National Textile Corporation Ltd. & Ors vs Sitaram Mills Ltd. & Ors. Etc on 4 April, 1986

Equivalent citations: 1986 AIR 1234, 1986 SCR (2) 187, AIR 1986 SUPREME COURT 1234, 1986 SCC (SUPP) 117, (1986) 99 MAD LW 33, (1986) 2 COMLJ 261, (1986) 2 SCJ 139, 1986 88 BOM LR 662

Author: A.P. Sen

Bench: A.P. Sen, R.S. Pathak, D.P. Madon

PETITIONER:
NATIONAL TEXTILE CORPORATION LTD. & ORS.

Vs.

RESPONDENT:
SITARAM MILLS LTD. & ORS. ETC.

DATE OF JUDGMENT04/04/1986

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
PATHAK, R.S.
MADON, D.P.

CITATION:
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1986 SCC Supl. 117 1986 SCALE (1)657
CITATOR INFO :
D 1986 SC2030 (25,26)
RF 1988 SC 782 (26,39,43,55,65)
RF 1988 SC1353 (4)

ACT:
Textile Undertakings (Taking over of Management) Act, 1983, sub-section 2 of section 3 - Meaning of the words "assets in relation to the textile undertaking" - Whether the surplus lands appurtenant to the mill are separable as belonging to the "Real Estate Business" carried on by the sick mill and, therefore, do not fall within section 3(2).

HEADNOTE:
The only question involved in the appeal was whether

the so-called Real Estate Division of the Company's textile undertaking Shree Sitaram Mills was a separate and distinct business and therefore the surplus lands did form part of the "assets in relation to the textile undertaking" within the meaning of sub-section (2) of section 3 of the Textile Undertakings (Taking Over of Management) Act, 1983. In dealing with the question, the Court referred to the history of the matter. The mill was established in 1875 under the management of Messrs Shapurji Broacha Mills Limited on a very large tract of land. The only real estate that it required in the later 19th century comprised of 1,05,008 square yards which undoubtedly was an asset of the textile undertaking although the actual mill precincts were spread over 50,749 square yards. Early in the 20th Century, it changed hands a few times and ultimately it was taken over by the Tantias in 1955 as a grey unit. As revealed from the Company's balance-sheets, since more than 7 years before the taking over the networth of the Company had been in the negative. In the early 70s, the Tantias due to spiral rise in land values in the Metropolitan City of Greater Bombay devised a plan to dispose of vacant lands appurtenant to the textile mill. Till the date of taking over, the Board of Directors were engaged in disposing of the Company's surplus lands for purposes of raising finance for the textile business. In the early 1978-79, the networth of the Company was minus Rs. 2.80 crores, in 1979-80 minus 3.54 crores, in 1980-81 minus Rs. 3.91 crores, in 1981-82 minus 6.56 crores and in 1982-83 minus 8.67 crores. Further, as a result of the general strike called on January 18, 1982 the
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company further suffered financially along with other textile mills in Bombay. The mill not only had the deficit for so many years in the negative but the losses had been increasing at an alarming rate. The liabilities which stood at Rs. 3.08 crores by the end of March 31, 1980 rose to Rs. 4.70 crores at the end of March, 1981 and to Rs. 8.67 crores by the end of March, 1983. All this showed that the mill stood in need of increasing financial assistance from commercial banks and governmental and public financial institutions on concessional rates for its resuscitation.

After the textile strike had been called off, it became imperative to consider the overall economic situation of all the textile mills in Greater Bombay and also to consider as to what was the future outlook of such mills, particularly of those which were not in a position to recommence work due to financial constraints. On December 3, 1981, the Central Government appointed an Investigation Committee under section 15(a)(i) of the Industries (Development and Regulation) Act, 1951 to find out the cause for the fall in production of the Company's textile undertaking. The Investigation Committee submitted its report in February 11, 1983. In the meanwhile, the State Government of Maharashtra by an order dated March 25, 1982 declared the company's

textile undertaking to be a relief undertaking. At a meeting called by the Reserve Bank on October 29, 1982, the textile mills affected by the strike were classified into three categories on a general consensus, namely, Category I: Units which were viable before the strike and continued to be as such; Category II: Units which were viable before the strike but whose viability might have been marginally affected by it; and Category III: Units which were bad/sick and whose position had further deteriorated because of the strike. In November 1982, the respondents' textile undertaking was placed in Category III.

The Government of India accepted this categorisation. It was realised that none of the 13 mills falling under Category III could be expected to survive on a sound basis without financial assistance from the Government, Government controlled institutions and nationalised banks. The amount for rehabilitation of the aforesaid 13 mills was estimated to aggregate to Rs. 194.48 crores. It was expected that the disposal of surplus lands appurtenant to some of these mills
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such as the respondents' textile undertaking Shree Sitaram Mills would largely help in raising the necessary working capital. The Industrial Development Bank of India expected that with this realisable asset it would be possible to make the respondents' textile undertaking viable over a period of 7 years subject to the condition that the Tantias disassociated themselves from the management. It was therefore clearly understood that the respondents' textile undertaking could be made viable only with the sale of surplus lands and the financial assistance from the Government.

On September 20, 1983, the Government of India Ministry of Commerce, Department of Textiles constituted a Task Force to look into the affairs of the Category III strike-affected mills, including the respondents' textile undertaking Shree Sitaram Mills. The Task Force submitted its report on October 13, 1983 i.e. just on the eve of the promulgation of the Textile Undertakings (Taking Over of Management) Ordinance, 1983. The Task Force classified the mills falling in Category III into four groups. The respondents' textile undertaking was placed in Group II, namely, mills which were likely to be made viable with the sale of surplus lands with a rider added that a change in the management should also be brought about.

The Government of India decided, as a matter of policy, that it was desirable to achieve the process of nationalisation in two stages - by first taking over the management of the textile undertakings and thereafter enact suitable legislation to nationalise the same. As the taking over the management was with a view to implement the decision to nationalise the said textile mills, there was no question of holding an inquiry either under the Industries (Development and Regulation) Act, 1951 or under the Sick

Textile Undertakings (Taking Over of Management) Act, 1972.

On October 18, 1983, the President of India promulgated the Textile Undertaking (Taking over of Management) Ordinance, 1983 whereby the management of 13 textile undertakings specified in the First Schedule vested in the Central Government under sub-section (1) of section 3. The Textile undertaking of the respondents Shree Sitaram Mills being one of the aforesaid 13 undertakings, also vested in the Central Government together with the surplus lands appurtenant

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thereto. The Ordinance was later replaced by an Act of Parliament being Textile Undertakings (Taking Over of Management) Act, 1983 which by sub-section (2) of section I was brought into force with retrospective effect from October 18, 1983, the date of promulgation of the Ordinance. The object and purpose of the legislation, as reflected in the long title, was to provide for the taking over, in the public interest, of the management of the textile undertakings of the Companies specified in the First Schedule, pending nationalisation of such undertakings and for matters connected therewith or incidental thereto.

The respondents' textile company Shree Sitaram Mills owing the textile mill filed a petition under Art. 226 of the Constitution challenging the constitutional validity of sub-section (1) of section 3 of the Act as violative of Articles 14, 19(1)(g) and300A. By the judgment under appeal, a Division Bench of the Bombay High Court upheld the constituional validity of the Act in so far as the taking over of the respondents' textile undertaking by the Central Government under sub-section (1) of section 3 of the Act was concerned, but held that the surplus lands which the respondents called the Real Estate Division was not an "asset in relation to the textile undertaking" within the meaning of sub-section (2) of section 3 of the Act and accordingly directed the restoration of the lands to the respondents.

In appeal, the appellant contended that the surplus lands appurtenant to the textile undertaking which the respondents called as the Real Estate Division of the Company was not a separate or distinct business and therefore the lands did form part of the assets "in relation to the textile undertaking" within the meaning of sub-section (2) of section 3 of the Act.

Allowing the appeals by certificate, the Court,

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HELD : 1.1 The words "assets in relation to the textile undertaking" used in sub-section (2) of section 3 of the Act have a very wide connotation. Function of sub-section (2) of section 3 of the Act is to amplify and define as to what is taken within the sweep of the term "textile undertaking" as defined in section 2(d), which says that the expression

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"textile undertaking" shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges of the textile company in relation to the said textile undertaking. It does not stop at that but goes on to say that this would also include lands, buildings, workshops, projects, stores, spares, instruments, machinery, equipment, automobiles and other vehicles, goods under production and in transit, cash balances, reserve funds, investments and booklets and all other rights and interests in and arising out of such property as were before the appointed day, in the ownership, possession, power or control of the textile company whether within or outside India. It further includes all books of accounts, registers and all other documents of whatever nature relating thereto. The conclusion is therefore inescapable that all the assets of the company held in relation to the textile undertaking including the surplus lands appurtenant thereto, vest in the Central Government by reason of sub-section (2) of section 3 of the Act. [227 G-H; 228 A-D]

1.2 It is a well known rule of construction that in dealing with a beneficent piece of legislation, the Courts ought to adopt a construction which would subserve and carry out the purpose and object of the Act rather than defeat it. In interpreting such a piece of legislation, the Courts cannot adopt a doctrinaire or pedantic approach. In the instance case, the legislation was clearly in furtherance of the Directive principles of State policy in Article 39(b) and (c) of the Constitution. [223 A-C]

1.3 The Legislature intended 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 respondent 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 socalled Real Estate Division. The viability study of the IDBI also heavily relied on the surplus lands held by the respondents' company. Surplus lands of the textile mills taken over under sub-section (I) of section 3 of the Act are but a vital physical resource capable of generating and

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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 company 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. [224 B-G]

New Satgram Engineering Works & Anr. v. Union of India

JUDGMENT:

Collieries Ltd. & Ors., [1985] 1 S.C.C. 305, relied on.

2.1 From the official record it is clear: (i) that there was in reality no such separate business as Real Estate Business carried on by the company. The company was borrowing money all the time and the proceeds of the sale of surplus lands and industrial galas were utilised to improve the liquidity to pay off the creditors; (ii) All the assets including the surplus lands appurtenant to the mill were assets of the company held for the benefit of the textile undertaking; (iii) at no point of time was there a segregation of the assets of the company for form the Real Estate Division, nor were there any bifurcation of the surplus lands and transfer of title to the lands; (iv) the so called Real Estate Division had no capital assets of its own; (v) the company was indebted to the tune of 6.80 crores and the liabilities were being met by the sale and development of lands, construction of industrial galas and the diversion of plot No.5 from the industrial zone to the residential zone. The proceeds were all ploughed back into the textile business to pay off the debts; and (vi) there was no separate account of the Real Estate Division and the respondents have not laid any real foundations on pleadings that the Real Estate business was separate and distinct from the textile business. It was in reality a scheme for conversion of capital. The activity of selling the surplus lands or the industrial galas constructed thereon had a direct nexus with, or clearly related to the carrying on of the textile business. [214 A-D; 218 B-C] 2.2 The balance-sheets and the Profit and Loss Accounts instead of substantiating the respondents' claim that the business in real estate was separate and distinct from the textile business, are rather destructive of it. [222 A-B] & CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3067, 3017 and 3568 of 1984.

From the Judgment and Order dated 13th June, 1984 of the Bombay High Court in Writ Petition No. 2714 of 1983.

K. Parasaran, Attorney General, M.K. Banerjee, Additional Solicitor General, F.S. Nariman, T.V.S.N. Chari, T.R. Desai, S. Menon, Naunit Lal, Kailash Vasdev, Mrs. Vinod Arya, Ms. Indira Jaisingh, Ms. Kamini Jaiswal, P.H. Parekh, Jitendra Sharma, Ms. Mihir Desai and Kirti Singh for the appearing parties.

The Judgment of the Court was delivered by SEN, J. These appeals on certificate directed against the judgment and order of the Bombay High Court dated June 13, 1983 raise a question of far-reaching public importance. By the judgment under appeal, a Division Bench of the High Court on a petition under Art. 226 of the Constitution filed by Messrs Shree Sitaram Mills Limited, Bombay (for short 'the petitioners') while upholding the constitutional validity of the Textile Undertakings (Taking Over of Management) Act, 1983 insofar as it provides by s. 3(1) of the Act for the taking over by the Central Government of the management in the public interest of Messrs Shree

Sitaram Mills a textile undertaking owned by it and specified in the First Schedule to the Act, held that the surplus land appurtenant to the Mill was not an 'asset in relation to the textile undertaking' within the meaning of sub-s.(2) of s.3 of the Act, on the ground that the business of real estate carried on by the Company was separate and distinct from the textile business, and accordingly directed the Central Government to restore possession of the said land to the Company. The issue involved must necessarily turn on the meaning of the words 'assets in relation to the textile undertaking' appearing in sub-s.(2) of s.3 of the Act.

In order to appreciate the nature of the controversy, it is necessary to state a few facts. The mill now known as Shree Sitaram Mills was established in 1875 under the management of Messrs Shapurji Broacha Mills Limited on a very large tract of land located in the heart of the metropolitan city of Greater Bombay. The only real estate that it acquired in the late 19th Century comprised of 1,05,008 square yards which undoubtedly was an asset of the textile undertaking, although the actual mill precincts were spread over 50,749 square yards. Early in the 20th Century it changed hands a few times and ultimately it was taken over by Tantias of Calcutta in 1955 as a grey unit. The Company's share capital comprised of equity shares of the value of Rs. 45 lakhs and cumulative redeemable preference shares worth Rs. 15 lakhs and these shares were closely held among the members of the Tantia family. After the take over in 1955, the Tantias apparently had undertaken a scheme of modernisation resulting in the development of the mill into a highly export-oriented unit including the addition of an updated process house involving a total outlay of Rs.2 crores which was financed through loans taken from the National Industrial Development Corporation. During the 60s, the Company's performance had only been average, incurring losses for five years and making profits for the remaining five years with the result that in the overall balance the Company managed to survive without substantially adding to its reserves. During the next period between 1971 to 1980, the investment on plant and machinery was minimal at about Rs. 42 lakhs and the only major scheme of modernisation that the Company planned was under the Soft Loan Scheme when in 1977 it made an application to the Industrial Development Bank of India (IDBI) since a substantial portion of its machinery was not in a state of good repairs. The Company had not declared any dividend on its shares for several years. In the early 70s i.e. during the years 1971-72, 1972- 73 and 1973-74 which were profitable years for the textile industry as a whole, the Company made profits which were attributable to its textile undertaking.

Due to unprecedented floods in 1974 and various other factors, the financial condition of the Company became precarious. As is reflected from its balance-sheets, the Company had been making continuous losses at an increasing rate from the year 1974-75 onwards. Even though the years 1978-79 and 1979-80 were comparatively good for the textile industry, the Company continued making losses largely due to shortage of working capital and strained liquidity position. It had leased out its process house to Messrs Bhartiya Electric Steel Company Limited, a sister concern of the Tantias, from 1977 to provide financial support to the mill but it was not fruitful. The strained liquidity position had a vicious effect affecting the quality of raw material and stores purchases resulting in distress sales mainly because the company was not able to attract competent talent for managing its affairs. As a cumulative effect of all these factors, the Company continued to slide down steeply and the capacity utilisation became the first victim leading to a fall in the volume of production. As mentioned in the IDBI report :

> "Even if large funds were pumped at a concessional rate, the Company would take 20 years to wipe out its liabilities."

As is revealed from Company's balance-sheets, since last more than seven years before the taking over, the net- worth of the Company had been in the negative. In the year 1978-79 the networth was minus Rs. 2.80 crores, in 1979-80 minus Rs. 3.54 crores, in 1980-81 minus Rs. 3.91 crores, in 1981-82 minus Rs.6.56 crores and in 1982-83 minus Rs. 8.67 crores. It would therefore appear that the networth had not only been negative but the negative factor had been increasing at a rapid rate over the years. There was also loss in the Profit & Loss Account. The mill not only had the deficit in the past for so many years in the negative but the losses had been increasing at an alarming rate. Even during 1978-79 when there was a textile boom in the country, the Company's losses were to the tune of Rs. 2.80 crores. The balance in the Profit & Loss Account is reflected as follows :

> Balance in the Profit & Loss Account (Year ended 30th of June (In Rs.) 1975 15,72,746 1976 35,72,256 1977 1,77,71,023 1978 2,72,68,303 1979 3,43,59,540 1980 4,18,24,930 1981 4,55,00,000 1000 7,10,00,000 As a result of this, the Company resorted to borrowings far in excess of its limits, the amount drawn on June 30, 1983 being Rs. 4.75 crores as against the drawing power of Rs. 1.97 crores. The petitioners also purported to enter into transactions of the pledged goods which were already hypothecated to the Company's bankers without disclosing the fact either to the bankers or the purported pledgees. The mill stood in need of increasing financial assistance from commercial banks and governmental and public financial institutions on concessional rates for its resuscitation.

There were accumulated losses of the order of over Rs. 1.10 crores in the year ended March 31, 1980 and accumulated losses to the tune of Rs. 91 lakhs as on March 31, 1981. The secured loans outstanding to the Company's bankers as on March 31, 1980 were of the order of Rs. 2.80 crores which increased to Rs. 3.64 crores by March 31, 1981. The current liabilities which stood at Rs. 3.08 crores by the end of March 31, 1980 rose to Rs. 4.70 crores at the end of March 31, 1981.

All this clearly shows that the financial condition of the Company even before this general strike was grave. The fact that the Company's affairs were being mismanaged was evidenced by the mounting arrears of workers dues to the staggering figure of Rs.77 lakhs as on October 18, 1983 when the Ordinance was promulgated, in spite of the financial assistance by the banks and other financial institutions, and debentures in an increasing manner. During the year 1981 the Company received fresh financial assistance from IDBI, Maharashtra State Financial Corporation and other financial institutions aggregating to over Rs. 47 lakhs. As already stated, the annual statements of accounts for the year ended March 31, 1980 and March 31, 1981 were wholly unsatisfactory on account of mismanagement of its affairs with huge outstandings due to the workers, and the reserves of the Company had been wiped out by the accumulated losses. The mill could not be revamped into production and rehabilitation to subserve the interest of the general public to achieve national growth and particularly to prevent unemployment of thousands of workers without investment of large sums of money by public financial institutions for such reorganisation and rehabilitation.

It is needless to stress that the textile industry in India has played an important role in the growth of national economy and at one time the Indian Textiles were in great demand in the world market. It occupies an important position in the industrial field in India both because it produces an essential commodity the production of which makes the country self-sufficient and also the export of which helps in building up its foreign exchange reserves. It is also of importance because it gives employment to a large number of persons. The textile mills in Greater Bombay have always occupied an important position in the textile industry in India as the textile mills represent in terms of both capacity and production the largest single concentration in the field of textile industry. In these circumstances, such textile mills located in Greater Bombay have always been of special importance in the economy and the Government of India has always been conscious of necessity of preserving such mills and of assisting them by granting wherever necessary assistance to the industry including loans through public financial institutions on concessional terms to prevent their having to close down. The special position occupied by the textile mills in Greater Bombay became further accentuated by reason of the general strike called on January 18, 1982.

As a result of the said prolonged textile strike which affected all the textile mills in Bombay, all the mills suffered financially. Even prior to the commencement of the said textile strike, the financial position of the various textile mills in Bombay was not uniformly good. Whereas there were several mills which were in sound or excellent financial condition, there were other textile mills whose financial condition even prior to the strike was not satisfactory. The main reason why certain mills were not in a satisfactory financial condition was lack of proper management. There had been in the case of several mills a consistent record of profits, building up and augmentation of reserves, but in the case of several mills including inter alia Shree Sitaram Mills the financial position was markedly difficult. These mills were not in a sound financial condition as the others. As the overall economic factors applicable to all textile mills in Greater Bombay were broadly and generally comparable, the weaker position of the mills in question was attributable to mismanagement.

After the textile stirke had been called off it became imperative to consider the overall economic situation of all the textile mills in Greater Bombay and also to consider as to what was the future outlook of such mills, particularly of those which were not in a position to recommence work due to financial constraints. Faced with the problem of rendering financial assistance and rehabilitation to the textile industry the Reserve Bank of India carried out a survey of the sick textile mills which had a disasterous effect on the financial viability which could only be attributed to mismanagement and a situation further worsened by the general strike. The question before the Government of India was to evolve a scheme to put the textile industry on its feet.

On December 3, 1981 the Central Government appointed an Investigation Committee under s.15(a)(i) of the Industries (Development & Regulation) Act, 1951 to find out the causes for the fall in the volume of production of the Company's textile undertaking. The Investigation Committee submitted its report dated February 11, 1983 a copy of which was also forwarded to the respondents. It recommended that the IDBI and the nationalized banks should finance and put through expeditiously the rehabilitation programme proposed by the Company by keeping full control over the management. In the meantime the State Government of Maharashtra by its order dated May 25, 1982 declared the Company's textile undertaking to be a relief undertaking entitled to protection

under the Bombay Relief Undertakings Act, 1958.

At a meeting called by the Reserve Bank on October 29, 1982 at which were present the Deputy Governor, Reserve Bank of India, Joint Secretary, Ministry of Finance (Banking), Chief Secretary, Government of Maharashtra, Industries Secretary, Government of Maharashtra, Executive Director and Senior Representatives of IDBI and Senior Representatives of concerned Banks, textile mills affected by the strike were classified into three categories on a general consensus :

> Category I : Units which were viable before the strike and continued to be as such.
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> Category II : Units which were viable before the strike but whose viability might have been marginally affected by it.
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> Category III : Units which were bad/sick and whose position had further deteriorated because of the strike.
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> However, subsequently in November 1982, the respondent, textile undertaking was placed in Category III viz., units which were bad/sick and whose position had further deteriorated.
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> The Government of India accepted this categorisation. It was realized that none of the 13 mills falling under Category III could be expected to survive on a sound basis without financial assistance from the Government, Government controlled institutions and nationalised banks. None of the said mills were in a position to restore their financial condition on a commercial basis without such special assistance. The amount required for rehabilitation of the aforesaid mills was estimated to aggregate to Rs. 194.48 crores to be contributed by public financial institutions such as the IDBI, the nationalized banks and 10% promoters share etc. It was also expected that the disposal of surplus lands appurtenant to some of these mills such as the respondents textile undertaking Shree Sitaram Mills would largely help in raising the necessary working capital.
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> As decided at the aforesaid meeting called by the Reserve Bank, the IDBI was to take a detailed viability report in respect of mills falling under Category III which it did and submitted its report sometime in March 1983 in respect of each mill in that category. So far as the respondents were concerned, as regards its management the IDBI adversely commented on 'the management of the mill by the Tantias as a result of which the bankers of the Company had lost confidence in them' and 'indicated that no loans could be advanced unless Tantias were agreeable to dissociating themselves from the mismanagement. It also referred to the Inquiry Committee appointed by the Government of India to look into the affairs of the Company which had attributed the continuous losses incurred by the Company to gross mismanagement. After setting out a long term scheme of financing of the textile mill by public financial institutions, the report observed :

> "Even assuming that the Company will be able to utilize 75% of its cash accruals to liquidate its term liabilities, it will take over 20 years for it to repay its term commitments (including the funded loan) aggregating to Rs. 7.59 lakhs".

It accordingly observed that the mill could not be considered viable, but added :

"However, the Company has surplus lands admeasuring 6625 square metres within the factory area which is proposed to be disposed off and for which it had already obtained the approval of Government of Maharashtra under Urban Land Ceiling Act. The Company expects to realize about Rs. 2.05 crores from the sale of the land. The Company also has plans to construct residential buildings thereon for sale to financial institutions/banks etc. in which case, it expects net realization from such sales at Rs. 3.05 crores towards the end of 1984-85".

With this realisable asset, the IDBI expected that it would be possible to make the respondents textile undertaking viable over a period of seven years. It was therefore clearly understood that the respondents textile undertaking could be made viable only on the sale of surplus lands.

On September 20, 1983 the Government of India, Ministry of Commerce, Department of Textiles constituted a Task Force to look into the affairs of the Category III strike affected mills. The Task Force under the terms of reference had to collect the necessary data and place its report before the Economic Affairs Committee of the Union Cabinet to enable the Government to take a decision as to which of the mills falling under Category III should be nationalised. The Task Force submitted its report on October 13, 1983 i.e. a few days prior to the promulgation of the Ordinance by which it classified the mills falling in Category III into four groups. The respondents' textile undertaking was placed in Group II viz. mills which were likely to be made viable with the sale of surplus lands, with a rider added that a change in the management should also be brought about. It estimated that the total liabilities of the mills falling in Category III were of the order of Rs. 194.48 crores.

It became therefore necessary to consider whether such mills should be rehabilitated by injecting public funds on non-commercial and concessional terms. The Government of India was of the opinion that the management of such mills had been defective as, had there been no mismanagement, the mills would not have found themselves in the condition in which they were even before the general strike. In the circumstances the Government of India had to consider whether it would be in the public interest that such public finances should be made available to such mills particularly when there were serious allegations of mismangement, frittering away of assets of the textile undertakings, diversion of funds, etc. It had also to consider whether in the public interest it was desirable to give financial assistance on concessional terms to provide undertakings the self-sufficiency rather than to take over such undertakings and manage them itself as a step towards nationalisation. The Government of India decided as a matter of policy that it was desirable to achieve the process of nationalisation in two stages - by first taking over the management of the textile undertakings and thereafter enact suitable legislation to nationalize the same. As the taking over of the management was with a view to implement the decision to nationalize the said textile mills, there was no question of holding an inquiry either under the Industries (Development and Regulation) Act, 1951 or under the Sick Textile Undertakings (Taking Over of Management) Act,

1972.

Prior to November 1982, there were several viability surveys made by different authorities, namely, (1) Ahmedabad Textile Industries Research Association (2) Textile Commissioner's Office (3) S.R. Batlibhoy & Company and an independent survey by the IDBI itself. In 1976-77, at the instance of the IDBI the Ahmedabad Textile Industries Research Association carried on a technoeconomic viability survey and made its report in 1978 which at the request of the United Commercial Bank was again updated in March 1979. In its reports, the said Research Association stated that considering all financial aspects and the favourable enviornment of the Company's textile undertaking, it was a techno-economically viable unit and that finance should be provided by way of working capital to the tune of Rs. 2.40 crores forthwith by the Bank. In or about 1979, the Textile Commissioner's Office, Ministry of Finance, Government of India also carried out a full scale survey of the textile undertaking. Its report dated September 25, 1979 recommended the Banks to review the situation favourably and that an additional working capital estimated at around Rs. 50 lakhs should be provided. After the aforesaid survey report of the Research Association and the Textile Commissioner's Office the IDBI asked the Company to obtain a further techno-economic viability survey from the reputed chartered accountants Messrs S.R. Batlibhoy & Company. The firm of chartered accountants accordingly undertook a survey and while indicating that the management should be strenghthened in certain areas, recommended that necessary finance should be provided to the Company as its textile undertaking was a techno-economically viable unit. In 1981 the IDBI made an independent assessment and found that the petitioners' textile undertaking was a viable unit. It was a predominantly export-oriented unit and the modernisation scheme put foward by the Company could ensure gainful employment to 3,000 workers. At that point of time the Company had outstanding export orders to the tune of Rs. 4.5 crores but was not able to execute the same as per schedule on account of lack of working capital. It found that the Company's export performance was to the extent of 75% of its total sales and there was possibility of stepping up exports after completion of the scheme of modernisation.

All these surveys were directed in ascertaining whether the Company's textile undertaking was a techno-economically viable unit or not and whether it was desirable to provide the Company with working capital.

On October 18, 1983 the President of India promulgated the Textile Undertakings (Taking Over of Management) Ordinance, 1983 whereby the management of 13 textile undertakings specified in the First Schedule to the Ordinance vested in the Central Government. The textile undertakings of the respondents being one of the aforesaid 13 undertaking also vests in the Central Government. The Ordinance was replaced by an Act of Parliament being Textile Undertakings (Taking over of Management) Act, 1983 which by sub-s. (2) of s.1 was brought into force with retrospective effect from October 18, 1983, the date of promulgation of the Ordinance. The purpose and object of the Act, as reflected in the long title, was to provide for the taking over in the public interest of the management of the textile undertakings of the Companies specified in the First Schedule pending nationalisation of such undertakings and for matters connected therewith or incidental thereto. The preamble to the Act brings out the necessity for such legislation :

"WHEREAS by reason of mismanagement of the affairs of the textile undertakings specified in the First Schedule, their financial condition became wholly unsatisfactory even before the commencement in January 1982 of the textile strike in Bombay and their financial condition has thereafter further deteriorated;

AND WHEREAS certain public financial institutions have advanced large sums of money to the companies owning the said undertakings with a view to making the said undertakings viable;

AND WHEREAS acquisition by the Central Government of the said undertakings is necessary to enable it to invest such large sums of money;

AND WHEREAS pending the acquisition of the said undertakings, it is expedient in the public interest to take over the management of the said undertakings;

BE it enacted by Parliament in the Thirtyfourth Year of the Republic of India."

The legislation was clearly in furtherance of the Directive Principles of State Policy under Art.39(b) and

(c). As the preamble reads the financial condition of the textile undertakings specified in the First Schedule had become wholly unsatisfactory even before the commencement of the textile strike in January 1982 in Bombay, by reason of mismanagement of the affairs of such undertakings and their financial condition thereafter further deteriorated. Many public financial institutions had advanced large sums of money to the textile companies owning the said undertakings with a view to making the said undertakings viable. Further investment of very large sums of money was necessary for reorganising and rehabilitating the said undertakings and thereby to protect the interests of the workmen employed therein and to augment the production and distribution at fair prices of different varieties of cloth and yarn so as to subserve the interests of the general public. Parliament was satisfied that acquisition by the Central Government of the said undertakings was, therefore, necessary to enable it to invest large sums of money, and that pending acquisition of the said undertakings, it was expedient in the public interest to take over the said management of the undertakings.

The Statement of Objects and Reasons accompanying the Bill reads as follows :

"The Textile Undertakings (Taking Over of Management) Ordinance, 1983 was promulgated by the President on 18th October, 1983 to vest in the Central Government the management of thirteen textile undertakings, pending their nationalisation. By reason of mismanagement of the affairs of these undertakings, their financial condition which became wholly unsatisfactory even before the commencement in January, 1982 of the textile strike in Bombay further deteriorated thereafter. Certain public financial institutions had with a view to making the said undertakings viable, advanced large sums of money to the companies owning these

undertakings. Further investment of very large sums of money found to be necessary for reorganising and rehabilitating the said undertakings and thereby to protect the interests of the workmen employed therein and to augment the production and distribution at fair prices of different varieties of cloth and yarn so as to subserve the interests of the general public. Government considered the nationalisation of the said undertakings to be necessary to enable it to invest such large sums of money and safeguard other interests. Once the basic decision of nationalisation was taken, a genuine apprehension arose in the Government's mind that unless the management of the concerned undertakings was taken over on immediate basis there might be large scale frittering away of assets which would be detrimental to the public interest. It thus became urgently necessary for Government to take over Management of the undertakings in the public interest. As Parliament was not in Session at that time and every day's delay could have had serious repercussions the aforementioned Ordinance was promulgated."

On November 11, 1983 the respondents filed a petition under Art. 226 of the Constitution challenging the constitutional validity of sub-s.(1) of s.3 of the Act as violative of Arts. 14, 19(1)(g) and 300A. The respondents contended that apart from the Company's textile undertaking and the business of manufacture of yarn and textiles, the Company as from 1970 also carried on the business of real estate. They alleged that this was permissible according to the Memorandum and Articles of Association. It is averred that there are several relevant facts which conclusively show that the Real Estate Division was a separate and independent business being carried on by the Company.

Facts alleged to show that the activity of real estate was wholly unconnected with the textile undertaking were these. Since the Company's textile undertaking was established way back in 1875, it was not scientifically established on the basis of principles of good and economic management. Various departments of the Company's textile undertaking such as spinning, weaving and storage godowns were constructed and laid out at great distances from each other. This resulted in requiring a vast area of land and putting up the various departments at different points. This had its great disadvantages, since the transportation cost increased, there was lot of wastage and handling, supervision and control of manufacturing activities became inconvenient, time-consuming and cumbersome. The original establishment was brought about in the late 18th and early 19th century when wages were low and the textile industry was not modernized. There was total lack of scientific or proper planning. After the present management had taken over in 1955 the Tantias implemented a modernization scheme by bringing the departments together which promoted convenience in handling and reducing transportation costs, wastage and pilferage. As a result of these measures a large area of land and built up space became available to the Company for the purpose of utilizing the same in its real estate business. Consequently in the year 1970 the Company applied to the Bombay Municipal Corporation for sub-division of its lands in order to enable it to utilize the same for the purpose of its real estate business. By its letter dated April 16, 1971 the Municipal Corporation sanctioned sub-division on certain terms and conditions principal amongst them being (1) The Company should hand over plot No. 1 admeasuring about 5,000 square yards to the Bombay Municipal Corporation for construction of school and playground against nominal advance, the balance value to be fixed by the Special Land Acquisition Officer. (2) Plots Nos. 2 and 6 admeasuring

about 4,000 square yards were to be reserved for recreational amenities and open space, free of cost. (3) Plot No. 3, a triangular plot at the top admeasuring 103 square yards was to be set apart by the Company for construction of B.E.S.T. sub- station. (4) The Company had to construct and hand over an approach road 1500 to 1600 feet long and 45 feet wide admeasuring about 7,600 square yards free of cost as per the requirement of the development plan finalized by the Bombay Municipal Corporation. In consideration of the aforesaid, the Bombay Municipal Corporation agreed to grant Floor Space Index i.e. Floor Area Ratio, otherwise known as FAR, and building rights on the appurtenant plots.

As a result of the aforesaid sub-division, the following plots became available to the Company for development :

1. Plot No. 5 admeasuring 8740 square yards.

2. Plot No. 7 admeasuring 7122 square yards.

(being Industrial Estate already constructed and sold)

3. Plot No. 8 admeasuring 3000 square yards.

4. Plot No. 12 admeasuring 3443 square yards (being Industrial Estate constructed and sold in the year (1980-81) Apart from the said plots being available for development the Company had in its possession various old buildings and godowns which were already constructed but which were not useful in the textile industry on account of the fact that it had modernised its textile undertaking. All these buildings were tenanted and the rent recovered from the same was duly credited to the Company's balance-sheet. These also became available to the Company for disposal. All these plots were shown demarcated in the plan 'Exh.K' and annexed to the Writ Petition as order of the Municipal Commissioner granting permission for sub-division along with a plan delineating the different plots. In 1981, plot No. 6 admeasuring 2761 square yards which was kept reserved as recreation ground was released by the Minicipal Corporation in exchange for plot No. 8 admeasuring 2960 square yards.

The respondents further aver that they applied to the Industries Commissioner for 'No Objection Certificate' for constructing industrial estates on plots Nos. 7 and 12. The Industries Commissioner by letter dated January 20, 1972 issued the requisite N.O.C. for construction of industrial estates or galas as industrial units for small scale industries on plot No. 7, admeasuring 7122 square yards subject to municipal sanction on condition that 25% space should be reserved for small scale industrial units which were to be transferred from non-conforming zones on the terms fixed by the Municipal Commissioner for Greater Bombay. The respondents also by their letter dated July 19, 1973 applied to the State Government for permission to construct such galas on plots Nos. 5 and 8. On the same day, the Directorate of Industries granted the N.O.C. permitting the respondents to construct an industrial estate on plot No. 12 admeasuring 3443 square yards comprising of 110 sheds on similar condition. The Municipal Corporation sanctioned the building plans on March 16, 1973 and the Industries Commissioner by his letter dated July 19, 1973 granted a N.O.C. for

construction of industrial estate on plot No. 12. On even date, the respondents architects also made an application to the Director of Industries for grant of N.O.C. for the proposed industrial estate on plot No. 5.

On January 19, 1974 a special resolution was passed at an extraordinary general meeting of the Company in terms of s. 149(2A) of the Companies Act, 1956 to the effect :

> "Resolved that pursuant to s. 149(2A) of the Companies Act, consent be and is hereby accorded to and authority conferred upon the Board of Directors of the Company to carry out the provisions of cl.12 of the Memorandum of Association."

The resolution then reproduced sub-cl.(12) of cl.3 of the Memorandum of Association.

To resume the narrative, the construction of an industrial estate on plot No. 7 admeasuring 7122 square yards consisting of 166 galas was commenced by the respondents sometime in the year 1974 and the same was completed in later years. Incidentally, they constructed 90 galas in Building A and 12 galas in Building B and secured the help of the developers for the rest. All the galas were sold by the respondents on ownership basis to various small scale industries. Similarly, the respondents commenced construction of an industrial estate on plot No. 12 admeasuring 3443 square yards in the year 1973 but due to the imposing of certain restrictions placed by the State Government on construction of industrial estates in Greater Bombay, the activity of construction of industrial estates on the said plot came to a standstill pending relaxation for restarting of such construction. In 1979-80, the Government allowed such construction. Thereafter the respondents restarted construction of the industrial estate on plot No. 12 admeasuring 3443 square yards during the year 1980 and the industrial units built thereon were all completed and sold by 1981. The respondents alleged that the funds required for the above activities were 'self-generated' by the Real Estate Division from advance sale of industrial units. They further alleged that a road admeasuring about 1500/1600 feet long and 45 feet wide had been constructed in 1981 by the Real Estate Division as per the term imposed. The respondents also alleged that through 'continuous and persistent efforts' the Real Estate Division could obtain permission from the State Government for conversion of plot No.5 from industrial to residential use by modifying the G Ward development plan i.e. from General Industrial Zone to residential zone on September 19, 1981. Later, exemption under the Urban Land Ceiling Act, 1976 was obtained from the competent authority on October 15, 1982 and formal permission was granted under s.22 of the Act for development of plot No. 5 for residential purposes. In October 1982 the respondents architects submitted building plans to the Municipal Corporation for construction of residential buildings and thereafter they started negotiations for sale of residential buildings to various banks and public sector undertakings in anticipation of the sanction.

Upon these facts the respondents filed a petition under art. 226 of the Constitution in the High Court challenging the constitutional validity of sub-s.(1) of s.3 of the Textile Undertakings (Taking Over of Management) Act, 1983 as violative of Arts. 14, 19(1)(g) and 300A of the Constitution. They also contended in the alternative that the Real Estate Division cannot be said to be forming part of the textile undertaking and therefore the taking over of the Real Estate Division was illegal, null and void. By the judgment under appeal, the High Court upheld the constitutional validity of the Act

insofar as the taking over of the management of the respondents textile undertaking by the Central Government under sub-s.(1) of s.3 of the Act was concerned but held that the Real Estate Division was not an "asset in relation to the textile undertaking" within the meaning of sub-s.(2) of s.3 of the Act.

The crucial question that falls for determination is whether the surplus land appurtenant to the mill was not an 'asset in relation to the textile undertaking' within the meaning of sub-s.(2) of s.3 of the Textile Undertakings (Taking over of Management) Act, 1983. That depends on whether the so-called business of real estate carried on by the Company was separate and distinct from the textile business. The High Court has held that along with the vesting of the management of the mill in the Central Government under sub-s.(1) of s.3 of the Act, all the assets and properties etc. of the Company only relating to the mill vested in them and that the Company having by a resolution passed at the Extraordinary General Meeting of shareholders on January 19, 1974 authorized the Directors to carry on business of developing Company's surplus lands and the Company's balancesheets from 1974 onwards having shown the said Industrial Estate as current assets of the Company and from February 1976 as stock-in-trade of the Company, the said lands were being treated as distincts assets of the Company. It observed that the existence of the Company's 'Real Estate Division' was also recognised by the letters of the Investigation Committee appointed by the Central Government under s.15(a)(i) of the Industries (Development and Regulation) Act, 1951, informing the petitioners' Company of the appointment of such a Committee by asking the Company to furnish particulars as regards the 'Real Estate Division'. Further, the report of the said Investigation Committee made in February 1982 also dealt with the said 'Real Estate Division' separately. It has referred to the fact that in 1981, the Central Excise Authorities had approved for licensing the demarcation of the Mill's area being Plot No. 9 (part) as shown in the plan (Annexure K) and that the notification dated September 19, 1981 by the Government of Maharashtra authorized the change of user of Plot No.5 from Industrial zone to Residential zone. The High Court further observed that it was not disputed that the petitioners' company under its Memorandum of Association was entitled to carry on, amongst others, the business of land development, builders, dealings in real estate etc. From the above facts stated, the High Court has come to the conclusion that the respondents Company in its own right since 1973-74 had established a 'Real Estate Division' for doing business in construction and sale of buildings on its land other than the land occupied by the mill which was distinctly demarcated. Therefore, the business carried on by the respondents Company under the 'Real Estate Division' was distinct from and unrelated to the Company's business of running the textile mill. It repelled the contention of the Central Government that merely because the respondents Company, as a condition of getting loans from financial institutions to rehabilitate the mill and by making of viable financially, it would not make the said Real Estate Division an asset of the Company so as to vest the same in the Central Government under sub- s.(2) of s.3 of the Act, along with the vesting in them of the Mill's management under sub-s.(1) thereof. The issue involved must necessarily trun on the meaning of the words "assets in relation to the textile undertaking" appearing in sub-s.(2) of s.3 of the Act.

Sub-ss.(1) and (2) of s.3 of the Act which have a material bearing on these appeals provide as follows :

> "(1) : On and from the appointed day the management of all the textile undertakings shall vest in the Central Government.
>
> (2) The textile undertaking shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges of the textile company in relation to the said textile undertaking and all property, movable and immovable, including lands, buildings, workshops, projects, stores, spares, instruments, machinery, equipment automobiles and other vehicles, and goods under production or in transit, cash balances, reserve fund, investments and booklets 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 of control of the textile company whether within or outside India and all books of account, registers and all other documents of what ever nature relating thereof."

In the Act, "textile undertaking" as defined in s.2(d) reads :

> "2(d): "textile undertaking" or "the textile undertaking" means an undertaking specified in the second column of the First Schedule."

The term "textile company" is also defined in s.2(e) as :

> "2(e) : "textile company" means a company (being a company as defined in the Companies Act, 1956) specified in the third column of the First Schedule, as owning the undertaking specified in the corresponding entry in the second column of that Schedule."

Various contentions have been raised in these appeals but on the view that we take it is not necessary for us to deal with them all. We were also referred to a large number of decisions on the contentions so advanced. But we do not think that they are of any real assistance since these appeals must turn on the construction of the words 'assets in relation to the textile undertaking' appearing in sub-s. (2) of s.3 of the Act which must take their colour from the context in which they are used.

In support of these appeals, Shri Milon Banerjee, learned Additional Solicitor-General appearing on behalf of the Union of India and the National Textile Corporation, was followed by Ms. Indira Jaising, learned counsel appearing on behalf of the Maharashtra Girni Kamgar Union representing the workers of the textile mill. The principal contention advanced by the learned counsel was that the words "assets in relation to the textile undertaking" used in sub-s.(2) of s.3 of the Act have a wide legal connotation and they must be construed to mean "forming part of" and not as "belonging to" the textile under taking. In essence, the contention is that the surplus lands were integrally connected with the textile business which could not be carried on and made viable except by the sale of the surplus lands. The submission is that the High Court was in error in holding that the Company was engaged in the business of property development. The argument is that the activity of development and disposal of surplus lands or of construction and sale of industrial galas was for purposes of raising finance for the textile business and therefore was ancillary or incidental to the

main object with which the Company was formed, namely, of carrying on textile business. Reliance was placed on the application of the "main objects" rule of construction, namely that where a Memorandum of Association expresses the objects of the Company in a series of paragraphs and one paragraph, or the first two or three paragraphs, embody the main object of the Company, all other paragraphs are treated as merely ancillary to the "main object" and as limited or controlled thereby. We were referred to the various survey reports of the IDBI, Ahmedabad Textile Industries Research Association, Investigation Committee, Textile Commissioner's Office and Task Force with a view to impress upon us that the viability of the Company depended largely on the proper utilization of the surplus lands. It was contended that the Legislature in enacting the law clearly had the intention of taking over the surplus lands of the Company and the High Court should have interpreted sub-s. (2) of s. 3 of the Act in consonance with the legislative intent.

The contention to the contrary put forth by Shri Nariman, appearing for the respondents' Company is that the words "assets in relation to the textile undertaking" in sub-s. (2) of s.3 of the Act must be read in conjuction with sub-s. (1) thereof and the other provisions of the Act and therefore must be interpreted to mean "forming part of" i.e. as "belonging to" the textile undertaking. It is submitted that what vests in the Central Government under sub-s. (1) of s. 3 of the Act is the management of the textile undertaking. Function of sub-s. (2) thereof is only clarificatory. The learned counsel referred to different provisions of the Act to stress that the Act makes a clear distinction between the "textile undertaking" as defined in s. 2(d) and the "textile company" as defined in s. 2(e). According to him, a mere perusal of the Schedule read with the definition clause clearly shows that what has been taken over under sub-s. (1) of s. 3 of the Act is only the management of the textile undertaking and everything relating thereto and nothing else. The learned counsel laid particular stress on the special resolution passed at the Extraordinary General Meeting of the shareholders on January 19, 1974 whereby the Company accorded its approval and conferred authority upon the Board of Directors of the Company to carry out the provisions of sub-cl. (12) of cl. 3 of the Memorandum of Association. Where was the necessity, he asks, of the special resolution as contemplated by s. 149(2A) of the Companies Act unless the shareholders intended and gave consent to the starting of a new business by the Company in real estate ? Therefore he contends that the passing of a special resolution and filing of the same with the Registrar were necessary concomitants inasmuch as the business in real estate which the Company intended to carry on was a new business and it was not germane i.e. was unrelated to the existing business. He then contends that sub-cl. (12) of cl. 3 read with sub-cl. (37) on its true construction, excluded the 'main objects' rule of construction so that each of the objects in the clause was to be read in isolation and not as ancillary or limited or controlled by first few paragraphs and that, on that construction, sub-cl. (12) was wide enough to include the Real Estate Division, i.e. the project the Company had undertaken from 1974 onwards of development and sale of surplus lands by construction of industrial galas. He tried to draw sustenance from the IDBI's study of viability, report of the Task Force and that of the Investigation Committee and contends that each of them was constituted by a body of experts charged with the duty of making an investigation into the affairs of the Company. He submits that all these high-powered bodies accepted the existence of a separate Real Estate Division of the Company. In substance, the submission is that the business of development of property and the sale of plots with industrial galas was an adventure in the nature of trade which was wholly independent of the textile business and merely because the Company was raising finance by selling industrial galas

constructed on the lands, did not necessarily imply that the lands formed part of the textile undertaking.

We find it difficult to sustain the judgment of the High Court that the so-called Real Estate Division of the Company was a separate or distinct business or that the surplus lands did not form part of the assets 'in relation to the textile undertaking' within the meaning of sub-s. (2) of s. 3 of the Act. There was in reality no such business much less any real estate business. The respondents Company was borrowing money all the time and the proceeds of the sale of surplus lands and industrial galas were utilised to improve the liquidity to pay off the creditors. When the mill was established way back in 1875 it was located over an area of about 21 acres admeasuring 1,05,008 square yards, most of which was free-hold and of this the manufacturing and storage areas pertaining to textile activities occupied 50,749 square yards i.e. nearly half of the total area. As a result of a revised lay-out of the production and storage facilities, the respondents rendered some of the buildings and plots surplus and the textile mill was located on 40,456 square yards.

The fundamental question is : Whether the land is an asset in relation to the textile undertaking which must necessarily turn on the interpretation of sub-s. (2) of s. 3 of the Act. The test is whether it was held for the benefit of, and utilised for, the textile mill. It is quite clear that there was as such no such separate business carried on by the Company in real estate. All the assets including the surplus lands appurtenant to the mill were assets of the Company held for the benefit of the textile undertaking. At no point of time was there a segregation of the assets of the Company to form the Real Estate Division. The surplus land which was an asset belonging to the Company's textile mill was never bifurcated to form a Real Estate Division. There was no transfer of title to the lands and the so- called Real Estate Division had no capital assets of its own. The Company was indebted to the tune of Rs. 6.80 crores and the liabilities were being met by sale and development of lands, construction of industrial galas and the diversion of Plot No.5 from the industrial zone to the Residential zone. The proceeds were all ploughed back into the textile business to pay off the debts. There was no separate account of the Real Estate Division and there is really nothing on record to show that any separate business in real estate was ever started. The respondents have laid no real foundation on the pleadings to sustain the finding reached by the High Court that the business of real estate was separate and distinct from the textile business. There is no clarity in the pleadings as to the precise point of time when such a business was ever started. The question is : When did the Real Estate Division come into existence ? The petitioners aver in para 2 that w.e.f. 'the year 1973-74 the Company also established what is described as a Real Estate Division'. It is averred :

> "In the said Division, the 1st Petitioner carried on and carries on the business of developing various plots, putting up buildings thereon and selling the same or portions thereof. The said activity is totally segregated from the textile undertaking and is a separate and independent business of Petitioner No.l and it has nothing to do with the Textile Undertaking."

While in paragraph 27 it is averred :

> "Apart from the 1st Petitioner's textile undertaking and the business of manufacturing yarn and textile, the 1st Petitioner from 1970 also carried on the business of real estate".

The balance-sheets of the Company throughout furnish data for the textile undertaking as a whole and the fact shows that the so called real estate business was not separate from the textile undertaking. Even the schedule of fixed assets does not indicate that the alleged Real Estate Division comprising of the surplus lands apart from 40,456 square yards which now form part of the mill precincts had been separated. There is nothing to show that the said lands were not appurtenant to the textile undertaking or their integrality was broken. me balance-sheets do not disclose that the Company had shown Real Estate Division or the industrial galas separately in the schedule of fixed assets. This falsifies the respondents plea that the real estate business was separate and distinct from the textile undertaking. It is quite clear that the business of the company under the real Estate Division was a business belonging or related to the textile undertaking. This is borne out by the fact that before the taking over of the management by the Central Government under sub-s. (1) of s. 3 of the Act, the respondents Company as a condition of getting loans from financial institutions to rehabilitate the textile mill mortgaged the lands and also for making it financially viable brought in additional funds by sale of the excess lands. Sales of the surplus lands or of industrial galas constructed thereon did not constitute an adventure in the nature of trade but were in substance and essence utilisation of the capital assets of the Company for the purpose of running the textile undertaking.

Ms. Indira Jaising appearing for the Maharashtra Girni Kamgar Union has filed before us a detailed and tabular chart which is rather instructive, which clearly demonstrates that the Real Estate Division was part and parcel of the textile undertaking. It gives particulars showing utilisation of the lands belonging to the Company for purposes of running the textile business, demarcating the plots as shown in the plan (Annexure K) to the Writ Petition. Prior to the year 1971, there was no sub-division of the lands and as such all the assets of the Company were held in relation to the textile business. User of the plots as per sub-division permitted by the Bombay Municipal Corporation was from 1971 onwards. There were four reserved plots, namely, plot no.l admeasuring 4764 square yards, reserved by the Bombay Municipal Corporation for construction of a school. Plot No.2 admeasuring 1870 square yards, reserved by the Corporation as a recreation ground i.e. to be kept green. Plot no. 3, a small triangular plot admeasuring 105 square yards, reserved by the Corporation for the B.E.S.T. Sub-Station, and plot no.6 admeasuring 2761 square yards, reserved by the Corporation to be kept open for recreation till 1981. In 1981 it was released in exchange for plot no.8 admeasuring 2960 square yards. 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 respondents to a charitable trust of the Tantias in 1974-75 for setting off loans taken from the trust for the textile business. Plot no. 5 admeasuring 8740 square yards lying vacant : There was no development of this plot. The respondents-Company created an equitable mortgage in favour of the United Commercial Bank to raise finance for the textile business. Plot no. 6 admeasuring 2761 square yards was released by the Corporation and transferred from the Industrial Zone to the Residential Zone with permission to construct multi-storeyed buildings containing residential flats. Plot no. 7 admeasuring 7122 square yards : in 1974 the Company built some industrial galas on a portion and sold them on

ownership basis. In 1980, building rights were sold to builders as the Company did not have finances to build on its own. Sale proceeds thereof were used for improving financial liquidity of the Company and to reduce the liabilities relating to the textile business. We have already referred to plot no. 8 which was lying vacant till 1981 when the Municipal Corporation reserved it in exchange for plot no.6. Equitable Corporation was also created by the Company in favour of the united Commercial Bank with respect to this plot. Then comes plot no.9 admeasuring 50,749 square yards. The textile mill and its buildings are now located over a portion thereof admeasuring 40,456 square yards. On the remaining part, old buildings existed which were sold in 1974-75 to a sister concern of the Tantias. Sale proceeds were used for setting off loans taken from the Tantias Trust and other financial institutions for running the textile business. Of the remaining plots, two of them, namely, plot no. 10 admeasuring 1745 square yards and plot no. 11 admeasuring 1590 square yards were sold by the Company without raising any construction to a Tantia concern. Proceeds of these sales were utilized for improving the financial liquidity of the Company and to reduce the liabilities relating to the textile business. Plot no. 12 admeasuring 3443 square yards : in 1980 a basement was built for industrial galas. Thereafter, the Company due to paucity of funds sold building rights to a builder. Sale proceeds were used for (1) paying outstanding bonus to the workmen of the textile undertaking, and (2) repayment of bank loans, buying of cotton under the directions of the Banks. Lastly, plot no. 13 admeasuring 1873 square yards : In 1968-69 this plot had already been sold by the Company without any construction. Sale proceeds were used for improving the financial liquidity of the Company and reducing the liabilities in relation to the textile undertaking. The tabular chart gives a graphic picture of the transactions effected by the Company in respect of the surplus lands by building industrial galas thereon or otherwise. They bring out the existence of inter-connection, inter-lacing, inter- dependence and unity between the transactions of the respondents Company relating to the surplus lands and the structures built thereon as well as the textile business carried on by it. Sales of surplus lands in such circumstances, we are inclined to think, are no more than a realisation of capital or conversion of one form of it into another. It was in reality a scheme for conversion of capital. The activity of selling the surplus lands or the industrial galas constructed thereon had a direct nexus with, or clearly related to, the carrying on of the textile business.

Falsity of the respondents claim that the business of the Real Estate Division was separate and distinct from the textile business and therefore the surplus lands which constituted the Real Estate Division, were not an asset in relation to the textile undertaking within the meaning of sub-s. (2) of s.3 of the Act is clearly borne out from the balance-sheets of the company. Before dealing with the balance sheets we think it proper to set out the relevant portion of the Note on Real Estate Division submitted by the petitioners, which reads :

> "The textile unit was one of the businesses of Petitioner No.1, Real Estate being another business. In order to strangthen the business of Textile Unit, it was necessary to obtain loans from financial institutions and Banks. The Petitioner No.1 created security on Plot Nos. 5, 8 and 12 (assets of the Company not related to the working of the textile unit) in favour of the Company's bankers. Merely because the Petitioner No. 1 created or agreed to create security on some of its assets not pertaining to Textile Undertaking for strengthening the textile undertaking, it does not follow that these assets are the assets of the Company in relation to the textile undertaking of

which charge can be taken by the Central Government or the Custodian. Shri M.L. Tantia and his family members had pledged their shares to the extent of 13,000 shares in favour of the Company's bankers, as a collateral security. It very often happens that the Company carries on several businesses and the same are known as separate divisions like Rayon Division, Paper Division, Cement Division, Land Development Division etc. Merely because the Petitioner No. 1 utilised or offers to utilise the assets of another Division as security for loans etc. for strengthening the Textile Unit, the identity of the Real Estate Division or its separate assets is not destroyed. Factual material in respet of the Equitable mortgage created in this context is set out in paragraph 17(b) of the affidavit in Rejoinder (page 299-300). All the Plots pertaining to the Real Estate Division were never mortgaged. Even plot No. 12 which was mortgaged, along with plot Nos. 5 and 8 in 1978 for obtaining a temporary loan of Rs. 12 lakhs for payment of Bonus, was released by the Banks in favour of Petitioner No. 1 for development and construction and sale of Industrial Estate duly constructed. When the construct{on of Industrial Estate on plot No. 12 was completed, a sum of Rs. 87 lakhs pertaining thereto was deposited by Petitioner No. 1 in a special account with the United Commercial Bank and utilised for various purposes. Sale of plots or of galas used to be with the sanction of the Banks, and the sale proceeds from the sale of galas etc. were deposited with the Banks and fairly dealt with."

"It is respectfully submitted that the Supplementary Survey Report (Annexure II(b)) as well as Paragraph 5 of the Investigation Committee Report supports the case of the Petitioner No. 1 to the effect that Real Estate Division has functioned for more than a decade."

Merely because funds generated from the sale of galas were utilised for strengthening the textile unit, which also belong to the same Company, it cannot be inferred that the Real Estate Division did not function as a separate unit after segregation of different plots and particularly the Mill itself (factory area). "

(Emphasis supplied) In this note the assertion that the textile unit was one of the businesses of the Company, a business in real estate being another, proceeds on the hypothesis that a Company may carry on several businesses. Upon this basis, the respondents seek to assert that merely because the respondents Company secured loans by way of equitable mortgage in respect of some of the plots for financing the textile business, it does not follow that the surplus lands were the assets of the Company in relation to the textile undertaking. We have already dealt with different transactions entered into by the Company with respect to the surplus lands in the preceding paragraph and it is clear enough they are not separable from but were integrally connected with the running of the textile undertaking. It is undisputed that the predominant object with which the Company was formed was to carry on business in textiles alone and the surplus lands were undoubtedly an asset of the Company held in relation to the textile business. Furthermor e, the respondents case

that the textile business of Real Estate Division was separate and distinct from the textile business stands belied by the balance-sheets of the Company. The respondents case is that the Real Estate Division was started during the year 1973-74 when monies were received from various buyers of industrial galas against advance sales of such galas built on plot No.7. In the relevant accounting year the Company made profits of Rs. 39.25 lakhs which were solely attributable to the textile undertaking. The prior mortgage in favour of the National Industrial Development Corporation was redeemed and the outstanding balance of Rs. 23,75 lakhs paid off during the year. In the Directors' Report in that year it is stated that a sum of Rs. 3,53,423 had been received from the various buyers against the sale of the multi-storeyed galas in the Industrial Estate that the Company was bringing up and that this would improve the Company's financial liquidity and also help to reduce its liabilities. In the schedule of fixed assets attached to and forming part of the balance-sheet for the year under the heading "Current sets" the following entry appears :

"(a) Current Assets :

(i) .....

(ii) .....

(iii) .....

(iv) Industrial galas under construction (at cost) Rs. 8,69,776."

In the Notes of Account, a sum of Rs. 8,62,675 is shown as a receipt towards advance sale of galas under

construction in the industrial estate being constructed by the Company within the mill precincts. Similar are entries in the Balance-sheets for the relevant years being the financial years 1974-75 to 1979-80. In the balance-sheets for all these years, the Company appears to have opened a separate account under the heading "Industrial Galas under

Construction Account" and shown them under the heading "Current Assets". In the Notes of Account, it is stated that the profit on the sale of galas would be accounted for after completion of the industrial estate and handing over all the galas to the proposed society. No useful purpose would be served in referring to the entries appearing in the several years in question except to touch upon one or two entries. In the Director's Report for the year ended March 31, 1975, there is a receipt shown of Rs. 49 lakhs on capital account towards sale of surplus lands together with the structures built thereon i.e. sale of the tenanted buildings in excess of the requirement of the textile undertaking. In the balance-sheet for the year 1975-76 the amount of Rs. 30,76,849 spent on construction of the industrial galas had been

debited to "Industrial Galas under Construction Account" and shown as stock-in-trade of the Company. In the accounting year, the Company created an equitable mortgage in favour of the United Commercial Bank of Plot No. 9 admeasuring 40,456 square yards on which the textile mill is situate by deposit of title-deeds by way of collateral security and this fact was intimated to the Registrar of Companies along with a plan demarcating the boundaries of the textile undertaking. Similar entries appear in the subsequent years. It goes on like this from year to year.

Nothing really turns on the aforesaid entries in the balance-sheets. Such entries in the books of account of a business concern following the mercantile system are usually made for accounting purposes. The balance-sheets and the Profit and Loss Accounts instead of substantiating the respondents claim that the business in real estate was separate and distinct from the textile business, are rather destructive of it. The opening of a separate account under the heading "Industrial Galas under Construction Account" is of little significance. None of the balance-sheets of the Company nor the Profit and Loss Accounts make any mention of the so-called Real Estate Division. Even the schedules relating to the fixed assets in the balance-sheets of the Company make no distinction between land belonging to the textile undertaking and land belonging to the Real Estate Division. They clearly demonstrate that the Company had at no time purchased any land for dealing in real estate. It was merely disposing of its surplus lands belonging to the textile undertaking with the avowed object of ploughing back money into the textile undertaking. The balance-sheets for the years 1973-74 onwards do not show that at any point of time there was any segregation or bifurcation of the assets of the Company or of the textile undertaking with a view to form the Real Estate Division, nor was there any transference of title to the lands. The so-called Real Estate Division had no capital assets of its own at all. The Company in its balance-sheets and Profit and Loss Accounts gave data for the textile undertaking as a whole and, as already stated, even the Schedule of Fixed Assets does not indicate the alleged Real Estate Division. The proceeds of sale of surplus lands or industrial galas constructed thereon or of loans incurred by mortgaging the plots were utilized for improving the financial liquidity of the Company and reducing the liabilities relating to the textile business. From the balance-sheets and Profit and Loss Accounts, the conclusion is irresistible that the surplus lands belonging to the Company were held "in relation to the textile undertaking" within the meaning of sub-s. (2) of s.3 of the Act.

We find it difficult to sustain the conclusion or reasoning of the High Court. The High Court failed to appreciate that it was dealing with an Act of Parliament providing for taking over in public interest of management of the textile mills specified in the Second Column of the First Schedule, pending nationalisation of such textile undertakings and for matters connected therewith and incidental thereto. The legislation was clearly in furtherance of the Directive Principles of State Policy in Art. 39(b) and (c) of the Constitution. In interpreting such a piece of legislation the Courts cannot adopt a doctrinaire or pedantic approach. It is a well-known rule of

construction that in dealing with such a beneficent piece of legislation, the Courts ought to adopt a construction which would subserve and carry out the purpose and object of the Act rather than defeat it. The High Court completely ignored the fact that all the assets of the Company were held in relation to the textile business. The Company acquired all its real estate in the 19th century when it was formed for carrying on textile business and admittedly no new assets had been acquired by it thereafter. This is borne out by the fact that the disposal of surplus lands was with the sole and avowed intention of ploughing back the money to improve the financial liquidity of the Company and to reduce the liabilities relating to the textile business. In the absence of the surplus lands no loans could have been raised for the purpose of running the textile undertaking and as such they were and are an integral part of the textile undertaking. We regret to find that the High Court in coming to the conclusion that it did, has also overlooked the reports of the several high-powered committees constituted by the Central Government from time to time which stressed that the potential viability of the textile undertaking depended to a large extent on the proper utilization of the lands belonging to the textile undertaking, and also the fact that the Company had in the past been misutilising its real estate. In particular, the Investigation Committee's report highlighted that the disposal of the surplus lands had been misused by the Company and that it was to the detriment of the Company's textile undertaking implying thereby that the proper utilisation of the assets would make the textile undertaking viable. The viability study of the IDBI clearly brings out that the textile undertaking could only be made viable by the disposal of the surplus lands. Further, the report of the Task Force submitted to the Economic Affairs Committee of the Union Cabinet classified the Company's textile undertaking under Group II i.e. mills which will be viable with the sale of sruplus lands. 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-s.(2) of s.3 of the Act in the context of sub-s.(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. me Note attached to the report of the Task Force includes the total lands belonging to the respondents 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 respondents Company.

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-s.(l) of s.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 under takings. Hence, a paradoxical situation should have been avoided by adding a narrow and pedantic construction of a provision like sub-s.(2) of s.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-s.(l) 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. In New Satgram Engineering Works & Anr. v. Union of India & Ors., [1981] 1 S.C.R. 406 in repelling the contention that the Engineering Unit together with the Shethia Bhawan and all its assets built on a plot adjacent to the New Satgram Coal Mines in 1964, the technical Director's Bungalow built on a plot outside the A mining area somewhere in 1957-58 and another building on the same plot of land, namely, the Guest House used for the residence of the officers and staff of the mines were not assets falling within the definition of "mine" defined in s.2(h)(vi), (vii) and (xi) of the Coal Mines (Nationalisation) Act, 1973, the Court had occasion to observe :

"It will be seen that there is a difference in the language used in s.2(h)(vii) and (xi). Sub-clause

(vii) uses the words "in, or adjacent to, a mine"

and "used substantially" for the purposes of the mine or a number of mines under the same management, in relation to workshops. The use of the word 'and' makes both the conditions conjunctive. Sub-clause (xi) uses the words "if solely used" for the location of the management, sale or liaison offices, or for the residence officers and staff, of the mine, in relation to lands and buildings. The differences in language between the two expressions "used substantially"

and "solely used" is obvious. It is, therefore, possible to contend that lands and buildings appurtenant to a coal mine, if not exclusively used for purposes of the colliery business, would not come within the definition of mine in s.2(h), i.e., it would depend upon the nature of user, and that the crucial date is the date of vesting. We are inclined to think that the distinction though apparent may not be real in the facts and circumstances of a particular case. A Workshop or a building constructed initially for the purpose of a coal mine cannot by its being diverted to other purposes cease to belong to the mine. What is of the essence is whether the workshop or the building originally formed a part and parcel of the coal mine. The subsequent user may not, in our opinion, be very material. To illustrate, a workshop which has come into existence for and because of the mine but which also cones to be used for purposes other than of the mine does not on that account alone cease to be a workshop used substantially for the purposes of the mine. Again, a building which is used to accommodate some other concern because of the availability of space does not on that account alone cease to be solely used for locating the management offices of the

mine."

(Emphasis supplied) It was then observed :

"By reason of sub-s.(1) of s.3 of the Act the right, title and interest of the owners in relation to the coal mines specified in the Schedule stand transferred to, and vest absolutely in the Central Government free from all encumbrances. Parliament instead of providing that the word 'mine' shall have the meaning assigned to it in the Mines Act, 1952, has given an enlarged definition of 'mine' in s.2(h) so that not merely the colliery but everything connected with the mining industry should vest in the Central Government, i.e. not only that part of the industry which consisted of raising, winning, and getting coal but also that part of it which consisted in the sale of coal and its supply to customers both of which are a part of an integrated activity. mis is manifested by sub- clauses (i) to (xii) of clause (h) of s.2, i.e., all the assets belonging to a mine vest in the Central Government." (Emphasis supplied) Again, in Union of India v. United Colliories Ltd. & Ors., [1985] 1 S.C.C. 305 a similar question arose. me question was whether or not a staff car belonging to the United Colliery Ltd., the owners in relation to a mine and being the staff car of the Technical Advisor of the North Chirimiri Collieries, was an asset belonging to the mine within the meaning of s.2(h)(xii) of the Nationalisation Act. me High Court held that the question as to whether the staff car should be treated as belonging to the owners of a mine as part of the mine itself raised disputed questions of fact relating to its user which would have to be determined on the basis of evidence, purporting to rely upon the aforesaid decision of this Court in New satgram Engineering Works' case and therefore relegated the parties to have the matter settled by A a civil suit. Allowing the appeal, this Court held that the decision in "New Satgram Engineering Works" case was clearly distinguishable. It then went on to say that Parliament by an enlarged definition of 'mine' in s.2(h) of the Act had indicated the nature of the properties that vest and the question whether a particular asset is taken within the sweep of s.2(h) depends on whether it answers the description given therein and added :

"The staff car in question was undoubtedly a fixed asset of the North Chirimiri Collieries and it belonged to respondent 1 the United Collieries Ltd., the owners in relation to the said mine. Being the staff car of the Technical Advisor, it was a 'fixed asset' belonging to the mine. It is rightly not suggested that the staff car was not a fixed asset. 'Fixed assets' in general comprise those assets which are held for the purpose of conducting a business in contradistinction to those assets which the proprietor holds for the purpose of converting into cash, and they include real estate, building, machinery etc. : words and Phrases, Permanent Edition Vol. 17, p. 161, Black's Law Dictionary, 5th Edition, p. 573; Stroud's Judicial Dictionary 4th Edn., Vol.l, p.20l. The staff car therefore fell within the definition of 'mine' as contained in Section 2(h)(xii) and vested in the Central Government under sub-section (1) of Section 3 of the Coal Mines (Nationalisation) Act, 1973. Merely because the Technical

> Advisor was putting the staff car to his personal use or for multifarious activities of the Thaper Group of Industries would not alter the true legal position since the subsequent user for a different purpose was not really germane."

That precisely is the question here. We have no doubt in our mind that the words "assets in relation to the textile undertaking" used in sub-s.(2) of s.3 of the Act have a very wide connotation. Function of sub-s.(2) of s.3 of the Act is to amplify and define as to what is taken within the sweep of the term 'textile undertaking' as defined in s.2(d), which says that the expression 'textile undertaking' shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges of the textile company in relation to the said textile undertaking. It does not stop at that but goes on to say that this would also include lands, buildings, workshops, projects, stores, spares, instruments, machinery, equipment, automobiles and other vehicles, goods under production and in transit, cash balances, reserve funds, investments and booklets and all other rights and interests in and arising out of such property as were before the appointed day, in the ownership, possession, power or control of the textile company whether within or outside India. It further includes all books of accounts, registers and all other documents of whatever nature relating thereto. The conclusion is therefore inescapable that all the assets of the Company held in relation to the textile undertaking including the surplus lands appurtenant thereto, vest in the Central Government by reason of sub-s.(2) of s.3 of the Act.

Upon that view it is not necessary for us to deal with the other contentions, namely, the applicability of the 'main objects' rule of construction or as to the purport and effect of the special resolution passed by the Company as contemplated by s. 149(2A) of the Companies Act, 1956 or the tests laid down under the Income Tax Acts of 1922 and 1961 for determining whether a certain receipt realized by an assessee was merely a realization or change of capital assets or was profit realized from an adventure in the nature of trade and was therefore 'business' as defined in s.2(4) of the Income Tax Act, 1922 and s.2(13) of the Income Tax Act, 1961, or whether two lines of business constitute the 'same business' under s.24(2) of the Income Tax Act, 1922 or were 'separate business'. We do not think that any useful purpose would be served in referring to the large number of decisions turning upon these questions nor to decisions arising under the Industrial Disputes Act, 1947 on whether the several under takings carried on by the same company are separate or not which necessarily turns on the question whether they are distinct or inter-dependent. Here we are concerned with the meaning of the words 'assets in relation to the textile under taking' appearing in sub-s.(2) of s.3 of the Act which must be construed in a generic sense looking to the context in which they are used. The Court has to interpret these words keeping in view that they occur in a legislation which provides for A the taking over of management of a textile undertaking under sub-s.(l) thereof pending nationalisation of such textile undertaking and matters incidental or connected therewith. On the view that we take, the other contentions do not really arise. B In the result, the appeals must succeed and are allowed with costs. me judgment and order of the High Court dated June 13, 1983 are reversed and the Writ Petition filed by the respondents is dismissed.

S.R. Appeals allowed.