PETITIONER:
K.BHAGIRATHI G.SHENOY AND OTHERS

Vs.

RESPONDENT:
KP BALLAKURAYA AND ANOTHER

DATE OF JUDGMENT: 06/04/1999

BENCH:
K.T.Thomas, D.P.Mohapatra,

JUDGMENT:

Thomas J.

Whether a lease is of land appurtenant to a building or vice-versa continues to remain an issue providing pabulum for many a litigation. In the instant case also that issue has assumed decisive dimension. Our efforts to have this case settled out of court did not fructify despite the active role played by counsel on both sides. So we have to determine this issue on the facts of this case.

This case reached the Supreme Court after drifting through a long stream of vicissitudes. Genesis of this litigation is traced to a lease created during pre-independence days when one of the two buildings situated in the disputed property was rented out by its owner, (a bureaucrat then stationed at Delhi) to one Somappa Naik. On 28-7-1951 a new lease deed was executed by the said Somappa Naik in respect of the disputed property having an area of 1.60 acres containing the same pucca residential building thereon, for a monthly rent of Rs.9/-. When the lessee continued under the lease he assigned his rights in favour of the present respondent (who is a practicing advocate of Kassargod District Court) on 17-8-1968.

When the Kerala Land Reforms Act, 1963 (for short the Act) came into force the respondent filed an application before the Land Tribunal, Kassargod in 1974 as per Section 72B of the Act for assigning to him the right, title and interest of the landowner, claiming that he is a cultivating tenant of the disputed land. Despite resistance made by the appellant (landowner) the said application was allowed by the Land Tribunal but the Appellate Authority remitted the case back to the Land Tribunal for fresh consideration and disposal. The Land Tribunal again allowed the application and when appellant appealed, the Appellate Authority confirmed the order.

Appellant moved the High Court in revision under Section 103 of the Act. A Single Judge referred the case to a Division Bench as he felt that the legal question involved was to be determined by a larger Bench. By the impugned order a Division Bench of the High Court concurred with the conclusion made by the Land Tribunal and the Appellate Authority. Hence this appeal by special leave.

The main ground on which the appellant resisted the application of the respondent is that the lease was of a building with the land appurtenant thereto and hence it does not

fall within the purview of the Act. Under Section 3 of the Act such a lease is exempted from the provisions relating to tenancies subsumed in Chapter II of the Act. Section 3(1)(ii) can be extracted here:

"Nothing in this Chapter shall apply toxxx xxx xxx xxx (ii) leases only of buildings, including a house, shop or warehouse and the site thereof, with the land, if any, appurtenant thereto."

Shri T.L. Vishwanatha Iyer, learned senior counsel who argued for the respondent laid emphasis on the monosyllable only in order to bolster up his contention that the legislative intent was to limit the exemption to leases of buildings. It is not a sound principle in interpretation of statutes to lay emphasis on one word disjuncted from its preceding and succeeding words. A word in a statutory provision is to be read in collocation with its companion words. The pristine principle based on the maxim noscittur a sociis (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the import of words in a statutory provision.

If the clause was worded as lease of buildings there would have been difficulties in cases where land also adjoins the building. But the legislature chose to frame the clause as leases only of the buildings with the land, if any, appurtenant thereto. The legislature was conscious of many such leases where the dominant factor is the building, or the object of the lease is to demise building which has landed areas as adjunct or appendage or incident to the building.

The word appurtenant when used in connection with leases of properties, has gained wider as well as narrower interpretations through judicial pronouncements. Such divergence in the interpretation was necessitated to comply with legislative intent while considering facts of each case. In an early decision (Budhi Mal vs. Bhati, AIR 1915 All. 459) the Allahabad High Court understood the word as an appendage, or adjunct, or something belonging to another thing which is the principal matter. Quoting from Abbots Law Dictionary, Ramanatha Iyer in his treatise on The Law Lexicon of British India has extracted the following meaning to the word appurtenant:

"belonging to another thing as principal, as hamlet to another village, garden to a home; that which passes as incident to the principal thing, a thing used with and related to or dependent upon another thing more worthy and agreeing in its nature and quality with the thing whereunto it is appendant or appurtenant; that which belongs to something else, an adjunct, an appendage."

In Maharaj Singh vs. State of U.P. (1977 1 SCC 155) a two-Judge Bench of this Court considered the claim of a defendant that the hat, bazar and mela as areas appurtenant to the buildings in the property on the premise that they have not vested in the government under Section 6 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Learned Judges observed thus:

"What is integral is not necessarily appurtenant. A position of subordination something incidental or ancillary or dependant is implied in appurtenance."

In M/s. Larsen and Toubro Ltd. vs. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnan (1988 4 SCC 260) the

company (Larsen and Toubro) was a tenant of all that plot of vacant land and buildings erected thereon and more particularly described in the schedule and delineated in the plan annexed and measuring 17 grounds and 321 sq. ft. or thereabouts. The company claimed protection under Section 9 of the Tamil Nadu City Tenants Protection Act, 1922 which applied only to tenancies of lands in certain towns. The word building in the said Act was defined as any building and includes the appurtenances thereto. The company contended that since apart from the building a large area of land was also included in the lease deed it cannot be considered as appurtenances to the building. Learned Judges pointed out that the question whether a land is appurtenant or not is one of fact. After adverting to the different clauses contained in the lease deed involved in that case their Lordships concluded:

"It is not possible to infer from these clauses that the parties had entered into two separate transactions of lease, though incorporated in a single document. In our opinion, this was a composite lease, as we have already said, of a building with appurtenant land and having regard to the definition contained in the Act, the lessee is not entitled to the rights conferred by Section 3 or Section 9 of the Act."

In Suryakumar Govindjee vs. Krishnammal and ors. (1990 4 SCC 343) a two-Judge Bench of this Court has observed thus:

"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. 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 the light of the legal principles laid down by this court we have now to judge whether the lease in this case is of a building with the land appurtenant thereto or it comprises of two leases one of building and the other of land by bringing both of them under one deed.

The lease deed dated 28-7-1951 incorporated all the terms and conditions for the lease. Its English translation is produced as Annexure-B. The lessor was described as Secretary to the Minister for communication, Government of India, and the lessee was described as a clerk of the Panchayat Board, Kassargod Kasba. In the prefatory portion it refers to the tiled building belonging to the lessor which was demised to the lessee for a period of 11 months as per a Chalageni Chit (rent deed) dated 6-5-1947 and on the expiry of the said period the lessee was permitted to continue under the same terms and conditions.

After saying so the lease deed continues to state that while so, as per the request made by the lessee to grant him lease of some portion of the land adjoining the leasehold property and as agreed to by the lessor the additional portion is taken possession of by the lessee, and this Chalageni Chit is executed.

In the next paragraph of the lease deed it is stated that the property described thereunder in which the house wherein the lessee resides now, is included, together with the bath-room (which was constructed by the lessor) and the trees on the property, have been demised by the lessor to the lessee for a period starting from 1-7-1951 and ending with 30-6-1952. The other stipulations in the lease deed are the following:

(1) The lessee is liable to pay the monthly rent of Rs.9/- by the 10th day of every succeeding month. (2) If the rent falls in arrears it shall bear interest at the rate of 5 per cent per annum from the date of default. (3) All the improvements standing on the landed area would belong to the lessor. (4) The lessee has no right (a) to effect any kinds of improvement on the land, (b) to make any repairs to the building without the written consent of the lessor or to make any claim for the cost incurred for such repairs, (c) to cut any of the trees without any proper reasons, (d) to sub-lease or to alienate to any other person.

The description of the property is as follows: The western portion of the property lying in survey R.S. No. 112/1, having an extent of 1.60 acres and the tiled residential building (in which lessee is residing) together with a bathroom, 33 coconut trees (among which 21 are yielding), 7 jack trees, 7 mango trees, 50 cashew trees, 2 nellikai trees, and 2 casuarina trees. It is made clear that the other pucca building situated on the land is not included in the lease.

Learned counsel contended that factors such as the nomenclature as Chalageni and that the lease is expansion of the original lease, are positive indications in favour of the lease being mainly one of land. Nomenclature does not matter in this case because even the previous deed of 1947 also contained the same appellation. Nor can the fact that it is expansion of the first lease be of any decisive impact, for that feature can be highlighted by both sides as a supporting factor to their respective stand.

One standard by which this document can be tested for discerning the predominant factor therein building or land can be this: Was it one lease for the building and the landed portion was added as appendage or incidental thereto? Or was it one document for two separate demises i.e. one for building and the other for the land? It is difficult to make out a third possibility that it would have been only one lease where the predominant factor was land, the building being of subsidiary importance.

Learned counsel for the appellant first pointed out the situation at which both parties were placed then. The lessor having such a pucca residential building with a sprawling compound attached to it had to remain in New Delhi as he was working as Secretary to the Government of India. The lessee who was a public servant working at Kasarcodu needed a house to live in at that place. Such facts, according to the learned counsel, would clearly show that it was the building which was of prime consideration for the lease. The attached compound could not have been left out, for practical reasons, uncared by any one and hence it became necessary to include that compound area also as part of the lease. The said contention cannot be sidelined as without force.

Learned counsel then highlighted the factors such as provisions for payment of rent every month and liability to pay interest from the date of default and contended that they are clear indications in favour of the lease being that of building with the land adjoining thereto. The very fact that the land portion

is described as adjoining to the building is proof positive of its object, according to the learned counsel. He also contended that if the land was intended to be enjoyed, de hors the building, no provision was necessary to prohibit the lessee from effecting any improvement on the land. It is only the fruits of the trees which the lessee was permitted to take.

The fact that another building situated within the boundaries has been retained by the lessor is a pointer indicating that the land was only to be used as adjunct to the residential building. Over and above all those, the interdict against making any improvement on the land is a stirring feature which is in conflict with the idea of land becoming the dominant factor of the lease. No lease of land can possibly be conceived without the lessee being given freedom to use the land to generate profit therefrom. Here the lease imposed a complete ban on the lessee to use the land for such purposes. All that he is permitted thereon is to take usufructs of the trees already standing on the land.

A reading of the lease deed from the above angles indicates that there was no idea for the lessor to create a right to enjoy the land independent of the building but only to take usufruct of the trees standing thereon while residing in the building. The area of the land alone cannot be a determinative factor. It was common practice in olden days for residential buildings to have sprawling areas as adjuncts to such buildings. That practice could well have been followed by the parties in the lease deed which is subject matter of the case.

For the aforesaid reasons we take the view that the lease was of building with the landed area meant as appurtenant thereto. Its corollary is that the lease is exempted from Chapter II of the Act and the consequence is that respondent cannot claim any right under Section 72B of the Act.

In the result, we allow the appeal and set aside the impugned judgment as also the order of the Land Tribunal as confirmed by the Appellate Authority. Accordingly, the application filed by the respondent under Section 72B of the Act will stand dismissed.