

U.P. STATE SUGAR CORPORATION
v.
BURWAL SUGAR MILLS CO. LTD. AND ORS.

FEBRUARY 24, 2004

[ASHOK BHAN AND S.H. KAPADIA, JJ.]

U.P. Sugar Undertaking (Acquisition) Act, 1971; Ss. 2(h) and 3:

Acquisition of sugar factory of the Respondent and others by the State—Constitutional validity—Challenge to—Upheld by High Court—Affirmed by Supreme Court—Transferring of possession of the scheduled property of undertaking of the company to appellant-Sugar Corporation—Disposal of some of the units of sugar factory to private sector—Issuance of notice inviting tenders—Challenge to—Partly allowing the writ petition, High Court held that certain portion of the scheduled property could not vest in the Corporation—On appeal, held: As per provisions in the Act, the factory with properties connected thereto/being used for the purposes of the factory could be acquired and not other properties/assets being used for running the factory—Company is much wider entity as against the Undertaking which is an asset of the Company—Legislature intends to acquire the Undertaking and not the Company—Registered Office of the Company not includible in the schedule property of the Undertaking, since it was never used as godown of the factory under the provisions of the U.P. Sugarcane (Purchase Tax) Act—Hence, transfer of its possession to appellant-Corporation illegal/contrary to the provisions of the Act—Interpretation of Statutes—U.P. Sugar cane (Purchase Tax) Act, 1961—Section 3A.

Sugar factories of Respondent No.1-Company and Others had been taken over by the State of Uttar Pradesh as the Company and others had failed to clear outstanding dues to the cane growers/labourers/Government under the provisions of the U.P. Sugar Undertakings (Acquisition) Act, 1971. Later, the factory/Undertaking of Respondent No.1 stood transferred to the appellant-Corporation. Respondent No.1 and others challenged the constitutional validity of the Acquisition Act. High Court upheld the constitutional validity of the Act. In appeal, order of the High Court was affirmed by the Supreme Court in *Ishwari Khetan Sugar Mills (P) Ltd. & Ors. v. State of U.P. and Ors.*, [1980] 4 SCC 136.

A In the meanwhile, Appellant-Corporation took over possession of the schedule property of the Undertaking of Respondent No.1, who filed a writ petition objecting to taking over of the properties other than as provided under Section 2(h) of the Act. Later, the State Government decided to dispose of some of the units/sugar factories of the appellant-Corporation including factory of Respondent No.1 by issuing notice inviting tenders for sale, which was also challenged by him by filing another writ petition. Both the writ petitions were disposed of by the High Court holding that certain portions of the schedule property could not vest in the Corporation. Hence the present appeals by the Appellant-Corporation.

B
C It was contended for the appellant-Corporation that since the house/premises in question was being used as godown for storing sugar and also used as a residence of the Director/guest house of the factory, State acted rightly in taking over possession thereof. On behalf of the Respondent No.1-Company, it was submitted that the house/premises in question could not have been used as godown for storing sugar since it was situated far away from the factory.

D
Dismissing the appeals, the Court

E HELD: 1.1. There is no material on record to show that the premises in question were being used or occupied for the storage of sugar, and that the house in question was being used as a guest house or for the residence of a Director of the factory. Under the provisions of U.P. Sugar Undertaking (Acquisition) Act, it is the factory along with its properties which were connected with or were in use for the purposes of the factory which were acquired and not the properties and assets of the Company running that factory. The Act specifically differentiates between a Company owning a Sugar Undertaking and the Sugar Undertaking itself. The Company is much wider entity as against the undertaking which is only one of the assets of the Company. The Legislature deliberately did not touch the Company and acquired only the undertaking as per the objects of the Legislature. The registered office of the Company is owned and possessed by the Company and is not a part of the 'Schedule Undertaking' and, therefore, the same could not vest in the State. Handing over of its possession by the Receiver to the appellant-Corporation was illegal and contrary to the provisions of the Act.

[612-H; 613-A-C]

H 1.2. The building in question or any part of it was never approved or used as a godown of the factory under the provisions of the U.P. Sugarcane

(Purchase Tax) Act, 1961. It cannot be said that the premises in question was being used as a godown to store the sugar. [613-G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1981-82 of 1998.

From the Judgment and Order dated 14.2.97 of the Allahabad High Court in C.M.W.P. No. 2292/83 and 1954 (MB) of 1994. B

Ms. Shobha Dikshit, Pradeep Misra and Ms. Indu Misra with her for the Appellant.

Manoj Swarup, Ms. Lalita Kohli and Anubhav Kumar for the Respondent. C

The Judgment of the Court was delivered by

BHAN, J. 1. U.P. State Sugar Corporation Limited, appellant herein, is a company registered under the provisions of the Companies Act, 1956. It is owned and controlled by the State Government. In the year 1971, U.P. Sugar Undertakings (Acquisition) Ordinance, 1971 (U.P. Ordinance 13 of 1971) was issued which was replaced by U.P. Sugar Undertaking (Acquisition) Act, 1971 (for short 'the Act'). The objects of the Act as given in the Statement of Objects and Reasons are as follows: D

"The owners of certain sugar mills of the State or their lessees had created serious problems for the cane-growers and labour which created an adverse impact on the general economy of the areas, where those mills were situate. The only solution of these problems was for the State Government to take immediate steps to acquire with a view to renovating those and rehabilitating mills or carry out improvement therein. E

2. Accordingly, a legislation was prepared to acquire such mills, which provided for acquisition of properties and assets pertaining to those mills and for payment of compensation for the same and for the replacement of the dues of cane-growers, labourers and of the Government out of the amount or compensation and for other connected and incidental matters. F G

3. To prepare the mills for crushing before the next crushing season, the usual annual repairs (which are carried out during off season) had H

- A to be carried out well in time and since the time available was short, immediate action was called for. As both the Houses of the State Legislature were not in session, the Governor promulgated the Uttar Pradesh Sugar Undertakings (Acquisition) Ordinance, 1971 on July 3, 1971.
- B 4. The State Government have since decide that the dues of canegrowers and labourers should be given higher priority than the State Government's taxes and other unsecured dues.
5. This Bill is being introduced to replace the aforesaid Ordinance with the above modifications."
- C 2. Act provided for acquisition of properties and assets pertaining to the mills which had failed to clear their outstanding dues to the canegrowers, labourers and the government and for payment of compensation for the same. The Preamble of the Act reads:
- D "An Act to provide, in the interest of the general public, for the acquisition and transfer of certain sugar undertakings and for matters connected therewith or incidental thereto."
3. Section 3 of the Act provided that on the appointed day, every sugar undertaking shall deemed to be acquired and transferred to the Corporation-appellant.
- E 4. Burwal Sugar Mills Co. Ltd., respondent No.1 herein, is a company registered under the Companies Act. It runs a sugar factory at Barabanki. On the coming into force of the Act the respondent No. 1's undertaking stood transferred and vested in the Corporation-appellant as provided under Section
- F 3 of the Act.
5. Several persons whose sugar undertakings had been acquired by the said Act challenged the constitutional validity of the same by filing writ petitions in the High Court. Respondent No.1 also filed writ petition challenging the constitutional validity of the Act. The High Court passed an
- G interim order on 3rd July, 1971 directing the parties to maintain status quo as it existed on 3rd July, 1971. Since at the time of acquisition, the sugar mill was in possession of the Receiver, the possession was restored to the Receiver. The writ petitions including the one filed by respondent No.1 were rejected. The Constitutional validity of the Act was upheld. Aggrieved against the
- H order of the High Court, appeals were filed in this Court which were rejected

and the order of the High Court was upheld. The judgment is reported in *Ishwari Khetan Sugar Mills (P) Ltd. and Ors. v. State of U.P. and Ors.*, [1980] 4 SCC 136. After the dismissal of the writ petitions, possession of the scheduled property was taken over by the appellant. A

6. Respondent No.1 filed writ petition No. 2292 of 1983 objecting to the taking over of the properties other than those provided under Section 2(h) of the Act. According to the respondent No.1 the factory was being run by a Receiver appointed by the State Government as on the date of the vesting of the mill in the corporation. It was averred in the writ petition that the Receiver had handed over possession of the following properties illegally to the appellant. B

1. Registered office at House No. 54/14 Canal Range at Kanpur.
2. Ambassador Car
3. Plot of Siddhaur
4. Grove Land D
5. Land appurtenant to the factory
6. Sale proceeds of Siddhaur Khan Sari Plant
7. Amount of loan realised from Sri Kishandas, Bhagirath Lal Arora
8. Share and securities Bonds. E

7. Appellant filed its counter affidavit wherein it was mentioned that except the following properties which have vested in the corporation, the possession of no other property was transferred to it.

1. House No.54/14 Canal Range at Kanpur from where sugar sale of the sugar manufactured in Burhwal Sugar Factory used to the stored immediately before the appointed day. F
2. One Ambassador Car No. 7142 (and not 481 307).
3. Land appurtenant to the factory which was used immediately before the appointed day for the purposes of parking of cane carts and trollies, purpose directly connected with the process of the sugar factory. The same land was also used as approach land for the cane carts, trollies and trucks upto the mill gate. G

8. State Government took a decision to dispose of eight units of the appellant-corporation to the private sector which included the factory of H

A respondent No.1 as well. Respondent No.1 thereafter filed writ petition No. 1954 of 1994 challenging the notice inviting tenders for the sale. It was contended in this petition that being the ex-owner of the property it had a preferential right to purchase the unit on the price fixed by the corporation.

B 9. Both the writ petitions were taken up for hearing together and disposed of by a common order. Writ Petition No. 2292 of 1983 was allowed in part. Out of the three properties the possession of which was admittedly taken over by the appellant, the High Court held that the House No. 54/14 Canal Range, Kanpur could not vest in the Corporation as it housed the registered office of the Company. Its possession could also be not transferred to the Corporation.

C Even if some sugar was stored in that building as alleged by the appellant it would not in any manner affect the dispute on merits. So far as other two properties, namely, the car and the land appurtenant to the factory which was being used immediately before the acquired date for the purposes of parking of cane carts and trolleys etc. it was held that the same were being used for the purposes of factory and, therefore, the appellant could retain possession

D of those properties. In so far as other items were concerned the case of the appellant was that those items had neither vested in the appellant nor their possession had been taken. The High Court concluded that those items naturally would be in possession of the Receiver appointed by the State and accordingly directed the Receiver to give back the possession of those properties to respondent No. 1.

E 10. Aggrieved against the judgment of the High Court the appellant has filed the present appeals. The only controversy raised in these appeals is regarding House No. 54/14 Canal Range, Kanpur.

F 11. According to the appellant the house apart from the registered office of the company was also being used as a godown to store the manufactured sugar for sale which was very much for the purpose of the factory and therefore its possession was rightly taken over and the same stood vested in the appellant. It was also argued that the house in question was being used as the residence of the Director and a guest house of the

G factory. As against this, learned counsel appearing for respondent No.1 supported the findings recorded by the High Court to the effect that the building was the registered office of the company and the same was not being used as a godown and indeed it could not have been used as such because the same was situated at Kanpur which is at a distance of 116 Kms.

H from Barabanki where the sugar was being manufactured. It was denied that

the premises in dispute were being used either as the residence of the Director or as a guest house of the factory. A

12. For the purpose of resolving the controversy as indicated, a reference to the definition of the word "Schedule Undertaking" as defined in the Act may be made. It is defined in clause (h) of Section 2 of the Act, the same reads: B

"(h) "Schedule Undertaking" means an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power in factory specified in the schedule and comprises

- (i) all plant, machinery and other equipment (including milling plant, boiling house equipment, other sugar machinery, cane unloading equipment and power plant), weight bridges, cranes, chimneys, turbines and boilers (including the foundations, superstructure and roofing thereof) pertaining to that factory; C
- (ii) any engineering workshop, including machinery and equipment thereof; D
- (iii) any chemical laboratory including any apparatus and equipment thereof;
- (iv) any motor or other vehicle or locomotive or railway sidings pertaining to that factory; E
- (v) any dispensary or hospital or community or welfare centre exclusively for the benefit of workmen and other persons employed in that factory; F
- (vi) all lands (other than lands held or occupied for purposes of cultivation and grove lands) and buildings held or occupied for purposes of that factory (including buildings pertaining to any of the properties and assets herein-before specified and guest houses and residences of Directors, managerial personnel, staff and workmen or of any other person as lessee or licensee, and any store houses, molasses, tanks, roads, bridges, drains, culverts, tube wells, water storage or distribution system and other civil engineering works) including any leasehold interest therein; G
- (vii) all limestone quarries pertaining to that factory, including any mining lease relating thereto; H

- A (viii) all electrical installations including any plant or equipment for the generation or transmission of energy, telephone equipment, furniture and fixtures pertaining to that factory or to any property or asset herein before specified;
- (ix) all tools, spare parts and stores pertaining to that factory;
- B (x) all fire arms for the use of watch and ward staff employed in that factory;
- (xi) all maps, plans, sections, drawings and designs pertaining to that factory;
- C (xii) all sugarcane, sugar in the process of manufacture for production and stocks of sugar and molasses and all bagasse and pressmud;
- (xiii) all books of account, registers and other documents pertaining to the factory or to any property or asset hereinbefore specified, but does not include cash-in-hand, cash at Bank, advances towards any income or other tax, investments and books, debts or rights, liabilities and obligations respecting any other contract.”
- D

13. A perusal of the above provision shows that generally all machines, tools, plants and other equipment which were being used for manufacturing sugar were acquired including the workshops, chemical laboratories, vehicles, dispensaries, hospitals, community or welfare centre exclusively used for the benefit of the workmen and other persons employed in the factory. Limestone quarries, electrical installations, tools, spare parts and stores pertaining to that factory were also acquired. Under sub-clause (vi) all lands and buildings *held or occupied for the purposes of that factory*, guest houses and residences of directors, managerial personnel, staff and workmen or of any other person were also taken over.

E

F

14. The intention of the Legislature is clear that the land and buildings which were connected with or were in use for the purposes of the factory would be covered by clause (vi) of section 2 (h). Admittedly, the registered office of the respondent company was located at House No. 54/14 Canal Range, Kanpur. There is no material on the record to show the premises in question were being used or occupied for the storage of sugar. Similarly, there is no material on record to show that the house in question was being used as a guest house or for the residence of a Director of the factory. Respondent No.1 is a registered company and is running a sugar factory at Barabanki with its registered office in House No. 54/14 Canal Range, Kanpur.

G

H

Under the Act it is the factory along with its properties which were connected with or were in use for the purposes of the factory which were acquired and not the properties and assets of the company running that factory. The Act specifically differentiates between a company owning a sugar undertaking and the sugar undertaking itself. The Company is much wider entity as against the undertaking which is only one of the assets of the company. The Legislature deliberately did not touch the company and acquired only the undertaking as per the objects of the Legislature. The registered office of the company is located in House No. 54/14 Canal Range, Kanpur which is owned and possessed by the company and is not a part of the 'Schedule Undertaking' and, therefore, the same could not vest in the State. Handing over of its possession by the Receiver to the appellant was illegal and contrary to the provisions of the Act.

15. Under the U.P. Sugarcane (Purchase Tax) Act 1961 the tax is levied and is payable on the manufactured sugar by a sugar factory before the sugar can be taken out from the factory campus except when it is kept in a godown situated outside the factory campus and is approved as such by the assessing authority. Section 3A of this Act reads:

"Payment of tax before removal of sugar factory:- (1) No owner of a factory shall remove, or cause to be removed any sugar produced in the factory on or after the first day of October, 1971, hereinafter referred to as the said date, either for consumption, or for sale or for manufacture of any other commodity in or outside the factory, until he had paid towards the tax levied under Section 3 a sum specified under sub-section (2) sub section (3) or sub section (4) as the case may be

Provided that such sugar may be deposited without payment of any such sum in a godown or other place of storage approved by the assessing authority and where it is so deposited it shall not be removed therefrom until the sum as aforesaid has been paid....."

16. The building in question at Kanpur or any part of it was never approved or used as a godown of the factory under the above said provisions. The plea taken by the respondent that the premises in question was being used as a godown to store the sugar is therefore not sustainable. As pointed out earlier, there is no material on record to show that the premises in dispute were being used as a residence of a Director or a guest house. The plea raised by the appellant to this effect is also rejected.

A 17. The relief as prayed for in Writ Petition No. 1954 of 1994 was not granted to respondent No.1. Respondent No.1 has not come up in appeal to challenge the findings which have been recorded against it. The same have attained finality.

B 18. For the reasons stated above, we do not find any merit in these appeals and the same are dismissed with no order as to costs.

S.K.S.

Appeals dismissed.