M/S SHAHA RATANSI KHIMJI & SONS

v.

PROPOSED KUMBHAR SONS HOTEL P. LTD. & ORS.
(CIVIL APPEAL NO.127 OF 2007)

JULY 10, 2014.

[R.M.LODHA, CJI, SUDHANSU JYOTI MUKHOPADHAYA AND DIPAK MISRA, JJ.]

Transfer of Property Act, 1882: ss.105, 108, 111 - Held: A lease of immovable property is a transfer of right to enjoy such property in consideration of price paid as per s.105 of the T.P. Act - By way of lease, a right and interest is created which stands transferred in favour of the lessee - The immovable property, thereafter, only can be reverted back on determination of such right and interest in accordance with the provisions of the T.P. Act - Therefore, once the right of lease is transferred in favour of the lessee, the destruction of a house/building constructed on the lease property does not determine the tenancy rights of occupant which is incidental to the contract of the lease which continues to exist between the parties - In the instant case, respondent purchased the lessor's interest - Lease continued even thereafter and did not extinguish - The lease was subsisting when the shares of the land were purchased by the respondent - But the interest of the lessee was not purchased by the respondent - Demolition and destruction of the tenanted premises - Tenancy of the appellant cannot be said to have been determined consequent upon demolition of the tenanted premises - High Court wrongly held that tenancy rights of appellant had lapsed - However, taking into consideration the fact that the appellant has not been in possession of the suit property since long, restoration of possession of suit property to the appellant is not directed - Instead respondent is directed to pay a sum of Rs. 20,00,000/- in favour of the appellant towards

compensation for depriving him from enjoying the suit property - Lease.

Lease: Destruction of leased building - Status of lessee - Held: When there is a lease of a house or a shop it cannot be treated as a lease of structure but also a lease of site - Once a tenancy is created in respect of a building standing on the land it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which is the site of the building continues to exist - This interpretation, is in accord with s.108 of the TP Act - Transfer of Property Act, 1882

The appellant had taken a godown over the southern portion of the suit property on rent and was using the access on eastern side of the godown for approaching the municipal road and in bringing its goods to the godown. The owner of the northern portion of the suit property sold his portion to the respondent. The respondent demolished the construction existing over his portion and started digging for basement. Later on, the respondent purchased the southern portion of the suit property also. The case of the appellant that the digging work exposed the base of the godown to the vagaries of nature.During the rainy season, water got accumulated in the said ditch and entire structure of godown was threatened. When the appellant inquired the respondent about the same, the respondent asked the appellant to vacate the godown. The respondent also threatened the workers of the appellant. Therefore, according to the appellant, the excavation made by the respondent was intentional and directed towards terminating the tenancy of the appellant by adopting dubious methods. It was also alleged that the respondent also closed the access road to the suit property. Thus, the appellant was unable to keep its goods in or take out

its goods from the suit property, causing irreparable loss to the appellant. A

The appellant filed a suit with a prayer that the respondent be restrained from closing the access of the appellant to the suit property from the municipal road and digging in a manner which would cause damage to the godown. The civil court dismissed the suit. The first appellate court upheld the decision of the civil court. By impugned judgment, the High Court dismissed the second appeal on the ground that the tenancy right of the appellant had lapsed. The instant appeal was filed challenging the order of the High Court. B C

On 5th January, 2007, the matter on reference came up before the Bench of Three Judges in view of inconsistency in the view taken in *Vannattankendy Ibrayi case and **T. Lakshmipathi case. D

In the case of *Vannattankandy Ibrayi, this Court formulated two questions for consideration: (a) Whether the tenancy in respect of the premises governed by the Kerala Buildings (Lease and Rent Control) Act is extinguished by destruction of the subject-matter of tenancy i.e. the premises by natural calamities, and (b) On the destruction of property whether the civil court has jurisdiction to entertain and try the suit for recovery of possession of land brought by the landlord. Both questions were answered in the affirmative. E F

In Lakshmipathi, this Court held that lease of a building includes, the land on which the building stands. So even if the building is destroyed or demolished, the lease is not determined as long as the land beneath it continues to exist. Doctrine of frustration cannot be invoked on destruction or demolition of a building under lease where not only privity of contract but privity of estate is also created. G H

A Allowing the appeal, the Court

HELD: 1. Immovable property means landed property and may include structures embedded in the earth such as walls or buildings for the permanent beneficial
B enjoyment. A lease of immovable property is a transfer of right to enjoy such property in consideration of price paid as per Section 105 of the T.P. Act. By way of lease, a right and interest is created which stands transferred in favour of the lessee. The immovable property, thereafter, only can be reverted back on determination of
C such right and interest in accordance with the provisions of the T.P. Act. Therefore, once the right of lease is transferred in favour of the lessee, the destruction of a house/building constructed on the lease property does not determine the tenancy rights of occupant which is
D incidental to the contract of the lease which continues to exist between the parties. [Para 22] [1114-C-F]

2. Section 108 postulates the rights and liabilities of lessor and lessee. If a right is not conferred by the Statute
E on the lessor for determination, except one exception which is clearly stipulated there in Section 108 (B) (e) by the Legislature, it would not be permissible for the Court to add another ground of the base or fulcrum of ethicality, difficulty or assumed supposition. The singular exception
F that has been carved out is the wrongful act or default on the part of the lessee which results in the injury to the property that denies the benefit. In all other circumstances which find mention under Section 111 of the Act, are the grounds for determination of the lease. This is the
G plainest construction of the provision and there is no other room for adding to or subtracting anything from it. [Para 29] [1124-H; 1125-A-C]

3. When there is a lease of a house or a shop it cannot be treated as a lease of structure but also a lease

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of site. Once a tenancy is created in respect of a building standing on the land it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which is the site of the building continues to exist. This interpretation, is in accord with Section 108 of the Act. It is reflectible that in *Vannattankandy Ibrayi's case, the two-Judge Bench observed that the rights stand extinguished as on the distinction of the demise, for there is destruction of the superstructure and in its non-existence there is no subject matter. Thus, the land has been kept out of the concept of subject matter. The Court in the said case failed to appreciate that there are two categories of subject-matters, combined in a singular capsule, which is the essence of provision under the Transfer of Property Act and not restricted to a singular one, that is, the superstructure. In **T. Lakshmipathi the Court took note of the fact that the land and superstructure standing on it as a singular component for the purpose of tenancy. It is in tune with the statutory provision. Therefore, in the event of the tenancy having been created in respect of a building standing on the land, it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which was the site of the building continues to exist. [Paras 31 and 32] [1125-G-H; 1126-A-G]

Vannattankandy Ibrayi Vs. Kunhabdulla Hajee* **(2001) 1 SCC 564: 2000 (5) Suppl. SCR 630 - overruled

***Lakshmipathi & Ors. Vs. R.Nithyananda Reddy & Ors.* **(2003) 5 SCC 150: 2003 (3) SCR 173 - relied on.**

V. Kalpakam Amma vs. Muthurama Iyer Muthurkrishna Iyer AIR **1995 Kerala 99 - referred to.**

A **4. In the instant case, it is not in dispute that the respondent purchased the lessor's interest. The lease continued even thereafter and did not extinguish. The lease was subsisting when the shares of the land were purchased by the respondent. But the interest of the** B **lessee was not purchased by the respondent. What was purchased by the respondent was the right and interest of ownership of the property. The interest of the appellant as lessee did not vest with the respondent. Therefore, the tenancy of the appellant cannot be said to have been** C **determined consequent upon demolition and destruction of the tenanted premises. The impugned judgment is set aside. However, taking into consideration the fact that the appellant is not in possession of the suit property since long, restoration of possession of suit property to the** D **appellant is not directed. Instead the respondent is directed to pay a sum of Rs. 20,00,000/- in favour of the appellant towards compensation for depriving the appellant from enjoying the suit property, within two months, failing which it shall be liable to pay interest @ 6% per annum from the date of the judgment. [Paras 33** E **and 34] [1126-H; 1127-A-F]**

Hind Rubber Industries (P) Ltd. vs. Tayebhai Mohammedbhai Bagasarwalla, ***AIR*** **1996 Bom. 389;** *Raja Dhruv Dev Chand v. Harmohinder Singh and Anr.* ***AIR*** **1968** F **SC 1024: 1968 SCR 839;** *D.G. Gose & Co. (Agents) (P) Ltd. v. State of Kerala* **(1980) 2 SCC 410: 1980 (1) SCR 804 ;** *Corpn. of the city of Victoria v. Bishop of Vancouver Island* ***AIR*** **1921 PC 240 - referred to.**

G **Case Law Reference:**

2000 (5) Suppl. SCR 630	**Overruled**	**Para 3**
2003 (3) SCR 173	**Relied on**	**Para 4**
AIR 1995 Kerala 99	**Referred to**	**Para 23**

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AIR 1996 Bom. 389	**Referred to**	**Para 24**	
1968 SCR 339	**Referred to**	**Para 30**	
1980 (1) SCR 804	**Referred to**	**Para 31**	
AIR 1921 PC 240	**Referred to**	**Para 31**	B

CIVIL APPELLATE JURISDICTION : Civil Appeal No.127 of 2007

From the Judgment and Order dated 18.07.2006 of the High Court of Judicature at Bombay in Second Appeal No.109 of 2006. C

V.A. Mohta, Braj K. Mishra, Aparna Jha, Nilkantha Nayak, Vishwajit Singh for the Appellants.

Gaurav Agarwal for the Respondent. D

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This appeal is directed against the judgment and decree dated 18th July, 2006 passed by the High Court of Judicature at Bombay in Second Appeal No. 109 of 2006. By the impugned judgment, the High Court affirmed the concurrent finding of the lower courts that the appellant's tenancy right had lapsed and dismissed the second appeal. E F

2. When the matter came before this Court, vide order dated 5th January, 2007, this Court referred the matter to a Bench of three Judges. The said order reads as under:

> *"Apparently there seems to be inconsistency in the view taken by this Court in Vannattankandy Ibrayi Vs. Kunhabdulla Hajee [(2001) 1 SCC 564] and T.Lakshmipathi & Ors. Vs. R.Nithyananda Reddy & Ors. [(2003) 5 SCC 150].* G

Leave granted. H

A The matter shall be placed before a three Judge Bench.

Status quo shall be maintained in the meanwhile."

3. In the case of Vannattankandy Ibrayi Vs. Kunhabdulla Hajee, (2001) 1 SCC 564, this Court formulated two questions B for consideration:

"(a) Whether the tenancy in respect of the premises governed by the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the State Rent C *Act") is extinguished by destruction of the subject-matter of tenancy i.e. the premises by natural calamities, and*

(b) On the destruction of property whether the civil court has jurisdiction to entertain and try the suit for recovery of possession of land brought by the landlord."

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Both questions were answered in the affirmative.

4. In *Lakshmipathi & Ors. Vs. R.Nithyananda Reddy & Ors.* (2003) 5 SCC 150, this Court held that lease of a building E includes, the land on which the building stands. So even if the building is destroyed or demolished, the lease is not determined as long as the land beneath it continues to exist. Doctrine of frustration cannot be invoked on destruction or demolition of a building under lease where not only privity of contract but privity F of estate is also created.

5. In the present case, the suit property comprises of Plot No. 525, Shaniwar Peth, Karad in District Satara, Maharashtra. There was a godown on the southern side of the suit property. The eastern portion of the suit property was open and there was G a road admeasuring 10 to 12 ft. from which the municipal road could be accessed. On the northern portion of the suit property, there was one RCC building. The northern 11/16th portion of the suit property belonged to one Vinayak Patwardhan whereas the southern 5/16th share, on which the godown was H constructed belonged to one Ujjwal Lahoti.

6. In or about 1961-62, the appellant firm took the godown over the suit property on rent from Ujjwal Lahoti; Since then the appellant has been continuously paying rent to Ujjwal Lahoti and storing its goods in the godown. The appellant was using the access on the eastern side of the godown for approaching the municipal road and in bringing its goods to the godown.

7. The case of the appellant is that the respondent had purchased 11/16th share of Vinayak Patwardhan in Plot No. 525 by two sale deeds dated 9th September, 1971 and 21st January, 1978, After purchasing the plot, the respondent demolished the RCC building existing over the property and started digging for basement for construction of a hotel. Later, on 4th May, 1990, the respondent purchased the remaining 5/16th share from Ujjwal Lahoti.

8. Further case of the appellant is that the respondent(s) without obtaining any requisite permission from the municipality started digging a ditch towards the northern side wall of the suit property, thereby exposing the northern base of the godown to the vagaries of nature. The said ditch was nearly 13.6 ft. deep and exposed the entire base of the godown. During the rainy season, water got accumulated in the said ditch and the entire structure of godown was threatened. It weakened the foundation of godown and subjected the entire structure of godown to the danger of collapsing. When the appellant inquired the respondent about the same, the respondent asked the appellant to vacate the godown. The respondent also threatened the workers of the appellant. Therefore, according to the appellant, the excavation made by the respondent was intentional and directed towards terminating the tenancy of the appellant by adopting dubious methods. It is also alleged that the respondent also closed the access road to the suit property. Thus, the appellant was unable to keep its goods in or take out its goods from the suit property, causing irreparable loss to the appellant.

9. The appellant filed a Regular Civil Suit No. 211 of 1990

A in the Court of IInd Jt.Civil Judge, J.D. Karad, at Karad. In the said civil suit, the appellant prayed that the respondent be restrained from closing the access of the appellant to the suit property from the municipal road. The appellant further prayed that the respondent be restrained from digging in a manner B which would cause damage to the godown.

10. In the said suit, initially ad interim injunction was granted restraining the respondent from further digging the suit property. Finally, on 28th May, 1990, ex-parte interim injunction was vacated. Aggrieved by the same, the appellant filed a C Misc. Civil Appeal No. 123 of 1990 before the IIIrd Additional District Judge, Satara against the order passed in RCS No. 211 of 1990.

11. The said appeal was also dismissed on 16th April, D 1996. It was alleged that the respondent thereafter went ahead with further destruction of the godown and demolished the western wall of the godown on 21st October, 1996. Aggrieved by the same, the appellant moved an application for amendment of the plaint bringing on record that on 21st E October, 1996, the respondent again pulled down some portion of the western wall of the godown and due to the damage caused to base of the property, during the rainy season the remaining walls also had collapsed. The appellant sought amendment of the plaint and inclusion of prayer to the effect F that the respondent be directed to reconstruct the walls by order of mandatory injunction. The appellant further prayed that it may be allowed to reconstruct the walls of the godown and the respondent should not be allowed to destroy or disturb the appellant from construction of the godown.

G 12. The amendment sought for by the appellant was initially not allowed by the learned Civil Judge. The High Court by order dated 15th March, 2002 in Civil Revision No. 447 of 2002 allowed the amendment.

H 13. The respondent filed written statement and additional

written statement in which one of the grounds was taken was that godown got demolished due to natural cause and not due to the acts of the respondent. A

14. By the Judgement and decree dated 30th August, 2002, learned Civil Judge dismissed the suit filed by the appellant. B

15. Being aggrieved by the judgement and decree passed by the Trial Court, the appellant filed a Regular Civil Appeal No. 86 of 2002 before the learned Addl. District Judge, Karad. By its judgement and order dated 30th November, 2005, the learned Addl. District Judge, Karad dismissed the appeal of the appellant. C

16. Against the judgement and decree of the Learned Additional District Judge, Karad, the appellant filed Second Appeal No. 109 of 2006 before the High Court of Judicature at Bombay. By its impugned judgement and decree dated 18th July, 2006, the High Court dismissed the second appeal on the ground that the tenancy right of the appellant had lapsed and no substantial question of law was involved in the appeal. D E

17. Learned counsel appearing for the appellant submitted that even after the destruction of the tenanted premises, the tenancy is not determined, and hence the appellant is entitled to the benefit of Section 108(B)(e) of the Transfer of Property Act, 1882 (hereinafter referred to as 'the TP Act'). It was contended that even if the tenanted premises is completely destroyed and renders the tenanted premises substantially or permanently unfit for the purpose for which it was let out, the lease subsists till the tenant terminates the lease. F

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18. In order to fully and appropriately appreciate the issue involved in the present case, it is desirable to refer to the relevant provisions of the Transfer of Property Act, 1882 (T.P. Act for short).

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19. Chapter V of the T.P. Act, 1882 deals with the lease of immovable property. Section 105 of the T.P. Act defines 'lease' and the said definition is as under:

"105. Lease defined.- A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined. -The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

20. Section 108 of the T.P. Act explains the rights & liabilities of lessor and lessee and provisions of the said section relevant to the present case i.e. Section 108(B)(e) reads as under:

"108. Rights and liabilities of lessor or lessee. - In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

(A) Rights and Liabilities of the Lessor

x x x x x

(B) Rights and liabilities of the Lessee

(e) If by fire, tempest or flood, or violence of any army or of a mob, or other irresistible force, any material part of

the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option or the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;"

21. The lease of immovable property is determined by modes stipulated under Sections 106 and 111 of the T.P. Act. Section 111 of the T.P. Act reads as under:

"111. Determination of lease

A lease of immovable property determines-

(a) by efflux of the time limited thereby,

(b) where such time is limited conditionally on the happening of some event-by the happening of such event,

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event,

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,

(e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,

(f) by implied surrender,

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee

A renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives
B notice in writing to the lessee of his intention to determine the lease,

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other."
C

22. Immovable property means landed property and may include structures embedded in the earth such as walls or buildings for the permanent beneficial enjoyment. A lease of immovable property is a transfer of right to enjoy such property
D in consideration of price paid as per Section 105 of the T.P. Act. By way of lease, a right and interest is created which stands transferred in favour of the lessee. The immovable property, thereafter, only can be reverted back on determination of such right and interest in accordance with the provisions of
E the T.P. Act. Therefore, once the right of lease is transferred in favour of the lessee, the destruction of a house/building constructed on the lease property does not determine the tenancy rights of occupant which is incidental to the contract of the lease which continues to exist between the parties.

F 23. The Kerala High Court in V. Kalpakam Amma vs. Muthurama Iyer Muthurkrishna Iyer, AIR 1995 Kerala 99, held that there cannot be a building without a site and once a structure is put up in the land the site becomes the part of the structure and, thereafter the site becomes part of the building.
G The Court further held:

"14. The Supreme Court had also occasion to consider the meaning of the word 'building' in D.G. Gouse and Co v. State of Kerala (1980) 2 SCC 410: (AIR 1980 SC 271).
H *It was a case challenging the constitutionality of the*

Kerala Building Tax Act, 1975. Paragraph 21 of the judgment deals with the definition of the word 'building'. It read thus:-

"The word "building" has been defined in the oxford Dictionary as follows:

That which is built; a structure, edifice; now a structure of the nature of a house built where it is to stand.

Entry 49 of Schedule VII of the Constitution of India therefore includes the site of the building as its component part. That, if we may say so, inheres in the concept or the ordinary meaning of the expression "building".

15. A somewhat similar point arose for consideration in Corporation of the City of Victoria v. Bishop of Vancouver Island, AIR 1921 PC 240 with reference to the meaning of the word "building" occurring in Section 197 (1) of the Statutes of British Columbia 1914. It was held that the word must receive its natural and ordinary meaning as "including the fabric or which it is composed, the ground upon which its walls stand and the ground embraced within those walls". That appears to us to be the correct meaning of the word 'building'.

15A. In Stroud's Judicial Dictionary (Vol.I. 5th Edn.), the word 'building' is defined thus: "What is a building must always be a question of degree and circumstances". In Black's Law Dictionary (5th Edn.), the meaning of the word building is given as follows: "A structure or edifice enclosing a space within its walls, and usually, but not necessarily, covered with a roof". In Bourvier's Law Dictionary (A Concise Encyclopedia of the Law Vol.I. 3rd Revision) the meaning of building is given as "an edifice, erected by art, and fixed upon or over the soil, composed of brick, marble, wood, or other proper substance,

A *connected together, and designed for use in the position in which it is so fixed."*

16. The above are some of the natural meanings that are given to the word 'building'. Adopting the above meaning,
B *the word 'building' must take in the site also, as part of it. If that is so, without site, there cannot be a structure and the site becomes an integral part of the building. Without a site, the super structure of the building on the land cannot normally exist. Thus, when there is a lease of a*
C *building, such lease would normally take in the site unless it specifically excluded from the land."*

24. Similar issue was considered by the Bombay High Court in Hind Rubber Industries (P) Ltd. vs. Tayebhai Mohammedbhai Bagasarwalla, AIR 1996 Bom. 389. In the said
D case, the High Court observed as under:

"16. In my view, the correct legal position in this country appears to be that the destruction of the tenanted structure does not extinguish the tenancy and the right
E *of occupation of the tenant under the contract of tenancy continues to exist between the parties. Merely because the tenanted structure has been destroyed or demolished, the right transferred under the lease cannot be said to have come to an end, and the relationship of*
F *lessor and lessee continues to exist. The destruction of the tenanted premises does not destroy the tenancy rights nor does it bring to an end the relationship of lessor and lessee or for that matter landlord and tenant. The lessee continues to be lessee in the property leased even after its destruction by fire or such like event unless*
G *the lessee exercises his option of treating such lease as void. It may be observed that Section 108 of the T.P. Act deals with the rights and liabilities of lessor and lessee and Part-B and clause (e) of Section 108 provides that if the property leased in wholly destroyed or rendered*
H *substantially and permanently unfit for the purposes for*

which it was leased by fire, tempest or flood or violence of any army or of a mob or other irresistible force, such lease may be rendered void at the option of the lessee provided of course that such injury to the lease property has not been occasioned by the wrongful act or default of the lessee. That means that right of the lessee in the leased property subsists even if the leased properly has been destroyed by fire, tempest or flood or violence of an army or of a mob or other irresistible force unless the lessee exercises his option that on happening of such events the lease has been rendered void. By necessary corollary, therefore, if the leased property is destroyed wholly by fire, the lease cannot be said to be extinguished, nor can it be said that lessee's right in the leased property has come to an end unless the lessee exercises such option. The express provision in clause (e) of Section 108 leaves no manner of doubt that on destruction of leased property by fire, the lease cannot be said to be extinguished, automatically and in this view of the matter the statement of law made in Article 592 of American Jurisprudence and para 2066 of Woodfall on landlord and tenant and relied upon by the learned counsel for the Plaintiff/Respondent cannot be applicable in our country. The view of the Kerala High Court in Dr. V. Siddharthan's case: (supra) is also not acceptable because of no proper construction given to Section 108(e) of the T.P. Act."

25. Adverting to one of the situations similar to that, now before us, the two Judge-Bench of this Court in Vannattankandy Ibrayi (supra) observed as under:

"20. From the aforesaid decisions there is no doubt that if a building is governed by the State Rent Act the tenant cannot claim benefit of the provisions of Sections 106, 108 and 114 of the Act. Let us test the arguments of learned counsel for the appellant that on the destruction

of the shop the tenant can resist his dispossession on the strength of Section 108(B)(e). In this case what was let out to the tenant was a shop for occupation to carry on business. On the destruction of the shop the tenant has ceased to occupy the shop and he was no longer carrying on business therein. A perusal of Section 108(B)(e) shows that where a premises has fallen down under the circumstances mentioned therein, the destruction of the shop itself does not amount to determination of tenancy under Section 111 of the Act. In other words there is no automatic determination of tenancy and it continues to exist. If the tenancy continues, the tenant can only squat on the vacant land but cannot use the shop for carrying on business as it is destroyed and further he cannot construct any shop on the vacant land. Under such circumstances it is the tenant who is to suffer as he is unable to enjoy the fruits of the tenancy but he is saddled with the liability to pay monthly rent to the landlord. It is for such a situation the tenant has been given an option under Section 108(B)(e) of the Transfer of Property Act to render the lease of the premises as void and avoid the liability to pay monthly rent to the landlord. Section 108(B)(e) cannot be interpreted to mean that the tenant is entitled to squat on the open land in the hope that in future if any shop is constructed on the site where the old shop existed he would have right to occupy the newly-constructed premises on the strength of original contract of tenancy. The lease of a shop is the transfer of the property for its enjoyment. On destruction of the shop the tenancy cannot be said to be continuing since the tenancy of a shop presupposes a property in existence and there cannot be subsisting tenancy where the property is not in existence. Thus when the tenanted shop has been completely destroyed, the tenancy right stands extinguished as the demise must have a subject-matter and if the same is no longer in existence, there is an end

of the tenancy and therefore Section 108(B)(e) of the Act has no application in case of premises governed by the State Rent Act when it is completely destroyed by natural calamities."

23. In V. Kalpakam Amma(supra) the Kerala High Court relying upon the definition of "building" in the State Rent Act held that there cannot be a building without a site and once a structure is put up in the land the site becomes part of the structure and thereafter the site becomes part of the building and on that basis the High Court held that once the premises covered by the State Rent Act is raised to the ground the tenancy continues to survive in respect of the vacant land. In our view this is not the correct interpretation of Section 2(1) of the State Rent Act. Section 2(1) uses the words "part of a building or hut". The words "part of the building" do not refer to the land on which the building is constructed but refer to any other superstructure which is part of that main building e.g. in addition to the main building if there is any other superstructure in the said premises i.e. motor garage or servant quarters then the same would be part of the building and not the land on which the building has been so constructed. So far the appurtenant land which is beneficial for the purpose of use of the building is also a part of the building. Thus according to the definition of "building" in the State Rent Act the building would include any other additional superstructure in the same premises and appurtenant land. We are, therefore, of the view that the interpretation put by the Kerala High Court on Section 2(1) for holding that the words "part of a building" mean the land on which the building has been constructed is not correct. The provisions of the State Rent Act clearly show that the State Rent Act is a self-contained Act and the rights and liabilities of landlord and tenant are determined by the provisions contained therein and not by the provisions of the Transfer of Property Act or any

A *other law. The rights of a landlord under the general law are substantially curtailed by the provisions of the State Rent Act as the Act is designed to confer benefit on tenants by providing accommodation and to protect them from unreasonable eviction. In the present case what we*
B *find is that the subject-matter of tenancy was the shop room which was completely destroyed on account of accidental fire and it was not possible for the tenant to use the shop for which he took the shop on rent. After the shop was destroyed the tenant, without consent or*
C *permission of the landlord, cannot put up a new construction on the site where the old structure stood. If it is held that despite the destruction of the shop, tenancy over the vacant land continued unless the tenant exercises his option under Section 108(B)(e) of the Act*
D *the situation that emerges is that the tenant would continue as a tenant of a non-existing building and liable to pay rent to the landlord when he is unable to use the shop. The tenancy of the shop, which was let out, was a superstructure and what is protected by the State Rent Act is the occupation of the tenant in the superstructure.*
E *If the argument of the appellant's counsel is accepted then it would mean that although the tenant on the destruction of the shop cannot put up a new structure on the old site still he would continue to squat on the vacant land. Under such situation it is difficult to hold that the*
F *tenancy is not extinguished on the total destruction of the premises governed by the State Rent Act. Under English law, in a contractual tenancy in respect of building and land the liability to pay the rent by the tenant to the landlord continues even on the destruction of the building*
G *whereas there is no liability of the tenant to pay rent to the landlord on the destruction of the premises governed by the State Rent Act. Therefore, the view taken by the Bombay High Court in Hind Rubber Industries (P) Ltd.(supra) does not lay down the correct view of law. This*
H *Court a number of times has held that any special leave*

petition dismissed by this Court without giving a reason has no binding force on its subsequent decisions. Therefore, the two aforesaid cases relied on by counsel for the appellant are of no assistance to the argument advanced by him.

24. However, the situation would be different where a landlord himself pulls down a building governed by the State Rent Act. In such a situation the provisions contained in Section 11 of the State Rent Act would be immediately attracted and the Rent Control Court would be free to pass an appropriate order.

25. Coming to the next question whether the civil court was competent to entertain and try the suit filed by the respondent for recovery of possession of the vacant land. As already stated above, the tenancy in the present case was of a shop room which was let out to the tenant. What is protected by the State Rent Act is the occupation of the tenant in the superstructure. The subject-matter of tenancy having been completely destroyed the tenant can no longer use the said shop and in fact he has ceased to occupy the said shop. Section 11 of the State Rent Act does not provide for eviction of the tenant on the ground of destruction of the building or the superstructure. Thus when there is no superstructure in existence the landlord cannot claim recovery of possession of vacant site under the State Rent Act. The only remedy available to him is to file a suit in a civil court for recovery of possession of land. In view of the matter the civil court was competent to entertain and try the suit filed by the respondent landlord."

26. Subsequently, another two-Judge Bench of this Court considered the same question in T. Laxmipathi(Supra). In the said case this Court noticed the decision of Bombay High Court in Hind Rubber Industries (supra) and other High Courts and observed as under:

A *"20. The tenancy cannot be said to have been determined by attracting applicability of the doctrine of frustration consequent upon demolishing of the tenancy premises. Doctrine of frustration belongs to the realm of law of contracts; it does not apply to a transaction where*
B *not only a privity of contract but a privity of estate has also been created inasmuch as lease is the transfer of an interest in immovable property within the meaning of Section 5 of the Transfer of Property Act (wherein the phrase "the transfer of property" has been defined), read*
C *with Section 105, which defines a lease of immovable property as a transfer of a right to enjoy such property. (See observations of this Court in this regard in Raja Dhruv Dev Chand v. Raja Harmohinder Singh6.) It is neither the case of the appellants nor of Respondents 2 and 3 that the subject-matter of lease was the building*
D *and the building alone, excluding land whereon the building forming the subject-matter of tenancy stood at the time of creation of lease.*

22. A lease of a house or of a shop is a lease not only of
E *the superstructure but also of its site. It would be different if not only the site but also the land beneath ceases to exist by an act of nature. In the present case the appellants who are the successors of the tenancy right have demolished the superstructure but the land beneath*
F *continues to exist. The entire tenancy premises have not been lost. Moreover, the appellants cannot be permitted to take shelter behind their own act prejudicial to the interest of Respondent 1 under whom Respondents 2 and 3 were holding as tenants and then inducted the*
G *appellants.*

24. We are, therefore, of the opinion that in the event of the tenancy having been created in respect of a building standing on the land, it is the building and the land which are both components of the subject-matter of demise and
H

the destruction of the building alone does not determine the tenancy when the land which was the site of the building continues to exist; more so when the building has been destroyed or demolished neither by the landlord nor by an act of nature but solely by the act of the tenant or the person claiming under him. Ample judicial authority is available in support of this proposition and illustratively we refer to George J. Ovungal v. Peter [AIR 1991 Ker 55], Rahim Bux v. Mohd. Shafi [AIR 1971 All 16], Hind Rubber Industries (P) Ltd. (supra) and Jiwanlal & Co. v. Manot & Co. Ltd.[(1960)64 CWN 932]. The Division Bench decision of the Kerala High Court in V. Sidharthan (Dr) v. Pattiori Ramadasan appears to take a view to the contrary. But that was a case where the building was totally destroyed by fire by negligence of the tenant. It is a case which proceeds on very peculiar facts of its own and was rightly dissented from by the Bombay High Court in Hind Rubber Industries (P) Ltd. v. Tayebhai Mohammedbhai Bagasarwalla."

27. After referring to the aforesaid two authorities, we are required to scrutinize which view is in consonance with the statutory provisions enshrined under the Transfer of Property Act. We have already referred to the statutory provisions that control the relationship between the lessor and the lessee, the definition of lease as engrafted under Section 105, the rights and liabilities of lessor and lessee enshrined under Section 108 and the conceptual circumstances and the procedure which find mention for determination of lease under Section 111 of the Act.

28. In Vannattankandy Ibrayi (supra) the learned Judges referred to the decision on common law, the principles in American jurisprudence, and various decisions of the High Courts and adverted to two categories of tenants, namely, a tenant under the Transfer of Property Act and the other under the State Rent Laws and proceeded to interpret Section 108 (B) (e) to hold that where a premises has fallen down under the

A circumstances mentioned therein, the destruction of the shop itself does not amount to determination of tenancy under Section 111 of the Act and there is no automatic determination of tenancy and it continues to exist. If the tenancy continues, the tenant can only squat on the vacant land but cannot use the shop
B for carrying on business as it is destroyed and further he cannot construct any shop on the vacant land. Under such circumstances it is the tenant who is to suffer as he is unable to enjoy the fruits of the tenancy but he is saddled with the liability to pay monthly rent to the landlord. It is for such a
C situation the tenant has been given an option under Section 108(B)(e) of the Transfer of Property Act to render the lease of the premises as void and avoid the liability to pay monthly rent to the landlord. Taking note of this facet, the Court proceeded to rule that Section 108(B)(e) cannot be interpreted to mean
D that the tenant is entitled to squat on the open land in the hope that in future if any shop is constructed on the site where the old shop existed he would have right to occupy the newly-constructed premises on the strength of original contract of tenancy because lease of a shop is the transfer of the property for its enjoyment and on destruction of the shop the tenancy
E cannot be said to be continuing since the tenancy of a shop presupposes a property in existence and there cannot be subsisting tenancy where the property is not in existence. It was further laid down that when the tenanted shop has been completely destroyed, the tenancy right stands extinguished as
F the demise must have a subject-matter and if the same is no longer in existence, there is an end of the tenancy.

29. As we notice from the aforesaid analysis it is founded on an interpretation of Section 108 (B) (e) by assuming when
G a building or structure is leased out, it is the superstructure that is leased out in exclusivity. As we perceive, the language employed in Section 108 (B) (e) does not allow such a construction. The singular exception that has been carved out is the wrongful act or default on the part of the lessee which
H results in the injury to the property that denies the benefit. In all

other circumstances which find mention under Section 111 of the Act, are the grounds for determination of the lease. This is the plainest construction of the provision and there is no other room for adding to or subtracting anything from it. Be it stated, Section 108 postulates the rights and liabilities of lessor and lessee. If a right is not conferred by the Statute on the lessor for determination, except one exception which is clearly stipulated there in Section 108 (B) (e) by the Legislature, it would not be permissible for the Court to add another ground of the base or fulcrum of ethicality, difficulty or assumed supposition.

30. In T. Lakshmipathi's case, the Court referred to the observations made by a three-Judge Bench in Raja Dhruv Dev Chand v. Harmohinder Singh and another, AIR 1968 SC 1024 wherein it has been held that doctrine of frustration belongs to the realm of law of contracts; it does not apply to a transaction where not only a privity of contract but a privity of estate has also been created inasmuch as lease is the transfer of an interest in immovable property within the meaning of Section 5 of the Transfer of Property Act. In the said case, it has been further opined that under a lease of land there is a transfer of right to enjoy that land. If any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let out, because of fire, tempest, flood, violence of an army or a mob, or other irresistible force, the lease may at the option of the lessee, be avoided and that is the rule incorporated in Section 108 (e) of the Transfer of Property Act and applies to leases of land, to which the Transfer of Property Act applies.

31. It is apt to note here that when there is a lease of a house or a shop it cannot be treated as a lease of structure but also a lease of site. The Court referred to the decision in D.G. Gose & Co. (Agents) (P) Ltd. v. State of Kerala (1980) 2 SCC 410 wherein this Court held that the site of the building is a component part of the building and, therefore, inheres in it

A the concept or ordinary meaning of the expression "building". The Court also placed reliance on Corpn. of the city of Victoria v. Bishop of Vancouver Island AIR 1921 PC 240.

32. It has been further opined that once a tenancy is created in respect of a building standing on the land it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which is the site of the building continues to exist. This interpretation, as we find, is in accord with Section 108 of the Act. It is reflectible that in Vannattankandy Ibrayi's case, the two-Judge Bench observed that the rights stand extinguished as on the distinction of the demise, for there is destruction of the superstructure and in its non-existence there is no subject matter. Thus, the land has been kept out of the concept of subject matter. In our considered opinion, the Court in the said case failed to appreciate that there are two categories of subject-matters, combined in a singular capsule, which is the essence of provision under the Transfer of Property Act and not restricted to a singular one, that is, the superstructure. In T, Lakshmipathi (supra) the Court took note of the fact that the land and superstructure standing on it as a singular component for the purpose of tenancy. It is in tune with the statutory provision. Therefore, we agree with the proposition stated therein to the affect that "in the event of the tenancy having been created in respect of a building standing on the land, it is the building and the land which are both components of the subject-matter of demise and the destruction of the building alone does not determine the tenancy when the land which was the site of the building continues to exist". On the touchstone of this analysis, we respectfully opine that the decision rendered in Vannattankandy Ibrayi (supra) does not correctly lay down the law and it is, accordingly, overruled.

33. In the present case, it is not in dispute that the respondent purchased the lessor's interest. The lease continued

even thereafter and did not extinguish. The lease was subsisting when the shares of the land were purchased by the respondent. But the interest of the lessee was not purchased by the respondent. What has been purchased by the respondent is the right and interest of ownership of the property. The interest of the appellant as lessee has not been vested with the respondent. Therefore, we are of the view that the tenancy of the appellant cannot be said to have been determined consequent upon demolition and destruction of the tenanted premises.

34. In view of the fact and circumstances of the case, we have no other option but to set aside the impugned judgment and decree dated 18th July, 2006 passed by the High Court of Judicature at Bombay in Second Appeal No. 109 of 2006 and Judgment and decree dated 30th November, 2005 passed by the Addl. District Judge, Karad in RCA No. 86 of 2002. However, taking into consideration the fact that the appellant is not in possession of the suit property since long, we are not inclined to direct restoration of possession of suit property to the appellant. Instead we direct the respondent to pay a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) in favour of the appellant towards compensation for depriving the appellant from enjoying the suit property, within two months, failing which it shall be liable to pay interest @ 6% per annum from the date of the judgment.

35. The appeal is allowed with the aforesaid observation and direction. No costs.

Devika Gujral

Appeal allowed.