

Gaurav Aseem Avtej vs U.P.State Sugar Corporation Ltd. on 20 April, 2018

Author: L. Nageswara Rao

Bench: L. Nageswara Rao, S.A. Bobde

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6919-6920 OF 2009

GAURAV ASEEM AVTEJ

.....APPELLANT (S)

Versus

U.P.STATE SUGAR CORPORATION LTD. & ORS.

.....RESPONDENT (S)

JUDGMENT

L. NAGESWARA RAO, J.

1. I.A. No.131233 of 2013 is an application for substitution filed by Gaurav Aseem Avtej which was allowed on 08.03.2018. The said application was filed on the ground that the first Plaintiff, Sh.Vinod Chandra Gupta died during the pendency of these appeals on 12.11.2010. He asserts his rights over the property in dispute on the basis of a sale deed executed on 29.11.2004 by the first Plaintiff, Sh. Vinod Chandra Gupta.

2. For the sake of convenience, the parties will be referred to as arrayed in Suit No.212 of 1981.

3. Suit No.212 of 1981 was filed before the learned Munsif, Bijnor by Sh. Vinod Chandra Gupta and his mother Smt. Prakashwati seeking eviction of the Defendant-Corporation and for recovery of the arrears of rent. The learned Munsif refused to decree the suit for eviction. However, the Defendant-Corporation was directed to pay Rs.1700/- towards arrears of rent for the period 1979-81. Both the Plaintiffs and the Defendant-Corporation filed appeals against the judgment of the Trial Court. The First Appellate Court dismissed the appeal filed by the Defendant-Corporation and allowed the Plaintiff's appeal. Consequently, the suit was decreed in favour of the Plaintiffs and eviction was ordered. The second appeals filed by the Defendant-Corporation before the High Court challenging the judgment of the First Appellate Court were allowed. The High Court reversed the judgment of the First Appellate Court and dismissed the suit. Aggrieved by the said judgment, the present appeals are filed.

4. In the plaint it was averred that the first Plaintiff along with his father, Sh.Ram Narain Gupta, were bhumidars of an area admeasuring 4 bighas 3 biswas in Mauza Rashidpur, Garhi Pargana,

Bijnor. According to them, the land was grove land. 3 bighas 8 biswas from the said land which is adjacent to M/s Shiv Prasad Banarasi Das Sugar Mills, Bijnor was given on lease for being used to park vehicles. It was averred that the lease was in existence for a considerably long period. As the period of the earlier lease expired in 1976, another lease deed was executed by the father of plaintiff No.1 on 25.06.1976 for a period of five years. It was stated in the plaint that the lease was determined by a notice dated 10.07.1979 and that the Defendant-Corporation was also in arrears of rent for the period 1979-1980. On the basis of the said pleadings, relief of eviction and recovery of arrears of rent was sought. The Defendant-Corporation filed a written statement in which it was stated that the Plaintiffs have lost all rights in respect of the land as they could not have leased out agricultural land. It was also urged that the Plaintiffs cannot derive any benefit from the declaration made by the competent authority under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (the 1950 Act) that the land was used for non agricultural purposes. The Defendant-Corporation submitted in the written statement that the land in dispute vested with the State Government by virtue of the Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 (the 1971 Act) and Defendant No.1 became the title holder of the property after the scheduled undertaking was transferred to it. The Defendants further pleaded that they have made permanent construction on the land which was being used for the purpose of the factory and they had become permanent lessees. The Trial Court relied upon the order passed by the S.D.O. Bijnor under Section 143 of the 1950 Act on 20.01.1972 declaring that the land in dispute was not agricultural land. On the basis of the said order, the Trial Court held that the land was not agricultural land and the Plaintiffs had the right to lease out the land. The Trial Court found that the land did not vest in the State Government under the 1971 Act as, according to the Trial Court, only the leasehold interest in the land vested with the State Government. The Trial Court refused to grant a decree of eviction on the ground that the notice dated 10.12.1979 was not proved to have been served on the concerned person. The Plaintiffs were held to be entitled for recovery of arrears of rent for the years 1979-1981.

5. The Appellate Court affirmed the findings of the Trial Court regarding interpretation of the 1971 Act and held that it was only the leasehold interest in the land that stood vested in the Government. The First Appellate Court recorded a finding that Section 111 of the Transfer of Property Act would apply to the instant case as the lease was for a fixed period between 1976-1980 and the lease stood determined automatically on 30.06.1980. The First Appellate Court decreed the suit by allowing the appeal filed by the Plaintiffs. The appeal filed by the Defendant-Corporation was dismissed.

6. The High Court allowed the appeals filed by the Defendants and dismissed the suit by holding that the land stood vested in the State Government under the 1950 Act as the lease executed by the Plaintiffs in favour of the Defendants was in violation of Section 156 of the 1950 Act. The High Court also relied upon Section 167 of the 1950 Act to hold that the Plaintiffs lost their rights over the land and as a consequence of void transfer, the land stood vested with the State Government free from all encumbrances. The High Court further observed that by virtue of Section 3 of the 1971 Act the land which was occupied for the purposes of the factory stood vested in the State Government free from all encumbrances.

7. The Appellant submits that the 1950 Act is not applicable to the land in dispute and that the vesting under the 1971 Act is only in respect of the leasehold rights. It is relevant to mention at the

outset that the pleadings in this case are not very clear. After a detailed scrutiny of the material on record, we refer to the undisputed facts which are as follows:-

i. The land in dispute admittedly belongs to the Plaintiffs. They leased out the said land to M/s Shiv Prasad Banarasi Das Sugar Mills, Bijnor prior to 1950.

ii. The land was being used for the purpose of parking of vehicles which brought sugarcane to the factory.

iii. The 1950 Act came into force on 26 January, 1951 iv. The S.D.O., Bijnor by an order dated 20.01.1972 declared the land as non agricultural land under Section 143 of the 1950 Act. The said order was passed on the basis of a report submitted by the Tehsildar on 17.12.1970.

v. The Plaintiffs were unsuccessful in their challenge to the 1971 Act. Though the Act was passed in 1971, the possession of the scheduled undertaking was handed over only in the year 1979 to the Government.

vi. A notice of termination of the lease was issued on 10.12.1979.

The suit filed by the Plaintiffs was partly decreed by the trial Court on 14.04.1982 and fully decreed by the First Appellate Court on 01.08.1984.

vii. During the pendency of the second appeal in the High Court, the Plaintiffs executed a sale deed in favour of the present Appellant on 29.11.2004. Notice was issued in the SLP on 20.07.2007 and leave was granted by this Court on 05.10.2009.

8. The point of vesting of the lands under the 1971 Act was adjudicated by all the three Courts below. We are of the opinion that determination of this issue will set at rest the controversy in this case. The Trial Court and the First Appellate Court held that the land did not vest in the Government under the 1971 Act and it was only the leasehold interest in the land that vested in the Government. Whereas, the High Court held that the land vested in the Government.

9. The 1971 Act was promulgated for acquisition of certain sugar undertakings. The Act was made in view of the serious problems created by the owners of certain sugar mills for the cane growers and the labourers. Immediate need for renovation and rehabilitation of the mills by the Government was the reason for the statute being brought into force. Section 2 (a) defines the appointed day in relation to the undertakings specified under Schedule I as July 3, 1971. M/s Shiv Prasad Banarasi Das Sugar Mills, Bijnor is at serial No.10 of Schedule I. Section 3 of the Act provides for vesting of every scheduled undertaking on the appointed day free from any debt, mortgage, charge or any other encumbrances. Scheduled undertaking as defined in Section 2(h) of the Act reads as follows:-

"2(h) "scheduled undertaking" means an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power

in factory specified [in any of the schedules of this Act], and comprises-

xxx xxx xxx

(vi) all lands (other than lands held or occupied for purposes of cultivation and grovelands) and buildings held or occupied for purposes of that factory (including buildings pertaining to any of the properties and assets hereinbefore specified, and guest houses and residences of directors, managerial personnel, staff and workmen or of any other person as lessee or licensee, and any store houses, molasses, tanks, roads, bridges, drains culverts, tubewells, water storage or distribution system and other civil engineering works) including any leasehold interest therein"

10. This Court examined the scope of the definition of scheduled undertaking in State of U.P. v. Lakshmi Sugar & Oil Mills Ltd., (2013) 10 SCC 509 and held as follows:

"15. A plain reading of the above would show that all lands other than those held or occupied for purposes of cultivation and grovelands are treated as being part of the "Scheduled Undertaking" which would upon acquisition vest in the appellant Corporation, provided such lands and buildings are "held or occupied for purposes of the sugar factory". What is important is that buildings pertaining to any of the property and assets specified in Sections 2(h)(i) to (xii) including guest houses and residences of Directors, managerial personnel, staff and workmen or of any other person as lessee or licensee including any store houses, molasses, tank, roads, bridges, drains, culverts, tubewells, water storage or distribution system and other civil engineering works including leasehold interest therein are also treated as part of the Scheduled Undertaking. The test, therefore, is whether the asset or any interest therein is held or occupied "for purpose of a sugar factory". If the answer is in the affirmative, the same is treated to be a part of the Scheduled Undertaking that would vest in the appellant Corporation upon acquisition."

11. A statute is best interpreted when we know why it is enacted. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. (Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. And Others (1987) 1 SCC 424 para 33). Reasons for the enactment of the 1971 Act are set out in the statement of objects and reasons. The serious problems created for the cane growers and labourers due to mismanagement of certain sugar mills led to a situation where the only solution was to acquire the said sugar mills with a view to renovate and rehabilitate the mills. The interpretation of the provisions of the 1971 Act should be made by keeping in mind the above background. The contention of the Appellant is that the land belonging to him was leased out to the sugar mill and the vesting is only of the leasehold interest in the land and that he continues to be the title holder. We are unable to agree. A detailed examination of the provisions of the Act would make it clear that the intention was to secure all assets which were being used for the purposes of the factory. (State of U.P. v. Lakshmi Sugar & Oil Mills Ltd. (supra)). The crucial words in Section 2

(h) (vi) are “held or occupied for purposes of that factory.” The scope of the word ‘held’ arose for consideration in *A.G. Varadarajulu v. State of T.N.*, (1998) 4 SCC 231 and this Court observed :-

“26. The word “hold” or “held” in the context of land has come up for consideration in several cases before this Court. In *State of U.P. v. Sarjoo Devi* [(1977) 4 SCC 2] while dealing with the said word in Section 3(14) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, as follows: (SCC p. 8, paras 8 and 10) “The word ‘held’ occurring in the above definition which is a past participle of the word ‘hold’ is of wide import. In the Unabridged Edition of *The Random House Dictionary of the English Language*, the word ‘hold’ has been inter alia stated to mean ‘to have the ownership or use of; keep as one’s own’.

*** In *Webster’s New Twentieth Century Dictionary* (Second Edition), it is stated that in legal parlance the word ‘held’ means to possess by ‘legal title’. Relying upon this connotation, this Court in *Bhudan Singh v. Nabi Bux* [(1969) 2 SCC 481] interpreted the word ‘held’ in Section 9 of U.P. Zamindari Abolition and Land Reforms Act, 1950 as meaning possession by legal title.” (emphasis supplied) Again in *State of A.P. v. Mohd. Ashrafuddin* [(1982) 2 SCC 1] it was held as follows: (SCC p. 4, para 8) “According to *Oxford Dictionary* ‘held’ means: to possess; to be the owner or holder or tenant of; keep possession of; occupy. Thus, ‘held’ connotes both ownership as well as possession. And in the context of the definition it is not possible to interpret the term ‘held’ only in the sense of possession.” The word “holds” was again interpreted in *Hari Ram v. Babu Gokul Prasad* [1991 Supp (2) SCC 608] where it occurs in Section 185(1) of the *Madhya Pradesh Land Revenue Code, 1959*. It was observed: (SCC p. 611, para 5) “The word ‘holds’ is not a word of art. It has not been defined in the Act. It has to be understood in its ordinary normal meaning. According to *Oxford English Dictionary*, it means, to possess, to be owner or holder or tenant of. The meaning indicates that possession must be backed with some right or title.”

12. Black’s Law Dictionary defines ‘Hold’ as under:-

“To possess in virtue of a lawful title; as in the expression, common in grants, “to have and to hold,” or in that applied to notes, “the owner and holder.” In the context of the 1971 Act, the word “held” connotes a wide meaning. All lands held or occupied lawfully and which were used for the purposes of the factory stood vested in the Government on the appointed day. The word ‘held’ in Section 2 (h) (vi) cannot be interpreted as limited only to a holding as an owner of the property. Legal possession is sufficient for the lands to vest in the Government by forming part of the scheduled undertaking.

13. Black’s Law Dictionary defines ‘occupy’ as under:-

“To take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession. Actual use,

possession, and cultivation. See occupancy; occupant; occupation; possession.

The words 'held' or 'occupied' carry the same meaning and there is no manner of doubt that if the land is in the lawful possession of the factory and was being used for the purposes of the factory, the said land vested in the Government as per Section 3 of the 1971 Act. Section 3 of the 1971 Act provides for the vesting of the scheduled undertaking free from all encumbrances. There is no dispute that, in the instant case, the land was held and occupied by the sugar factory for a long period of time pursuant to a lease deed executed by the Plaintiffs and was being used for the purpose of the factory.

14. The point that remains to be considered is about the reason for the insertion of the words "including any leasehold interest therein". The submission of the Appellant which found favour with the Trial Court and the First Appellate Court is that the vesting under the 1971 Act is only of the leasehold interest in the land. We disagree. We are of the opinion that all lands including those which are held pursuant to a lease vest in the State. It is only ex abundanti cautela that these words are included in the definition clause. The intention of the legislature is made very clear in the definition of 'scheduled undertaking' by insertion of the words "including any leasehold interest." The words 'including any leasehold interest' cannot be read in the manner that is canvassed by the Appellant which is that vesting is only of leasehold interest. A plain reading of Section 2 (h) (vi) of the 1971 Act provides that a scheduled undertaking would comprise of all lands and buildings held or occupied for the purpose of the factory. The word 'including' would clearly indicate that the lands held by way of lease are also part of a scheduled undertaking. In any case the words "including any leasehold interest therein" cannot be understood to have a limiting effect and result in the acquisition of only the leasehold interest in the land.

15. If the intention of the Legislature was to exclude leasehold lands it could have expressed the same by adding lands held on lease along with agricultural and grove lands. As per Section 2(h) (vi) all lands other than lands held or occupied for purpose of cultivation and grove lands are part of scheduled undertaking. In view of above, we are of the opinion that the land in dispute stood vested in the State Government on the appointed day i.e. 03.07.1971.

16. The findings recorded above would have been sufficient to dispose of the controversy in this case. But it has become necessary for us to deal with the findings of the High Court that the Plaintiffs are not entitled for any compensation for their lands. The reason given by the High Court is that the lease executed by the Plaintiffs was contrary to Section 156 of the 1950 Act. And, the consequence of the violation of Section 156 is that the transaction is void and the Plaintiffs lost all rights in the property as per Section 167 of the Act.

17. Undisputedly, the lease of the land was entered into between the parties prior to the 1950 Act coming into force. The Act of 1950 is not applicable to the land which was being used for non agricultural purposes prior to 1950. Land as defined in Section 3 (14) of the 1950 Act means land, held or occupied for purposes connected with agriculture, horticulture or animal husbandry. Moreover, there is also a declaration under Section 143 of the 1950 Act that the land was being used

for non agricultural purposes. The said order under Section 143 passed by the SDO, Bijnor on 20.01.1972 was on the basis of a report submitted by the Tehsildar made on 17.12.1970. In view of the above, we are of the opinion that the land did not vest in the Government under the 1950 Act.

18. We are not in agreement with the findings of the High Court regarding the vesting of the land in the Government under the 1950 Act due to which the Plaintiffs were held disentitled for any compensation. The land owners may resort to any remedy available to them for payment of compensation to which they are entitled to.

19. For the aforesaid reasons, the appeal are dismissed.

.....J. [S.A. BOBDE]J. [L. NAGESWARA RAO] New
Delhi, April 20, 2018.