

U.P. STATE SUGAR & CANE DEVELOPMENT LTD. A

v.

RAZA BULAND SUGAR CO.LTD. AND ORS.

(Civil Appeal Nos. 2176-2177 of 2002)

APRIL 17, 2009 B

[DR. ARIJIT PASAYAT, P.SATHASIVAM AND DR.
MUKUNDAKAM SHARMA, JJ.]

UTTAR PRADESH SUGAR UNDERTAKINGS
(ACQUISITION) ACT, 1971: C

ss.2(h)(vi) and 3 – 'Scheduled undertaking' – Acquisition of Sugar Undertaking – 'Lands' and Buildings' – Suit for declaration that certain properties were not covered by expression 'Scheduled undertaking' – Held: As regards lands, burden is on the Company to establish that lands or any specified part of it were held or occupied for the purpose of cultivation or it was grove land – In respect of buildings, the burden is on the Corporation to establish that the buildings were held or occupied for purpose of factory – Shops constructed out of the funds of the Sugar Undertaking after its acquisition, were covered by definition of 'scheduled undertaking' – Evidence – Burden of proof – Sugar Undertaking (Taking over of Management) Act, 1978. D E

The plaintiff Sugar Company (respondent no. 1 in C.A.No.2176 of 2002) on coming into force of the U.P. Sugar Undertakings (Acquisition) Act, 1971 and the Sugar Undertaking (Taking Over of Management) Act, 1978, filed a suit against the U.P. State Sugar Corporation (predecessor-in-interest of the appellant) and others for possession and permanent injunction restraining the defendants from interfering with the possession and management of affairs and business and assets of the registered office of the Company as detailed in para 10 of the plaint, and for declaration that the properties F G

A mentioned in para 10 of the plaint were not covered by the definition of 'scheduled undertaking' as provided in s.2(h) of the 1971 Act. The trial court decreed the suit in part. In the cross appeals, the High Court dismissed the suit in respect of the property mentioned at Item 3 in para
B 10, namely, Maize Colony including quarters and land appurtenant thereto, and decreed the suit in respect of the properties at Item Nos. 4 and 6 in para 10 of the plaint, namely, 'shops at Nainital Road along with land of playground' and 'Nursery land' etc.

C Disposing of the appeals, the Court

HELD:1.1 Section 2(h) of the U.P. Sugar Undertakings (Acquisition) Act, 1971 makes the position clear that the Act intends to keep intact the identity of the company. It is only the scheduled undertaking as defined u/s 2(h) of the Act, that vests in the Corporation u/s 3 of the Act. Therefore, the real controversy is in regard to interpretation of clause (vi) of s.2(h) of the Act which relates to land and buildings of the Company which have been acquired under the Act. Clause (vi) can be divided
D into two parts i.e. (i) land and (ii) buildings. [Para 5] [580-B-D]
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1.2. The definition in respect of land contemplates that every kind of land shall stand vested u/s 3 of the Act except such lands which are held or occupied for the purpose of cultivation and grove land of the company whose land has been acquired. The burden of proof is upon the company to establish that the lands or any specified parts of it were held or occupied for the purpose of cultivation or it was grove land, because it is the company which has the knowledge about the nature of user of the land in its occupation. This can be established by evidence. It is required to be established that the land was held or occupied for the purpose of cultivation and grove land. If the company fails to prove that aspect, the
F land vests in the Corporation u/s 3 of the Act and be
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deemed to have been transferred to the Corporation. [Para 6] [580-G-H; 581-A-B]

2.1. In respect of buildings the burden of proof was on the Corporation to establish that the buildings were held or occupied for the purpose of factory. The description of buildings under clause (vi) of s.2(h) is not in the same language as in respect of lands. While defining lands the words used are "other than" but in respect of buildings such words are missing and, therefore, the Corporation has to lead evidence to prove that the buildings held or occupied by the company were used for the purpose of factory and obviously the burden is on the person who claims exclusion. [Para 7] [581-B-D]

New Satgram Engineering Woks and Anr. v. Union of India AIR 1981 SC 124 and M/s Doypack System Pvt. Ltd. v. Union of India and Ors. AIR 1988 SC 782, referred to.

2.2. So far as the shops are concerned in respect of which relief has been granted to the plaintiff, it is noted that they came into existence after construction in 1974 i.e. subsequent to 1971. It has also come in evidence that the properties have been purchased and acquired out of the fund of the company. The trial court categorically held that there was no evidence to show that any other business was being carried on there. It was brought on record that the Sugar Undertaking was held by the plaintiffs from July 1971 to January 1979 on behalf of the Corporation. Therefore, the shops on Nainital Road were constructed out of the funds of the Sugar Undertaking and since the cash was converted into immovable properties, those shops were clearly covered by the definition of scheduled undertaking. Therefore, the appeals filed by the Corporation succeeds in respect of properties of Nursery lands, shop at Nainital Road, and play ground lands. [Para 10 and 11] [582-C-F]

A Case Law Reference:

AIR 1981 SC 124 referred to para 8

AIR 1988 SC 782 referred to para 8

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2176-2177 of 2002.

From the Judgment & Order dated 27.09.2000 of the High Court of Judicature at Allahabad in First Appeal No. 949 of 88 and 265 of 1989.

C WITH

C.A. Nos. 2178-2179/2002.

Shobha Dikshit, Dinesh Dwivedi, Pradeep Misra, Manoj Kumar Sharma and P.N. Gupta for the Appearing Parties.

D The Judgment of the Court was delivered by

E **DR. ARIJIT PASAYAT, J.** 1. These appeals arise out of a common judgment of the Allahabad High Court dismissing the two appeals, one by U.P. State Sugar Corporation Ltd. and other by Raja Buland Sugar Co. Ltd. and Ors. The cross appeals were filed against the judgment and decree passed by the trial Court on 18.8.1988 partly decreeing the suit in respect of certain properties involved in the suit while dismissing the suit in relation to other properties.

F 2. The defendants-Corporation filed First Appeal No.265/1989 against part of the decree whereby First Appeal 949/1988 was filed by the plaintiffs-Raza Buland Sugar Co. Ltd. whereby part of the decree dismissing the suit was challenged.

3. The factual background in a nutshell is as follows:

G Prior to 1946 there were two independent companies namely, Raja Sugar Company and Buland Sugar Company. M/s Govan Bros. were its Managing Agents. In the year 1946 the Dalmias purchased it from M/s Govan Brothers. Both the companies were amalgamated in the year 1957 and one H company under the name of Raza Buland Sugar Company Ltd.

came into existence. In the year 1968 Jhurjhunwalas purchased the company from Dalmias. On coming into force of the U.P. Sugar Undertakings Acquisition Ordinance (in short the 'Ordinance') later on became Act no.33 of 1971 (hereinafter referred to as the 'Act'). The plaintiffs filed a Writ Petition No.4130 of 1971 challenging the validity of the Ordinance. The High Court stayed the operation of the Ordinance on 5.7.1971 and also directed restoration of the status quo ante on 2.7.1971. In the year 1978, the Sugar Undertakings (Taking Over of Management) Act, 1978 (in short the 'Taking Over Act') came into force. It provided for appointment of Authorized Controller to manage the sugar factories. The possession of the undertakings was taken over by the Authorized Controller on 30th October, 1979. The Central Government rescinded the aforesaid order w.e.f. 1.11.1979. The authorized controller delivered the possession of the undertaking to the Collector, Rampur on 2.11.1979. The High Court dismissed the writ petition filed by the plaintiffs on 3.5.1979. Suit No.28 of 1979 was filed by the plaintiffs against the defendants i.e. (Corporation and others) for permanent injunction restraining them from interfering in any manner in the possession and management of affairs and business and assets of the registered office of the company as detailed in para 10 of the plaint and further sought declaration that the properties mentioned in para 10 of the plaint are outside the purview of the Ordinance and the Act and defendants Nos. 4 and 5 were not entitled to the possession of those properties.

Plaintiffs during the pendency of the suit got the plaint amended by adding the relief that if the court comes to the conclusion that the defendants were in possession of all or any of the items mentioned in para 10 of the plaint, a decree for possession be passed in favour of the plaintiffs. The suit was based on the allegations that the properties mentioned in para 10 of the plaint are not covered by the definition of 'scheduled undertaking' as defined in clause (h) of Section 2 of the Act. It was alleged that the plaintiffs were entitled to take possession

A of such property which is not covered by the expression 'scheduled undertaking'.

The stand of the defendants in the written statement was that all the properties mentioned in para 10 of the plaint are covered by the expression 'scheduled undertaking'. It took the further plea that the suit was barred by *res judicata* as the writ petition filed by the plaintiffs was dismissed by the High Court and the suit was barred by section 34 of the Specific Relief Act, 1963 (in short the 'Specific Relief Act') as the plaintiffs have not sought for other consequential relief in the suit. The trial Court framed various issues. It held that the properties mentioned at Item Nos.3 and 6 in para 10 are not covered by the expression 'scheduled undertaking' and therefore passed the decree for possession of such properties against the defendants. It was held that the suit was not barred by Section 34 of the Specific Relief Act and the suit was accordingly decreed partly. As noted above, both the plaintiffs and defendants filed appeals.

The High Court was of the view that the only question was whether the properties in dispute as specified in para 10 of the plaint stand vested in the Corporation in accordance with Sections 3 and 2(h) of the Act. The High Court partly allowed both the appeals. It was held that the suit in respect of Maize colony referred to in para 10 of the plaint as Item No.3 stood dismissed. The first appeal was partly allowed in respect of shops at Nainital Road alongwith land appurtenant to it as referred to in para 10 of the plaint. The suit was decreed for possession in respect of properties mentioned at Item Nos. 4 and 6 in para 10 of the plaint. In both the appeals the issues relates to the question as to which items in para 10 of the plaint are covered by the Act. For appreciating that question para 10 needs to be quoted in full:

"10. That M/s Raza Buland Sugar Co. Ltd. have following assets and business other than the Sugar Undertaking.

H 1. Jai Bhawan and land appurtenant thereto.

2. Hari Bhawan and land appurtenant thereto. A
 3. Maize colony including quarters and land appurtenant thereto.
 4. Shops at Nainital Road alongwith land of playgrounds. B
 5. Buland factory building including godowns residential accommodation and carbide buildings and lands appurtenant thereto.
 6. Nursery land, equipments and livestock, crops etc. C
 7. Electrical installations, typewriter, furniture, fittings calculations and other things belonging to the registered office of the company as per the balance sheet of the company of the year 1978.
 8. The managerial set up of Plaintiff No. 1 and its subsidiary company including its Secretary's residence Bungalow No. 2 and Administrative Manager's residence No. R.A.-1, situated near the Central Office, Civil Lines, Rampur and also the offices of Director, Secretary and Administrative Manager and share department situated in the Central Office, Civil Lines, Rampur. D
 9. Residential quarters alongwith land appurtenant thereto situated in Govan. Colony, Rampur rented to outsiders who are not connected with the scheduled undertaking. E
 10. Light railway land and equipment like locomotives, trollies, rails and other material which are in the use of sugar undertaking since a long time. F
 11. Temple land including construction thereof situated on Nainital Road, Civil Lines, Rampur. G
 12. Bagar Building land situated at Civil Lines, Rampur."
4. The relevant provisions of the statute are Sections 2(h) and 3. They read as follows: H

- A "2. (h) 'scheduled 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 a factory specified in the Schedule, and comprises--
- B (i) all plant, machinery and other equipment (including milling plant, boiling house equipment, other sugar machinery, cane unloading equipment and power plant), weighbridges, 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 grovelands) and buildings held or occupied for purposes of that factory (including buildings pertaining to any of the properties and assets hereinbefore specified and guest houses and residences of directors, managerial personnel, staff and workmen, or of any other person as lessee or licensee, and any storehouses, molasses tanks, roads, bridges, drains, culverts, tubewells, 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;
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(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 hereinbefore specified; A

(ix) all tools, spare parts and stores pertaining to that factory; B

(x) all firearms 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 or production and stocks of sugar and molasses and all bagasse and pressmud; D

(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 book debts, or rights, liabilities and obligations respecting any other contract;" E

"3, Vesting - On the appointed day, every scheduled undertaking shall, by virtue of this Act, stand and be deemed to have stood transferred to and vest and be deemed to have vested in the Corporation free from any debt, mortgage, charge or other encumbrance or lien, trust or similar obligation (excepting any lien or other obligation) in respect of any advance on the security of any sugar stock or other stock-in-trade) attaching to the undertaking; F

Provided that any such debt, mortgage, charge or other encumbrance or lien, trust or similar obligation shall attach to the compensation referred to in Section 7, in accordance with the provisions of that section, in substitution for the undertaking; G

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A Provided further that a debt, mortgage, charge or
 other encumbrance or lien, trust or similar obligation
 created after the scheduled undertaking or any property or
 asset comprised therein had been attached, or a receiver
 appointed over it, in any proceedings for realization of any
 B tax or cess or other dues recoverable as arrears of
 revenue shall be void as against all claims for dues
 recoverable as arrears of revenue."

5. On a bare reading of Section 2(h) the position is clear
 that the Act intends to keep in tact the identity of the company.
 C It is only the scheduled undertaking as defined under Section
 2(h) of the Act. It vests in the Corporation under Section 3
 of the Act. Therefore, as noted above, the real controversy is in
 regard to interpretation of clause (vi) of Section 2(h) of the Act
 which relates to land and buildings of the company which have
 D been acquired under the Act. Clause (vi) can be divided into
 two parts i.e. (i) land and (ii) buildings. The same reads as
 follows:

- E "(1) all lands other than the lands held or occupied for
 the purpose of cultivation and grove lands.
- (2) Buildings - held or occupied of that factory including
 buildings pertaining to any of the properties and
 assets hereinbefore specified, and guest houses
 and residences of directors, managerial personnel,
 F staff and workers 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
 G therein."

6. The definition in respect of land contemplates that every
 kind of land shall stand vested under section 3 of the Act except
 such lands which are held or occupied for the purpose of
 cultivation and grove land of the company whose land has been
 H acquired. The burden of proof is upon the company to establish

that the lands or any specified part of it were held or occupied for the purpose of cultivation or it was grove land because it is the company which has the knowledge about the nature of user of the land which was in its occupation. This can be established by evidence. It is required to be established that the land was held or occupied for the purpose of cultivation and grove land. If the company fails to prove that aspect, the land vests in the Corporation under Section 3 of the Act and be deemed to have been transferred to the Corporation.

7. In respect of buildings the burden of proof was on the Corporation to establish that the buildings were held or occupied for the purpose of factory. The description of buildings under clause (vi) of Section 2(h) is not in the same language as in respect of lands. While defining lands the words used are "other than" but in respect of buildings such words are missing and therefore the Corporation has to lead the evidence to prove that the buildings held or occupied by the company were used for the purpose of factory and obviously the burden is on the person who claims exclusion.

8. In *New Satgram Engineering Works and Anr. v. Union of India* (AIR 1981 SC 124) this Court held that the difference in the language between the two expressions "used substantially" and "solely used" was obvious. It was emphasized that the user must be seen on the date of vesting. It was further made clear that the workshop or building constructed initially for the purpose of coal mine cannot by itself being diverted to other purpose and ceased to belong to the mines. It was noted that what is of the essence is whether the workshop or the building originally formed a part and parcel. The subsequent user may not be very material. In *M/s Doypack System Pvt. Ltd. v. Union of India and Ors.* (AIR 1988 SC 782) this Court explained the meaning of phrases "pertaining to" and "in relation to" and "arising out of". It was clarified that these expressions used in the deeming provisions are used in the expansive sense. It was observed as follows:

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A "The words "pertaining to" and "in relation to" have
the same wide meaning and have been used
interchangeably for among other reasons which may
include avoidance of repetition of the same phrase in the
same clause or sentence, a method followed in good
B drafting. The word "pertain" is synonymous with the word
"relate". The expression "in relation to" (so also "pertaining
to") is a very broad expression which presupposes
another subject matter."

C 9. In the instant case, only PW-1 was examined by the
plaintiffs whose evidence does not in any way help the plaintiffs.

D 10. So far as the shops are concerned in respect of which
relief has been granted to the plaintiffs, it is noted that they came
into existence after construction in 1974 i.e. subsequent to
1971. It has also come in evidence that the properties have
E been purchased and acquired out of the fund of the company.
The trial Court categorically held that there was no evidence to
show that any other business was being carried on there. In Writ
Petition No.315 of 1980 it was brought on record that the Sugar
Undertaking was held by the plaintiffs from July 1971 to January
F 1979 on behalf of the Corporation. Hence, the shops on Nainital
Road were constructed out of the funds of the Sugar
Undertaking and since the cash was converted into immovable
properties, those shops were clearly covered by the definition
of scheduled undertaking.

G 11. Above being the position, the appeals filed by the
Corporation succeed in respect of the properties i.e. Nursery
lands, shops at Nainital Road and play ground lands, while the
appeals filed by the plaintiffs-Raza Buland Sugar Co. Ltd. stand
dismissed.

R.P.

Appeals disposed of.