

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2788 OF 2005

NATIONAL TEXTILE CORPORATION (MN)LTD. ... APPELLANT

VERSUS

M/S DURGA TRADING CO. AND ORS. ... RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by the appellant against judgment dated 6th February, 2003 passed by the High Court of Judicature at Bombay in Writ Petition No.1552 of 2000. By the impugned judgment, the Division Bench of the High Court allowed the writ petition filed by respondent no.1 and held as follows:

"11. In the facts and circumstances of the present case, the petitioner having acted on the agreement of sale and having paid the entire consideration was clearly not an unauthorized occupant within the meaning of Section 2(g) of the Public Premises Act. That being so, there is no justification for applying the summary procedure under the Public Premises Act, nor has the Estate Officer any authority or jurisdiction to evict the petitioner under Section 5(2) of the Public Premises Act. There seems to be serious dispute about the title which dispute cannot be resolved under Public Premises Act. In our opinion, the invocation of the provisions of the Public Premises Act in the present case was wholly improper. The Estate Officer without any application of mind issued directions for putting locks and seals on the premises. In our opinion, due process of law in a case like the present necessarily implies the filing of suit by the respondents for the

enforcement of their alleged rights in respect of the subject premises."

2. While holding so the Division Bench of the High Court also set aside the order dated 23rd June, 2000 and notices dated 17th November, 2000 issued under Sections 4 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971 (hereinafter referred to as the '1971 Act') by Estate Officer, National Textile Corporation(MN) Ltd.

3. The factual matrix of the case is as follows:-

3.1 The respondent no.1 filed a petition being Writ Petition No.1552 of 2000 before the Bombay High Court challenging the proceedings initiated by the appellant against it (respondent no. 1) u/s 5A (for removal of movable structures/fixtures) and u/s 4(2) (b) read with Section 7(1) and (3) (for damages and eviction) of the 1971 Act, in respect of subject premises i.e. land admeasuring 2921 sq. yards with structures thereon bearing Nos.96 and 97 situated at the premises of Shri Sitaram Mills Ltd. (hereinafter referred to as 'SSML' for short) at N.M. Joshi Marg, Mumbai.

3.2 In the said writ petition, respondent no. 1 submitted that the subject premises belonged to the erstwhile owner, SSML. On 25th March, 1975 an agreement to sell the subject premises was entered into between respondent no.1 and SSML and the full consideration of RS.25 Lakhs was paid by respondent no.1 to SSML. On 1st April, 1975 possession of the subject property was handed over to respondent no.1 and has since then remained with respondent no.1.

3.3 The management of the textile undertaking of SSML was taken

over by the Central Government w.e.f. 18th October, 1983 under the Textile Undertakings (Taking over of Management) Act, 1983 (hereinafter referred to as the, '1983 Act') and the appellant corporation was appointed as its Custodian. Later, the right, title and interest in relation to the textile undertakings got transferred and vested in Central Government under the Textile Undertakings (Nationalization) Act, 1995 (hereinafter referred to as the, '1995 Act') w.e.f. 1st April, 1995.

3.4 On 23rd June, 2000, the Estate Officer of the appellant Corporation passed an order under Sub Section (3) of Section 5A of the 1971 Act treating the subject premises as 'public premises' and directed respondent no.1 to remove the movable structures and fixtures from the said premises. Thereafter, on 17th November, 2000 the said authority issued two show cause notices to respondent no.1 u/s 4(1) and 7(3) of the 1971 Act calling upon respondent no.1 to show cause why it should not be evicted from the subject premises and why it should not be made liable to pay damages. The appellant Corporation initiated the aforesaid action against respondent no.1 on the ground that the premises were required for bona fide use. Moreover, the appellant Corporation urged before the High Court that since conveyance deed was not executed between the erstwhile owner SSML and respondent no. 1, it was merely an agreement to sell and hence, the subject premises got vested in the Central Government under the 1995 Act.

3.5 The High Court allowed the said writ petition by the impugned

judgment and order dated 6th February, 2003.

4. The issue involved in the present appeal is:-

"Whether in the facts and circumstances, the proceedings initiated by the appellant before the Estate Officer against respondent no.1 under the 1971 Act should continue or the appellant should be relegated to prefer a suit before the civil court as held by the High Court?"

5. Learned Solicitor General of India appearing on behalf of the appellant made the following submissions:

5.1 The claim of respondent no.1 is based on unregistered agreement to sell which never fructified into a registered sale deed. Moreover, respondent no. 1 is neither the owner of the land nor can it claim authorized occupancy pursuant to unregistered agreement.

5.2 The land in question got vested with the State and it is deemed to have been transferred in favour of the appellant in view of provisions of 1983 Act and 1995 Act. In view of such vesting, respondent no.1 cannot claim to be an authorized occupant within the meaning of Section 2(g) of 1971 Act.

6. Per contra, according to the learned senior counsel appearing on behalf of the respondent:-

6.1 The subject premises did not form part of the textile undertaking of SSML on the appointed day under the 1983 Act i.e. on 18th October, 1983 and for that reason the management of the subject premises never got vested in the Central Government under the 1983

Act and for the same reason the right, title and interest over the subject premises never got vested in the Central Government and the appellant under the 1995 Act. Thus both the Acts have no applicability to the subject premises.

It was further submitted that there are two independent preconditions for vesting under 1995 Act.

- (i) what is acquired is the right, title and interest of the owner specified in column 3 of the first schedule and
- (ii) such right title and interest must relate to the textile undertaking specified in column 2 of the first schedule.

6.2. Apart from the factual issue with respect to the second requirement, the first requirement involves a mixed question of fact and law. This is because whether or not a particular owner had "right, title and interest" on the appointed day involves a factual enquiry apart from vesting by operation of law. The expression "the right, title and interest of the owner" is a compenditious expression covering 3 distinct aspects. Since this is an expropriatory legislation it ought to read strictly and all three elements must subsist together before any vesting takes place. In this case, the appellant has no right, title and interest.

6.3. In any event, more than 12 years after respondent no.1 was put in possession and enjoyed the property fully, openly, continuously and in a manner hostile to SSML (and its successor in interest), respondent no.1 obtained rights in law and any residuary/vestige of

a title that remained in SSML was rendered ineffective or unenforceable in law.

6.4. The overwhelming material available on the record suggests the following:

- (i) Respondent no.1 and SSML had entered into an agreement to sell dated 25th March, 1975
- (ii) Respondent no.1 was put in possession of the subject premises on 1st April, 1975 pursuant to the agreement to sell.
- (iii) Respondent no.1 had paid the full consideration of Rs.25 lakhs to SSML (Rs.21,85,000/-, Rs.1,15,000/-, Rs.20,000/- and Rs.1,80,000/-).
- (iv) The sale took place pursuant to a Special Resolution passed at the Extra Ordinary General Meeting of the Company held on 2nd March, 1975.
- (v) The sale of subject premises was reflected in the Balance Sheet and in Schedule of Fixed Assets of SSML for the year ended 31st March, 1975.
- (vi) SSML accepted tenancy under respondent no.1 over an area of 5802 sq. ft. of the subject premises and was paying rent to respondent no.1
- (vii) SSML paid capital gains tax on the sale of the subject property which is clear from the letter dated 28.01.1980 written by SSML to the Commissioner of Income Tax.

(viii) Various Government authorities have since recognized that it is the respondent no.1 to whom the said premises belongs. This is clear, inter alia, from the following

(a) Order dated 23rd March, 1977 passed by the Competent Authority under the Urban Land Ceiling Act granting permission to SSML to transfer the subject premises to respondent no.1 by way of sale.

(b) the agreements dated 5th May, 1976 and 1st September, 1976 whereby respondent no.1 had let out a portion of the property on the first and second floor to the Collector of Customs through President of India. Even after the 1983 Act and the 1995 Act, the President of India through the Collector of Customs continued the agreements with respondent no.1. At no stage did the Collector of Customs approached the Central Government or appellant;

(c) BMC made separate property tax assessment in the name of respondent no.1

(d) the property tax assessed and paid by respondent no.1 to the Bombay Municipal Corporation

(e) BMC granted separate water connection in the name of respondent no.1 vide its letter dated 20th July, 1981.

(f) NOC dated 5th February, 1982 issued u/s 230A(1) by

the Income Tax Authorities in respect of the sale of the subject premises.

(g) The order of the Recovery Officer, Provident Fund and Labour Dues dated 5th February, 1983 inter alia stating that the attachment on Plot No.9 (part) was raised and vacated as the building on Plot No.9 (part) was agreed to be sold by SSML to respondent no.1

(h) Though the 1983 Act had come into force, the Customs Department in 1993 surrendered 12571 sq.ft out of 15805 sq.ft. in its possession on the 1st floor of the subject premises to respondent no.1.

(i) Though the 1995 Act had come into force, the Customs Department surrendered the remaining 3234 sq.ft in its possession on the first floor and the entire 8667 sq.ft in its possession on the 2nd floor to respondent no.1 on 26th February, 1997.

(j) Letter dated 23rd February, 1985 from Valuation Officer, Income Tax Department to respondent no.1 regarding assessment of rent of the premises of respondent no.1 occupied by the Customs admeasuring 8667 sq.ft and 15305 sq.ft.

(k) Various letters from Building Department, New Customs House, Bombay to respondent no.1 regarding reassessment of rent of premises occupied by Customs Department.

6.5. The Correspondence between the parties also shows that the subject premises were never considered as a part of the textile undertaking after the same was sold to respondent no.1 in the year 1975.

6.6. It was submitted that the subject premises herein were not part of the assets or rights or leaseholds or powers or authorities or privileges or property of the textile company (SSML) immediately before 1st April, 1994. Since the subject premises and all rights in respect of these premises stood excluded from the textile undertaking of SSML in 1975, SSML had no "ownership, possession, power or control" in relation to the said premises and hence the subject premises stand excluded from the first part of Section 4(1) of 1995 Act.

6.7. It was further submitted that there is a serious dispute about title that cannot be resolved under the 1971 Act. The appellant cannot be permitted to take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy. Due process of law in a case like the present necessarily implies the filing of a suit by the appellant for enforcement of their alleged rights in respect of the subject premises.

6.8. Learned Senior Counsel for the respondent no. 1, also relied upon decisions of this Court in **Govt. of A.P. v. Thummala Krishna Rao and Anr. (1982) 2 SCC 134** wherein the Court held that having regard to the bona fide title dispute, the respondents cannot be

evicted summarily; and **State of U.P. v. Zia Khan, (1998) 8 SCC 483** wherein this Court held that the question of title cannot be decided under U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and the decision on the subject had to be made by either revenue court or civil court.

7. Before advertng to the rival submissions made by the learned counsels for the parties, it would be necessary to make a brief reference to the provisions of the 1983 Act and the 1995 Act.

Section 2(d) of the 1983 Act defines "textile undertaking" as follows:

"(2)(d) "textile undertaking" or "the textile undertaking" means an undertaking specified in the second column of the first Schedule;"

Section 3(1) of the 1995 Act provides that on the appointed date, the right, title and interest of the owner in relation to every textile undertaking shall stand transferred to and shall vest absolutely in the Central Government. Sub-section (2) thereof provides that every textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall immediately after it has so vested, stand transferred to and vested in the National Textile Corporation.

Section 3 of the 1995 Act reads:

"3(1) On the appointed day, the right, title and interest of the owner in relation to every textile undertakings shall stand transferred to, and shall vest absolutely in, the Central Government.

(2) Every textile undertaking which stands vested in the Central Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation."

The key expression in sub-section (3) for the purposes of this case is:

"the right, title and interest of the owner in relation to every textile undertaking"

8. The real issue in the present case is whether the subject premises can be said to be an asset of the SSML vested with the State.

9. In **National Textile Corporation Ltd. v. Sitaram Mills Ltd. & Ors. 1986 (Supp.) SCC 117**, this Court noticed the stand taken by parties with regard to property in question. The said case related to the very same mill SSML. The Division Bench of the High Court of Bombay on a petition under Article 226 of the Constitution of India filed by SSML while upholding the constitutional validity of Section 3(1) of the Textile Undertakings (Taking Over of Management) Act, 1983 held that the surplus land appurtenant to the mill was not an 'asset in relation to the textile undertaking' within the meaning of sub-section (2) of Section 3 of the Act and directed the Central Government to restore the possession of the said land to the Company. Being aggrieved by the said decision the appellant corporation approached this Court. In the said case this Court held:

"40.....The legislature in enacting the law for the taking over of the management of the textile undertakings therefore clearly had the intention of taking over the surplus lands of the Company. In our opinion, the High Court ought to have interpreted sub-section (2) of Section 3 of the Act in the context of sub-section (1) thereof and the other provisions of the Act in consonance with the intention of the legislature. It was the intention of the legislature to

take over all the assets belonging to the Company held in relation to the textile undertaking. The note attached to the report of the Task Force includes the total lands belonging to the petitioners' Company for the purpose of determining the value of the assets of the Company and does not exclude the Real Estate Division. Even for determining the total compensation to be paid on nationalisation, the Task Force takes into account the total surplus lands of the Company and does not exclude any land belonging to the so-called Real Estate Division. The viability study of the IDBI also heavily relied on the surplus lands held by the petitioners' Company.

41. In the premises, the High Court has manifestly erred in holding that the said Real Estate Division was separate and distinct from the textile undertaking. Surplus lands of the textile mills taken over under sub-section (1) of Section 3 of the Act are but a vital physical resource capable of generating and sustaining economic growth of the textile mills. There can be no doubt that the legislative intent and object of the impugned Act was to secure the socialisation of such surplus lands with a view to sustain the sick textile undertakings so that they could be properly utilised by the Government for social good i.e. in resuscitating the dying textile undertakings. Hence, a paradoxical situation should have been avoided by adding a narrow and pedantic construction of a provision like sub-section (2) of Section 3 of the Act which provides for the consequences that ensue upon the taking over in public interest of the management of a textile undertaking under sub-section (1) thereof as a step towards nationalisation of such undertakings, which was clearly against the national interest. In dealing with similar legislation, this Court has always adopted a broad and liberal approach....."

10. Learned Senior Counsel appearing on behalf of respondent no.1 placed reliance on the aforesaid decision in **Sitaram Mills Ltd.** to suggest that the execution of the agreement dated 25th March, 1975 was not disputed in the said case.

11. While giving the impugned judgment, the Division Bench of the High Court also proceeded on such presumption that the property in question has been sold by the Textile Undertaking and observed as

follows:

"9.....It would not be out of place to mention that in an appeal arising out of the judgment of the Division Bench of this Court in respect of this very Mill, the Supreme Court has recorded in its judgment that the property in question has been sold by the textile undertaking prior to the commencement of the 1983 Act. There seems to be hardly any dispute about the factual position. The execution of the agreement dated 25th March, 1975 is not disputed. There is also no serious dispute that the entire consideration has been paid. Further the transaction is duly substantiated by the contemporaneous records like the balance sheet, profit and loss account, the resolution passed by the Board of Directors, etc. During the period 1975 to 1998 the property has been dealt with by the petitioner as its own property. It has been let out to various Government bodies from time to time. The rent in respect of the subject premises has been collected by the petitioner and the tax has always been paid by the petitioner. Section 53-A of the Transfer of Property Act furnishes a statutory defence to a person who has no registered title deed in his favour to maintain his possession if he can prove a written and signed contract in his favour and some action on his part in part performance of that contract."

12. From bare perusal of paragraph 35 of decision in **Sitaram Mills Ltd.** it is apparent that in the said case the learned counsel for the Maharashtra Girni Kamgar Union filed a detailed tabular chart before the Court to demonstrate that the Real Estate Division was part and parcel of the textile undertaking. In the said chart it was mentioned that 'of the remaining plots, on plot no.4 admeasuring 9765 square yards there were certain old godowns of the textile mill and they were sold by the petitioners (i.e. SSML) to a charitable trust of the tantias in 1974-75 for setting off loans taken from the trust for the textile business.'

The aforesaid chart produced by one of the parties before this Court was though noticed but no finding has been given by this

Court that the property in question was sold by the textile undertaking prior to commencement of 1983 Act. On the other hand if show that the land in question was point of the textile mills.

13. The agreement to sell relied upon by respondent no.1 itself contains clause 1(d), 2, 3, 6 etc. which mandates the execution of registered sale-deed or conveyance deed within three years. However, the same was never done. A suit for specific performance was filed by respondent no.1 before Bombay High Court against SSML 25 years after unregistered agreement to sell dated 25th March, 1975, thereby, acknowledging that there was no registered document of title with respondent no.1. The said suit is still pending.

14. Section 4 of 1995 Act relates to general effect of vesting.

Relevant parts of which read as follows:-

"4(1).The textile undertakings referred to in Section 3 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privilege and all property, moveable and immovable including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts pertaining to the textile undertakings and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership, possession, power or control of the textile company in relation to the said undertakings, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of Section 5."

"4(2) All property as aforesaid which have vested in the Central Government under sub-section (1) of Section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court or other authority restricting the use of

such property in any manner shall be deemed to have been withdrawn."

"4(5) For the removal of doubts, it is hereby declared that the mortgage of any property referred in sub-section (2) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, out of the amounts specified in relation to such property in the First Schedule, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government."

"4(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any property which has vested in the Central Government under section 3, instituted or preferred by or against the textile company is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the textile undertakings or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted or enforced by or against the National Textile Corporation."

Thus, it is clear that all other rights and interests in or arising out of such property as were existing immediately before the appointed day in the ownership, possession, power or control of the textile company in relation to the said undertaking vested with the Central Government and by virtue of sub-section (2) of Section (3) stood transferred to, and vested in, the National Textile Corporation. Liability if any of the owner of a textile undertaking i.e. SSML of any period to the appointed day is liability of such owner (SSML) and can be enforceable against him and not against the Central Government or the National Textile Corporation in view of Section 5(1) of 1995 Act, which reads as

follows:

"5(1) Every liability, other than the liability specified in sub-section (2), of the owner of a textile undertaking, in relation to the textile undertakings in respect of any period prior to the appointed day, shall be the liability of such owner and shall be enforceable against him and not against the Central Government or the National Textile Corporation."

15. Therefore respondent no.1 cannot derive any advantage against the Central Government or the National Textile Corporation on the ground of pendency of a suit against the owner (SSML).

16. In **M/s Doypack Systems Pvt. Ltd. v. Union of India & Ors, (1988) 2 SCC 299**, while dealing with a case involving National Textile Corporation-appellant herein, the Court noticed the meaning of the expressions "arising out of, pertaining to and in relation to" and observed:

"49. The words "arising out of" have been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur undertaking. We are of the opinion that 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 drafting. The word "pertain" is synonymous with the word "relate", see Corpus Juris Secundum, Volume 17, page 693.

50. The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Azeez²⁹, following and approving Nita Charan Bagchi v. Suresh Chandra Paul³⁰, Shyam Lal v. M. Shyamlal³¹ and 76 Corpus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this

connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term "relate" is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

17. The First Schedule of the 1995 Act provides the amount which the Central Government has to pay to the owner of every textile undertaking for the transfer and vesting of such undertaking to it. This provision cannot be the starting point of investigation as to which amount relates to which property or as a guide to construction (See paragraph 54 of *M/s Doypack Systems Pvt. Ltd. v. Union of India & Ors*, (1988) 2 SCC 299).

In the said case of *M/s Doypack Systems Pvt. Ltd.* the Court further held:

"57. The expression "and all other rights and interests in or arising out of such property, as were immediately before the appointed day, in the ownership, possession, power or control of the company in relation to the said undertakings", appearing in sub-section (1) of Section 4 of the Act indicates that the shares which have been purchased from out of the funds of the textile undertakings and which have been held for the benefit of the said textile undertakings, would come within the scope of Section 4 of the Act and thus would also vest in Central Government under Section 3. The origin of these shares and their connection with the textile undertakings have been fully corroborated. The textile business is the only business of Swadeshi Cotton Mills. There is interconnection and interrelation between all the six undertakings. Investments in Swadeshi Polytext Limited from the funds of Kanpur undertaking have always been made. Investments in Swadeshi Mining and Manufacturing Company Ltd. were always made from the funds of the Kanpur undertaking. Assets/ investments held and used for the benefit of the textile business of SCM, were carried on in its textile undertakings." Therefore, it is clear that the property in question stood

vested in the Central Government and, in turn, stood transferred and vested with National Textile Corporation under sub-section (2) of Section 3 of 1995 Act. Even if it is admitted that respondent no.1 has acted on the agreement to sell and has paid the entire consideration, it cannot be a ground to hold that respondent no.1 is authorized occupant within the meaning of Section 2(g) of the 1971 Act.

18. We are of the view that the Division Bench of the High Court failed to analyze the provisions correctly and wrongly presumed that the property in question has been sold to the Textile Undertaking prior to the commencement of 1983 Act. The Court wrongly relied on Section 53A of the Transfer of Property Act to hold that respondent no.1 has valid defence available under the said provision and hence erred in holding that respondent no. 1 is an authorized occupant within the meaning of Section 2(g) of the 1971 Act.

19. For the reasons aforesaid, we set aside the impugned judgment dated 6th February, 2003 passed by the Division Bench of High Court of Judicature at Bombay in Writ Petition No.1552 of 2000 and uphold notices dated 17th November, 2000 issued under Sections 4 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Now, it is open to the Competent Authority/Court to proceed in accordance with the provisions of the 1971 Act and pass an appropriate order. The appeal is allowed but there is no order as to costs.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(PRAFULLA C. PANT)

NEW DELHI;
FEBRUARY 17, 2015.

SUPREME COURT OF INDIA



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT