only the lease of land, although there were certain petty structures thereon which were not demolished or kept out of the lease but were also let out. They were clearly cases in which, we think, the applicability of the Rent Act was rightly ruled out. On the other hand, *Larsen & Toubro,* [1988] 4 SCC 260 is a case where there was the lease of a building although a vast extent of land was also included in the lease. That was not a case which arose under the Rent Control Act but it illustrates the converse situation. Sri Vaidyanathan wants to derive, from the case referred to above and certain cases which deal with other aspects which become relevant while considering a composite letting, a proposition that the dominant purpose of the letting should govern. For instance, there are cases where factories, mills or cinema theatres are leased out and cases have held that the dominant object is to lease a factory, mill or theatre and that, even though in all these cases, the letting out of a building would be involved, the provisions of the Rent Control Act would not apply vide *Venkayya* v. *Subba Rao,* AIR 1957 A.P. 619; *Uttam Chand* v. *Lalwani.* AIR 1965 SC 716 and *Dwarka Prasad* v. *Dwarkadas,* [1976] 1 SCR 277. But we think that this approach also seeks to over simplify the problem. When we come down to consider the terms of a particular lease and the intention of the parties, there are bound to be a large variety of cases. If the transaction clearly brings out a dominant intention and purpose as in the cases cited above, there may be no difficulty in drawing a conclusion one way or the other. But it is not always necessary that there should be a dominant intention swaying the parties. There may be cases where all that is intended is a joint lease of both the land and the building without there being any considerations sufficient to justify spelling out an intention to give primacy to the land or the building. For instance, where a person owns a building surrounded by a vast extent of vacant lands (which may not all be capable of being described appurtenant thereto, in the sense of being necessary for its use and enjoyment) and a party comes to him and desires to take a lease thereof, he may do so because he is interested either in the building or the land (as the case may be). But the owner may very well say: "I am not interested in your need or purpose. You may do what you like with the land (or building). I have got a compact property consisting of both and I want to let it out as such. You may take it or leave it." The fact in such cases is that the owner has a building and land and he lets them

A out together. He is not bothered about the purpose for which the lease is being taken by the other party. In such cases, it is very difficult to say that there is no lease of building at all unless there is some contra indication in the terms of the lease such as, for example, that the lessee could demolish the structure. The test of dominant intention or purpose may not be very helpful in such cases in the context of this B legislation.

Sri Vaidyanathan sought to contend that the words of S. 2(2) "any building ..... and gardens, grounds ..... let or to be let along with it", import the concept that the dominant purpose should be a letting of the building. We do not think that this is necessarily so. The C decision of this Court in *Sultan Bros. P. Ltd.* v. *C.I.T.*, [1964] 5 SCR 807 is of some relevance in this context. There the Supreme Court was concerned with the interpretation of S. 12(4) of the Indian Income-tax Act, 1922 which read:

> "(4) Where an assessee lets on hire machinery plant or D furniture belonging to him and also buildings, and the letting of the buildings inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of the clauses (iv), (v) and (vii) of sub-section (2) of section 10 in respect of such buildings."

E

The High Court took the view that the plant and machinery and buildings should not only be inseparably let out but also that "the primary letting must be of the machinery, plant or furniture and that together with such letting or along with such letting there (should be) letting of buildings." In that case, the High Court held, the primary letting was F of the building and so S. 12(4) would not apply. The Supreme Court did not approve of this reasoning. It said:

> "Now the difficulty that we feel in accepting the view which appealed to the High Court and the Tribunal is that we find nothing in the language of sub-s. (4) of S. 12 to support it. G No doubt the sub-section first mentions the letting of the machinery, plant or furniture and then refers to the letting of the building and further uses the word 'also' in connection with the letting of the building. We, however, think that this is too slender a foundation for the conclusion that the intention was that the primary letting must be of the H machinery, plant or furnitures. In the absence of a much

stronger indication in the language used, there is no warrant for saying that the sub-section contemplated that the letting of the building had to be incidental to the letting of the plant, machinery or furniture. It is pertinent to ask that if the intention was that the letting of the plant, machinery or furniture should be primary, why did not the section say so? Furthermore, we find it practically impossible to imagine how the letting of a building could be incidental to the letting of furniture, though we can see that the letting of a factory building may be incidental to the letting of the machinery or plant in it for the object there may be really to work the machinery. If we are right in our view, as we think we are, that the letting of a building can never be incidental to the letting of furniture contained in it, then it must be held that no consideration of primary or secondary lettings arises inconstruing the section for what must apply when furniture is let and also buildings must equally apply when plant and machinery are let and also buildings. We think all that sub-s. (4) of s. 12 contemplates is that the letting of machinery, plant or furniture should be inseparable from the letting of the buildings."

The Court proceeded then to consider the concept of 'inseparable letting' and observed:

"It seems to us that the inseparability referred to in sub-s. (4) is an inseparability arising from the intention of the parties. That intention may be ascertained by framing the following questions: Was it the intention in making the lease—and it matters not whether there is one lease or two, that is, separate leases in respect of the furniture and the building—that the two should be enjoyed together? Was it the intention to make the letting of the two practically one letting? Would one have been let alone or a lease of it accepted without the other? If the answers to the first two qustions are in the affirmative, and the last in the negative then, in our view, it has to be held that it was intended that the lettings would be inseparable. This view also provides a justification for taking the case of the income from the lease of a building out of s. 9 and putting it under s. 12 as a residuary head of income. It then becomes a new kind of income, not covered by s. 9, that is, income not from the ownership of the building alone but an income which

A though arising from a building would not have arisen if the plant, machinery and furniture had not also been let along with it."

Though the context was somewhat different, the observations in that case are of great assistance. We think that, in the context here also, we B should be guided not by any theory of dominant purpose but by the consideration as to whether the parties intended that that the building and land should go together or whether the lessor could have intended to let out the land without the building. The latter inference can perhaps be generally drawn in certain cases where only the lease of land dominated the thoughts of the parties but the mere fact that the building is small or that the land is vast or that the lessee had in mind a C particular purpose cannot be conclusive.

Let us now turn, in the above background, to a consideration of the lease deed in the present case. As already mentioned, counsel for the appellant strongly relies on the purpose of the lease and seeks to D make out that the building (*kaichalai*) was not really a significant part of the lease. This contention is stoutly refuted on behalf of the respondents. It is pointed out that the *kaichalai* was of substantial dimensions and that counsel for the appellant is not right in characterising it as a mere cattle shed. It is pointed out that the shed was also admittedly used by the appellants for the purposes of its business and there is E nothing to show that this was also not in contemplation at the time of the lease. Again it is pointed out that, in some parts of the lease deeds, the vernacular version gives first place to the *kaichalai* rather than to the vacant site. Also, every one of the lease deeds attaches special emphasis that the *kaichalai* should not be removed but should be returned to the lessor without any damage. We may also advert to one F more circumstance which shows beyond doubt that the *kaichalai* was not an insignificant structure. We have earlier referred to the fact that Ramaswamy Gounder had filed an earlier eviction petition on the ground that he needed the premises for personal occupation and immediate demolition. The lessee's defence to this was not that the *kaichalai* was a cattle-shed unfit for personal occupation. The defence G was that it had been let out for a non-residential purpose and could not be converted to residential use without permission. This certainly demonstrates that the *kaichalai* was capable of use both for residential and non-residential purposes. Counsel for the respondent, in fact, wanted to go a little further and hold it against the appellant that he had not taken in those proceedings the plea, now put forward, that the H Rent Control Act could not at all be invoked. We will not, however,

hold this against the appellant as, at that time, the benefits of the Tenants' Protection Act had not been extended to Udumalpettai and the tenant would not have gained anything by raising any such point. But the pleadings in those proceedings as well as the order of the Rent Controller therein leave no doubt that the *kaichalai* was a material structure let out as such to the lessee for non-residential purposes and which, with necessary permission, could also have been used for residential purposes. Having regard to all these circumstances, the correct inference appears to be that what the lessor intended was a lease of both the land and the building. The land was to be put to use for a petrol pump; so far as the building was concerned, the lessee was at liberty to use it as he liked but he had to maintain it in good condition and return it at the end of the lease. This was a composite lease with a composite purpose. It is difficult to break up the integrity of the lease as one of land alone or of building alone. In these circumstances, we think this letting would come in within the scope of the Rent Control Act, for the reasons already explained.

Before concluding, we may touch upon two more relevant aspects. The first is the use of the word "separately" in s. 2(2). This, however, does not affect our above construction of the section. That word is intended to emphasise that, for purposes of the Act, a building means any unit comprising the whole or part of a building that is separately let out. It does not mean—it cannot mean—that composite leases of land and building would not be covered by it. That would be clearly contrary to the language of the whole clause which specifically talks of joint letting of land and building. The second is the restriction of the applicability of s. 2(2) to cases of letting of building and appurtenant lands only. It may be suggested that the lands here are not "appurtenant" except perhaps to the extent required for providing access to the *Kaichalai*. This argument is not very helpful to the appellants. At best, it can mean that the *Kaichalai* and only a part of land needed for its enjoyment or use would be governed by the Rent Control Act. But this was not the contention of the appellant and no attempt has been made to ascertain what the extent of such "appurtenant" land could be. That apart, we are inclined to think that the word "appurtenant" has, in the context, a much wider meaning. It is not just restricted to land which, on a consideration of the circumstances, a court may consider necessary or imperative for its enjoyment. It should be construed as comprehending the land which the parties considered appropriate to let along with the building. To hold to the contrary may give rise to practical difficulties. Suppose there is, in the middle of a metropolis, a bungalow with a vast extent of land sur-

A rounding it such as for e.g. in the *Larsen & Toubro* case and this is let out to a tenant. If a very strict and narrow interpretation is given to the word "appurtenant", it is arguable that a considerable part of the surrounding land is surplus to the requirements of the lessee of the building. But, we think, no argument is needed to say that such a lease would be a lease of building for the purposes of the Rent Control Act. B Where a person leases a building together with land, it seems impermissible in the absence of clear intention spelt out in the deed, to dissect the lease as (a) of building and appurtenant land covered by the Rent Control Act and (b) of land alone governed by other relevant statutory provisions. What the parties have joined, one would think, the court cannot tear as under. In fact, we may point out that a wider meaning C for this word was convassed in *Irani* v. *Chidambaram Chettiar,* AIR 1953 Madras 650 which the court had no necessity to go into in the view taken by it on the interpretation of the lease deed. In this case also no contention has been raised in regard to this aspect and so we shall also leave open the precise connotation of the word except to say that it may warrant a wide meaning in the context. D

For the reasons discussed above, we see no grounds to interfere with the judgments of the courts below. The appeal is dismissed but we make no order as to costs.

R.S.S. Appeal dismissed.