Dr. A. Lakshmanaswami Mudaliarand ... vs Life Insurance Corporation on 11 December, 1962

Equivalent citations: 1963 AIR 1185, 1963 SCR SUPL. (2) 887, AIR 1963 SUPREME COURT 1185

Author: J.C. Shah

Bench: J.C. Shah, Bhuvneshwar P. Sinha, P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
DR. A. LAKSHMANASWAMI MUDALIARAND OTHERS

Vs.

RESPONDENT:
LIFE INSURANCE CORPORATION

DATE OF JUDGMENT:
11/12/1962

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1963 AIR 1185 1963 SCR Supl. (2) 887

ACT:
Insurance Company-Donation by Directors-If ultra vires-Shareholders' Dividend Account-Proprietary right; if in shareholders - Memorandum of Association - Conatruction-Liability of Directors-Life Insurance Corporation Act, 1956 (31 of 1956), 8. 15.

HEADNOTE:
On July 15, 1955, at an Extraordinary General Meeting of the shareholders of the United India Life Assurance Company Ltd., a resolution was passed, among other matters sanctioning a donation of Rs. 2 lakhs from out of the Share.

holders' Dividend Account to a Trust proposed to be formed with the object inter alia of promoting technical or business knowledge, including knowledge in insurance.

On July 1, 1956, the Life Insurance Corporation Act came into force by the provisions of which on the appointed day all the assets and liabilities appertaining to the controlled business of an insurer vested in the Life Insurance Corporation. BY s. 15(l)(a) of the Life Insurance Corporation Act power was given to the Corporation to apply to the Tribunal for relief in respect of payments made by the insurers, during the five years preceding the date of vesting, not reasonably necessary for the purpose of the controlled business. The Corporation applied to the Tribunal for relief in respect of the payments of Rs. 2 lakhs by the Company to the appellants on the ground that the said payment was ultra vires the powers of the company and was not reasonably necessary for the purpose of the controlled business. The Tribunal ordered the appellants to restore the sum of Rs. 2 lakhs to the Corporation. On appeal by special leave.

Held, that the Shareholders' Dividend Account provided for by the Articles did not confer any proprietary interest on

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the shareholders, though if was charged for the purpose of paying dividends to the shareholders and that the mere description of the dividend account as the exclusive property of the shareholders did not thereby create a proprietary interest in the shareholders. The right to dividend depends upon the recommendation to be made by the Directors with. out which the shareholders acquire no right to. the fund or any part thereof.

Bacha P. Guzdar v. Commissioner of Income-tax, Bombay, [1955] 1 S.C.R. 876, referred to.

Held, further, that the meeting in which the resolution was passed was a meeting of the Company &ad it could not be contended that it was a meeting of the shareholders in their individual capacity.

Held, further, that the resolution of the company and the acceptance by the appellants of the amount did not constitute a contract there being no consideration to support it.

Held, further, that the object of the company viz. to I 'invest and deal with funds and assets of the company upon such securities or investments" could not authorise the making of the donation and such a power which was not expressly provided for by the memorandum could not be found by reference to the general clause of the Memorandum giving power to do incidental things.

Egyptian Salt & Soda Company v. Port Said Salt Association, (1931) A. C. 677 and Ashbury Railway Carriages and Iron Company v. Riche, (1875) L. R. 7. HI L. 653, referred to.

Held, further, that the resort to the Articles of Association for the purpose of construing the Memorandum was

permissible only on matters regarding which the Memorandum was silent or ambiguous.
Angostura Bitters & Company Ltd. v. Kerr, [1933] A.C. 550, referred to.
Held, further, that the making of donations to the Trust which may or may not provide indirect or remote benefits to the business of insurance was not within the power of the company.
Tomkinson v. South Eaatern Railway, (1887) 35 Ch, D, 675, referred to,
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Held, also, that the action of the Company being ultra vires, it created no legal effect and could not be ratified even if all the shareholders agreed and payments made pursuant to such action created no rights in the appellants and they were rightly directed under s. 15 of the Life Insurance Corporation Act to personally refund the amount.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 400 of 1961. Appeal by special leave from the order dated December 20, 1958, of the Life Insurance Tribunal, Nagpur in Case No. 21/XV of 1958.

Purushottam Tricumdas, J.B. Dadachanji, O.C. Mathur and Ravinder Narain, for the appellants.

C. K. Daphtary, Solicitor General of India, G. S. Pathak, B. R. L. Iyengar, J. P. Shroff and K. L. Hathi, for respondent No. 1.

1962. December I 1. The judgment of the Court was delivered by SHAH, J.-This is an appeal from the order dated December 20, 1958, of the Life Insurance Tribunal in case No. 21/XV of 1958.

The United India Life Assurance Company Ltd.-hereinafter called 'the Company'-incorporated under the Indian Companies Act, 1882, with the principal object of carrying on life insurance business in all its branches was registered as an insurer under the Life Insurance Act, VI of 1938 for carrying on life insurance business in India. On July 15, 1955, at an extraordinary General Meeting of the share- holders of the Company, the following resolution, amongst others, was passed :-

> "Resolved that a donation of Rs. 2 lakhs be sanctioned from out of the Shareholders Dividend Account to the M. Ct. M. Chindambaram Chettyar Memorial Trust proposed to be formed with the object, inter alia, of promoting technical or business knowledge, including knowledge in insurance.
>
> Resolved further that the Directors be and are hereby authorised to pay the aforesaid sum to the Trustees of the aforesaid Trust when it is formed."

On the date of this resolution, appellants 2 & 4 were Directors of the Company, appellant 4 being the Chairman of the Board of Directors. On December 6, 1955, five settlers (including the' Company) executed a deed reciting that the settlers desired to establish a charitable trust for commemorating the name of the Late M. Ct. M. Chidambaram Chettyar "befitting his services to various institutions and organisations with which he was connected, and to industry commerce, finance, art and science in general and the great encouragement he gave to education, training, research and promotion of human relationship," and with that object the settlers had declared, transferred and delivered to the trustees a sum of Rs. 25,000/and interest, rents, dividends, profits and other income thereof to be held upon Trust for the objects and purposes mentioned in the deed. The objects of the Trust were manifold, e. g. to establish and maintain scholarships, stipends, allowances to be awarded to Indian students for prosecuting studies, to provide chairs or lecturerships, to conduct competitions to test proficiency in the art of essay writing or speaking, "to promote art, science, industrial, technical or business knowledge including knowledge in banking, insurance, commerce and industry", to establish and maintain subsidies or support charities in India engaged in improving human relations in industrial or commercial affairs, to establish and maintain or support any educational institution or libraries in India for imparting general, technical or scientific knowledge and to give subscriptions or donations or to render financial assistance to any educational or other charitable institution in India.

Appellants 2, 3 & 4 were the trustees nominated under the deed of trust, and the first appellant was appointed a trustee under cl. 8 of the deed. In pursuance of the resolution dated July 15, 1955, of the Directors of the Company made an initial instalment of Rs. 5,000/- to the trustees and the balance of Rs. 1,95,000/- was paid on December 15, 1955. On July 1, 1956, the Life Insurance Corporation Act, 1956, was brought into force. By s. 7 of that Act on the appointed day all the assets and liabilities appertaining to the 'controlled business' of all insurers were to stand transferred to and vested in Life Insurance Corporation of India. The expression 'controlled business' meant, amongst others, in the case of any insurer specified in sub-cl. (a) (ii) of sub-cl. (b) of cl. (9) of s. 2 of the Insurance Act and carrying on life insurance business all his business if he carries -on no other class of insurance business. September 1, 1956 was notified as the 'appointed day', and on that day, all the assets and liabilities of insurers including the Company stood transferred to and vested in the Life Insurance Corporation. On September 30, 1957, the Life Insurance Corporationwhich will hereinafter be referred to as 'the Corporation'-called upon the appellants to refund' the amount of Rs. 2 lakhs recei-ved by the trust from the Company in December, 1955, and the appellants by their letter dated December 10, 1957, having denied liability -to refund the amount, the Corporation applied on March 14, 1958 to the Life Insurance Tribunal constituted under the Life Insurance Corporation Act for an order that the trustees be ordered jointly and severally to pay to the Corporation the sum of Rs.2 lakhs with interest thereon at the rate of six per cent per annum from the date of payment to the trustees. It was alleged by the Corporation that the resolution dated July 15, 1955 as well as the payments made in pursuance thereof were ultra vires the Company and void and of no effect in law, that the Memorandum of the Company did not authorise such payment, that making of such a donation was not in the interests of the Company's business nor was it a generally recognised method of conducting the business and by the donation no direct or substantial advantage accrued to the Company. The appellants by their written statement submitted that the Directors of the Company were authorised by the Articles of Association of the Company to make donations towards

any charitable or' benevolent object or for any public, general or useful object, that the amount of Rs. 2 lakhs was paid out of the Shareholders Dividend Account which was distinct and separate from the general assets of the Company, and under the Articles of Association money standing to the credit of the 'Shareholders' Dividend Account being the exclusive property of the shareholders and not of the Company, was held by the Company for and on behalf of the shareholders and in trust for them; that the shareholders had absolute right of disposal over the said account and the shareholders of the Company having resolved to donate Rs. 2 lakhs to the trust' out of that account in exercise of their absolute ownership and power of disposal over the said fund, the payment could not be called in question by the Company or by any body purporting to act on behalf of the Company, for if the Company had not been taken over by the Corporation, the impugned payment could not have been challenged as ultra vires, and the powers of the Corporation were not larger in scope and ambit than that of the Company. The appellants also contended that as trustees they were not personally liable to refund the amount claimed.

By order dated December 20, 1958, the Tribunal directed the appellants to pay jointly and severally Rs. 2 lakhs within fifteen days from the date of service of the order, and in default to pay interest thereon at the rate of 6 per tent per annum till the date of realisation. Against the order, this appeal with special leave is filed.

The right of the Corporation to demand payment of the amount if the resolution sanctioning payment was unauthorised, cannot be challenged in view of the express provision in s. 15 of the Life Insurance Corporation Act. Under s. 15 (1)

(a) of Life Insurance Corporation Act, 1956, where an insurer whose controlled business has been transferred to and vested in the Corporation under the Act, has at any time within five years before the 19th day of January, 1956, made any payment to any person without consideration, the payment not being reasonably necessary for the purpose of the controlled business of the insurer or has been made with an unreasonable lack of prudence on the part of the insurer, regard being had in either case to the circumstances at the time, the Corporation may apply for relief to the Tribunal in respect of such transaction; and by cl. (2) the Tribunal is authorised to make such order against any of the parties to the application as it thinks just having regard to the extent to which those parties were respectively res. ponsible for the transaction or benefited from it and all the circumstances of the case.

It is necessary in the first instance to ascertain the true effect of the resolution dated July 15, 1955, and the character of the Shareholders' Dividend account. The material clauses of the Articles of Association of the Company relating to the constitution of the Shareholders' Dividend Account are Arts. 116 and 117. Article 116 reads :

> "Interest on the paid-up capital at the rate of six per cent per annum simple for each of the years covered by the Valuation Period shall from a first charge on and be deducted from the surplus remaining; and the said amount shall become the exclusive property of the shareholders and shall be carried over to the Shareholders' Dividend Account."

Article 117 reads :

> " Of the remaining surplus the shareholders shall be entitled to a one-tenth share and the amount representing the said one-tenth share shall also thenceforth become the exclusive property of the shareholders and be carried over to the Shareholders' Dividend Account."

Article 119 provides for payment of dividend and or bonus out of the Shareholders' Dividend Account. That article states that :

> "Dividend and or bonus shall be declared and paid to the shareholders in proportion to the paid-up capital from and out of the total amount remaining in the Shareholders' Divi- dend Account in accordance with the provisions of the Articles."

By Article 123 it is provided that no larger dividend shall be declared than is recommended by the Directors but the Company in a general meeting may declare a smaller dividend. By Article 124 no dividend is payable to the shareholders except out of the surplus of the Company and such dividend shall not be paid except from the amount in the Shareholders' Dividend Account.

By the resolution passed by the Company on July 15, 1955, it was resolved to donate Rs. 2 lakhs to the Trust. Undoubtedly the amount was payable out of the Shareholders' Dividend Account : but by the impugned resolution no dividend was declared. Every resolution of the Company directing payment out of the Shareholders' Dividend Account is not a resolution declaring dividend. The Directors have to recommend payment of dividend at a certain rate, and a resolution declaring dividend so recommended or at a smaller rate may alone be passed. The directors had at the same meeting recommended payment of an interim dividend (free of income tax) at Rs. 50/- per share on the paid-up capital of the Company, -and it was resolved that dividend at the rate be paid out of the Shareholders' Dividend Account in respect of all shares to such persons as were registered as holders of shares. The impugned resolution was therefore one donating an amount to the trust, and not declaring dividend payable on behalf of the shareholders to the trust. Constitution of a separate Shareholders' Dividend Account in Life Insurance Companies was necessitated because of s. 49 of the Insurance Act, 1938, which prohibited insurers of certain classes (and the Company is an insurer of that class) from carrying on the business of life insurance, from utilizing directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub- class of insurance business, as the case may be, for the purpose of declaring or paying any dividend to shareholders or any bonus to policy-holders or of making any payment in service of any debentures, except a surplus shown in the valuation balance-sheet in Form I as set forth in the Fourth Schedule submitted to the Controller as part of the abstract referred to in s. 15 as a result of an actuarial valuation of the assets and liabilities of the insurer. By sub- section (1) of s. 10, every insurer carrying on life insurance business was required to maintain a separate fund of receipts due in respect of such business a separate fund distinct from all other assets of the insurer, and deposits made by the insurer in respect of life insurance business were to be deemed parts of the assets of such fund. By sub- section (3) the life insurance fund was made absolutely the security of the life insurance policy holders, and could not be applied directly or indirectly for purposes other than those of the life insurance

business. By s. 13 every such insurer was required to cause an investigation to be made in respect of all life insurance business transacted by him once in three years by an actuary into the financial condition of the business, including a valuation in respect thereto and to cause an abstract of the report of such actuary to be made in accordance with the, regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule. By the Fourth Schedule in Part I various regulations for the preparation of abstracts of actuaries reports are laid down and Part II prescribes requirements applicable to an abstract in respect of life insurance business.

To maintain a reserve account for payment of dividends, Articles 116 and 117 provide that out of the surplus shown in the valuation Balance-Sheet, interest on the paid-up capital at the rate of 6 per cent per annum for each of the years covered by the valuation period and of a ten per cent share of the remaining surplus shall be set apart and be carried over to the . Shareholders' Dividend Account. The scheme of the two Articles is that the surplus is to be allocated first to the shareholders for the percentages prescribed, and then to the policy-holders, and by Art. 124 divided is made payable only out of the surplus, which is included in the Shareholders' Dividend Account. By Arts. 116 and 117 the amounts so set apart are declared to be the executive property of the shareholders that however does not create in the individual shareholders and proprietary interest in the Shareholders' Dividend Account. Until dividend is declared, the shareholders have no right to participate in the fund. The -expression "exclusive pro- perty of the shareholders' only emphasizes that in the Shareholders' Dividend Account the policy-holders have no interest : it means that the fund is divisible only among shareholders, policy-holders having no right to participate therein. However unit dividend is declared, the shareholders do not become creditors of the Company for a fractional share in the Fund proportionate to the value of their holding. As observed by this Court in Bacha F. Guzdar v. Commissioner of Income-tax, Bombay(1):

> "The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assests of the company which would be left over after winding up but not in the assets as a whole."

The fund, therefore,belongs to the Company, and continues to so belong until its destination is determined by a resolution of the Company declaring a dividend pursuant to a recommendation of the Directors. The scheme of the Articles of Association of the Company makes this abundantly clear. The power to declare a dividend is given by Arts. 122 & 123 to the Company in general meeting, but no larger dividend can be declared than what is recommended by the Directors. The right to dividend therefore depends upon the recommendation to be made by the Directors and unless there is a recommendation made by the Directors and the general meeting declares a dividend, the shareholders acquire no right to the fund or any art thereof, out of which dividend is when declared payable.

(1) [1955] 1 S.C.R. 876 The argument of counsel for the appellants that the meeting held on July 15, 1955, was a meetingof the shareholders, and when the shareholders resolved to donate an amount of Rs. 2 lakhs out of the Shareholders' Dividend Account they must be deemed to have resolved upon the destination of a part of the Fund to which they were entitled, has therefore no force. The meeting was a meeting of the Company specifically convened for considering various resolutions one of which was to make a donation of Rs. 2 lakhs out of the Shareholders' Dividend Account. Dividend is by the Articles undoubtedly payable out of the Shareholders' Dividend Account, but until a resolution is passed by the Company in a general meeting, no part of the Account belongs to the shareholders as dividend. It is common ground that no resolution was passed declaring that the amount of Rs. 2 lakhs be declared as dividend and paid over to the shareholders.

The contention raised by counsel for the appellants that the resolution of the Company and the acceptance thereof by the appellants as trustees of the Trust constituted a contract is, in our judgment, futile. There was within the meaning of the Indian Contract Act no consideration moving from the trustees for accepting the amount assuming that the reso- lution amounted to an offer. By s. 2 cl. (d) of the Indian Contract Act when at the desire of the promisor, the promisee or any other person has done or abstained for doing, or does or abstains from doing, or promises to do or abstain from doing, something. such act or abstinence or promise is called a consideration for the promise. Mere willingness to utilise the monies for the purpose of the trust cannot be regarded as consideration, for consideration to support an agreement must be valuable. In the case before us even before the trust came into existence the Directors of the Company entertained a desire to make a donation in favour of the trust to be constituted, and a resolution of the Company sanctioning the donation was passed. When the trust deed was executed the Directors paid over the amount pursuant to the resolution to the trust. By mere acceptance of the amount donated no consideration was rendered by the trust in favour of the Company. Payment by the Company of the amount resolved to be donated was therefore purely gratuitous: its acceptance made it a gift, and did not give rise to a contract. , A Company is competent to carry out its objects specified in the Memorandum of Association and cannot travel beyond the objects. The objects of the Company are set out in Cl. III. By the first subclause the Company is authorised to carry on life insurance business in all its branches and all kinds of indemnity and guarantee business and for that purpose to enter into and carry into effect all contracts and arrangements. By sub-cl. (ii) the Company is authorised "'to invest and deal with funds and assets of the Company upon such securities or investments and in such manner as may from time to time be fixed by the Articles of Association of the Company." Sub-clauses (iii) and (iv) are not material for the purposes of this appeal. By sub-clause

(v) the Company is authorised to do "all such other things as are incidental or conducive to the attainment of the above objects or any of them." The Memorandum of Association must like any other document be construed according to accepted principles applicable to the interpretation of all legal documents and no rigid canon of construction is to be applied to such a document. Like any other document, it must be read fairly and its import derived from a reasonable interpretation of the language which it employs. Egyptian Salt & Soda Company v. Port Said Salt Association (1). As observed in Ashbury Railway Carriages and Iron Company v. Riche (2) The covenant, therefore, is not merely that (1) [1931] A.C. 677, (2) (1875) L.R. 7 H.L. 653.

every member will observe the conditions upon which the company is established, but that no change shall be made in those conditions; and if there is a covenant that no change shall be made in the objects for which the company is established, I apprehend that that includes within it the engagement that no object shall be pursued by the company, or attempted to be attained by the company in practice, except an object which is mentioned in the memorandum of association.

Now, my Lords, if that is so -if that is the condition upon which the corporation is establi. shed -it is a mode of incorporation which contains in it both that which is affirmative and that which is negative. It states affirmatively the ambit and extent of vitality and power which by law are given to the corporation, and it states, if it is necessary so to state, negatively, that nothing shall be done beyond that ambit, and that no attempt shall be made to use the corporate life for any other purpose than that which is so specified."

Power to carry out an object, undoubtedly includes power to carry out what is incidental or conducive to the attainment of that object, for such extension merely permits Something to be done which is connected with the objects to be attained, as being naturally conducive thereto. By sub-clause (i) of cl. III of the objects clause of the Memorandum of Association, the Company is to carry on the life insurance business in all its branches. Clause (ii) authorises the Company to invest and deal with funds and assets of the Company upon such securities or investments and in such manner as may from time to time be fixed by the Articles of Association of the Company. This is in truth not an object clause, it is a clause authorising investment of funds. Clause (ii) does not invest the Directors with power to deal with the funds in such manner as may from time to time be fixed by the Articles of Association: power conferred thereby is power to invest and deal with funds and assets of the Company. The Directors under sub-clause (ii) of cl. III merely have the power to invest and deal with the funds and assets of the Company upon. such securities or investments, and the power is to be exercised in the manner prescribed by the Articles of Association. By Article 93 (t) the Directors arc undoubtedly invested with authority to establish, maintain and subscribe to any institution or Society which may be for the benefit of the Company, and to "make payments towards any charitable or any benevolent object, or for any general public, general or useful object". But this is within the authority of the Directors only if the Company has the power under the Memorandum of Association to achieve the object specified, or for doing anything incidental to or naturally conducive to objects specified. If the object is not within the competence of the Company, the Directors relying upon Art. 93 (t) cannot expend the funds of the Company for achieving that object. The primary object of the Company is to carry on life insurance business in all its branches, and donations of the Company's funds for the benefit of a trust for charitable purposes is not incidental to or naturally conducive to that object. There is in fact no discernible connection between the donation and the objects of the Company. Undoubtedly the Memorandum of Association has to be read together with the Articles of Association, where the terms are ambiguous or silent. As observed in Angostura Bitters &Company Ltd. v. Kerr(') by the judical Committee of the Privy Council :

> "that except in respect of such matters as must by statute be provided for by the memorandum, it is not to be regarded as the dominant (1) (1933] A.C. 550.

document, but is to be read in conjunction with the articles Harrison v. Mexican Rly. Co. ((1875) L. R. 19 Eq. 358); Anderson's case ((1877) 7 Ch. D. 75) ; Guinness v. Land Corporation of Ireland ((1882) 22 Ch. DI,

349) ; In re. South Durham Brewery Co.

((1885) 31 Ch. D. 261). Their Lordships agree that in such cases the two documents must be read together at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum, or to supplement it upon any matter as to which it is silent."

There is however no ambiguity in the relevant terms of the Memorandum of Association. Clause III of the Memorandum deals with the objects, and powers of the Company in language which is reasonably plain. The Articles may explain the Memorandum, but cannot extend its scope. Sub-clause (v) merely authorises the Company to do all such other things "as are incidental or conducive to the attainment of the above objects or any of them'. The clause merely sets out what is implicit in the interpretation of every Memorandum of Association : it does not set up any independent object, and confers no additional power. Acts incidental to or naturally conducive to the main object are those which have a reasonably proximate connection with the object, and some indirect or remote benefit which the Company may obtain by doing an act not otherwise within the object clause, will not be permitted by this extention. In Tomkinson v. South Eastern Railway (1) it was held that a resolution passed by the shareholders of a Railway Company authorising the Directors to subscribe pound 1000 out of the Company's funds towards a donation to the Imperial Institute was ultra vires, even though the establishment of the Institute would benefit the Company by causing an increase in passenger traffic over their line. Kay, J., announcing the judgment of the Court observed :

> "Now, what is proposed to be done here is this the chairman of the railway company, at a meeting of the company, proposed this resolution : 'That the directors be authorised, either by way of donation from the company or by an appeal to the proprietors, as they may be advised-the resolution thus proposing two alternative modes-'to subscribe the sum of pound 1000 to the Imperial Institute'. I pause there. The Imperial Institute has no more connection with this railway company than the present exhibition of pictures at Burlington House, of the Grosvenor Gallery, or Madame Tussaud's, or any other institution in London that can be mentioned. The only ground for the suggestion that this company has the right to apply its funds, which it has been allowed to raise for specific purposes, to this purpose is, that the Imperial Institute, if it succeeds, will very probably greatly increase the traffic of this company. If that is a good reason, then, as I pointed out during the argument, any possible kind of exhibition which, by being established in London, would probably increase the traffic of a railway company by inducing people to come up to see it would be an object to which a railway company might subscribe part of its funds. I never heard of such a rule, and, as far as I understand the law, that clearly would not be a proper application of the moneys of a railway company. I cannot distinguish this case from that at all, though, of course, I do not mean to disparage the enormous importance of the Imperial Institute. It may be established for the highest possible

> objects of interest to this country; but still, the only reason given to me why this railway company thinks it right to spend part of its funds in subscribing to it is this, that it will probably greatly increase the traffic of the company by inducing many people to travel up to visit this Institute. I cannot accept that as a reason for a moment."

The trust has numerous objects one of which is undoubtedly to promote art, science, industrial, technical or business knowledge including knowledge in banking, insurance, commerce and industry. There is no obligation upon the trustees to utilise the fund or any part thereof for promoting education in insurance, and even if the trustees utilised the fund for that purpose, it was problematic whether any such persons trained in insurance business and practice were likely to take up employment with the Company. Thus the ultimate benefit which may result to the Company from the availability of personnel trained in insurance, if the trust utilises the fund for promoting education in insurance practice and business, is too indirect, to be regarded as incidental or naturally conducive to the object of the Company, We are, therefore, of the view that the resolution donating the funds of the Company was not within the objects mentioned in the Memorandum of Association and on that account it was ultra vires.

Where a Company does an act which is ultra vires, no legal relationship or effect ensues therefrom. Such an act is absolutely void and cannot be ratified even if all the shareholders agree. Re. Birkback Permanent Benefit Building Society (1). The payment made pursuant to the resolution was therefore unauthorised and the trustees acquired no right to the amount paid by the Directors to the trust.

The only question which remains to be considered is whether the appellants were personally liable to refund the amount paid to them. Appellants (1) [1912] 2 Ch. 183.

2 and 4 were at the material time Directors of the Company and they took part in the meeting held under the Chairmanship of the fourth appellant in which the resolution, which we have held ultra vires, was passed. As office bearers of the Company who were responsible for passing the, resolution ultra vires the Company, they will be personall liable to make good the amount belonging to the Company which was unlawfully disbursed in pursuance of the resolution. Again by s. 15 of the Life Insurance Corpora- tion Act, 1956 the Life Insurance Corporation is entitled to demand that any amount paid over to any person without consideration, and not reasonably necessary for the purposes of the controlled business of the insurer be ordered to be refunded, and by sub-section (2) authority is conferred upon the Tribunal to make such order against any of the parties to the application as it thinks just having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case. The trustees as representing the trust have benefited from the payment. The amount was, it is common ground, not disposed of before the Corporation demanded it from the appellants, and if with notice of the infirmity in the resolution, the trustees proceeded to deal with the fund to which the trust was not legitimately entitled, in our judgment, it would be open to the Tribunal to direct the trustees personally to repay the amount received by them and to which they were not lawfully entitled.

The appeal therefore fails and is dismissed with costs. Appeal dismissed.

POORAN CHAND V. MOTILAL & OTHERS (S. J. IMAM, J. L. KAPUR., K. SUBBA RAO and J. R. MUDHOLKAR JJ.) Rent Control-Bevision-High Court, powers of-Illegal subletting-If confined to first sub-letting-Delhi and Ajmer Rent Control Act, 1952 (38 of 1952), 88. 13 (1) (b), 35. The landlords executed a lease of a residential premises in favour of the tenant for one year. More than a year after- wards, the landlords gave the tenant a notice to quit and filed a suit for his eviction inter alia on the ground that he had sublet the premises without their consent. The tenant resisted the suit on the grounds that the notice to quit was illegal and that there was no illegal sub-letting as contemplated by s. 13 (1) (b) of the Delhi and Ajmer Rent Control Act, 1952, as he had merely inducted a new sub- tenant in place of an old one. The trial Court decreed the suit but on appeal the Civil judge dismissed it on the ground that the notice to quit was invalid. The landlords filed a second appeal before the High Court and the High Court allowed the same holding that after the expiry of the lease by efflux of time the tenant was a statutory tenant and no notice to quite was necessary. The tenant contended that no second appeal lay to the High Court and it could not have interfered with the decree of the Civil judge in its powers of revision under s. 35 of the Act and that there was no illegal sub-letting.

Held, that even if a second appeal did not lie, the High Court would have been justified in reversing the decree of the Civil judge in exercise of its powers of revision under s. 35 of the Act. The power of the High Court under s. 35 was wider than that under s. 115, Code of Civil Procedure, though it could not be equated to that of its jurisdiction in an appeal. It was neither possible nor advisable to define with precision the scope and ambit of s. 35 but it should be left to the High Court to consider in each case whether the impugned judgment was according to law or not. In the present case, since the tenancy had expired by efflux of time, a notice to quit under s. 106, Transfer of Property Act was not necessary but the Civil judge refused to pass a decree -for - eviction on a wrong legal basis that such notice was necessary. The decree of the Civil judge was not "according to law" and the High Court was justified in getting aside.

Hari Shankar v. Rao Girdhari Lal Chowdhury, [1962] Supp. I S. C. R. 933 and Bell & Co. Ltd. v. Waman Hemraj, (1938) 40 Bom. L. R. 125, referred to.

Held, further, that the tenant had sub-let the premises within the meaning of s. 13 (1) (b) (i) of the Act. This section provides for eviction if a tenant' has sub-let, assigned or otherwise parted with possession of the whole or any part of the premises without the consent of the landlord in writing. It was not confined to the first sub-letting and it covered the case where there was already a sub-tenant and a new sub-tenant was inducted when the previous one left.

CiviL APPFLLATE JURISDICTION Civil
Appeal No. 624/1962.

Appeal by special leave from the judgment and decree dated July 18, 1961, of the Rajasthan High Court in Civil Regular Second Appeal No. 90 of 1960.

G. C. Mathur, for the appellant.

B. D. Sharma, for the respondents.

1962. December 11. The judgment of the Court was delivered by SUBBA RAO, J.-This appeal by special leave is directed against the judgment and decree of the High Court of judicature for Rajasthan at jodhpur setting aside those of the Senior Civil judge, Ajmer, and restoring those of the Subordinate Judge, First Class, Ajmer, decreeing the suit for eviction from the suit premises filed by the respondents against the appellant.

The facts may be briefly stated. The building situate at No. 41 Purani Mandi, Ajmer, consists of a large number of rooms., and the respondents are its owners. On October 13, 1935, the said building was taken on lease by the appellant's father for a period of one year on a rent of Rs. 50/- per month. On July 10, 1950, the respondents gave a lease of the said building in favour of the appellant for a period of one year on a rent of Rs. 65/- per month. On August 8, 1952, a fresh lease was executed in favour of the appellant on an enhanced rent of Rs. 70/- per month. Under the said lease the tenacy was to commence from August I., 1952. On,' June 27, 1954, the respondents issued a notice to the appellant, through their Advocates, calling upon him to vacate the premises by midnight of July 31, 1954/August 1, 1954. In that notice it was alleged that the appellant was in arrears of rent and that he had also sublet the property. In the reply notice the appellant promised to pay the arrears of rent as early as possible, but stated that he had all along been subletting portions of the premises to others, except the portion under his occupation. As the appellant did not comply with the terms of the notice, the respondents filed on August 2, 1954, Civil Suit No. 762 of 1954 in the Court of the Subordinate Judge, First Class, Ajmer, against the appellant for eviction, forrecovery of arrears of rent and for other reliefs. The plaint was later on amended. The appellant contested the suit on various grounds and particularly on the ground that it was not maintainable. It may be mentioned that in the written-statement the fact that the premises were sublet to tenants was not denied. The learned Subordinate judge decreed the suit, holding that the notice was valid and that the appellant was liable to be evicted under s. 13 (1) (b) of the Delhi and Ajmer Rent Control Act, 1952 (XXXVIII of 1952), hereinafter called the Act, as he had sublet portions of the premises without the consent in writing of the landlords On appeal the Senior Civil judge, Ajmer, allowed the appeal. He held that the notice issued to the appellant -was short by 24 hours and that he had no right to sublet the premises without the written consent of the landlord, though there where sub-tenants in the premises when the appellant took the lease. On second appeal, the High Court allowed the appeal and restored the decree of the trial court. The High Court held that the notice complied with the provisions of s. 106 of the Transfer of Property Act, 1882, and that, in any event, as the tenancy expired by mere efflux of time, no notice was necessary. Hence the present appeal., us the following four points: (1) No second appeal lay to the High Court against the decree and judgment of the Civil judge; (2) if no second appeal lay against the decree and judgment of the Civil judge, the High Court's power of interference with that judgment was confined only to s. 35 (1) of the Act and that under that section it had no jurisdiction to set aside the judgment on merits, whether of law or of fact; (3) the High Court wrongly held that the notice complied with the provisions of s. 106 of the Transfer of Property Act, 1882; and (4) the High Court made out a totally new case in holding that the tenancy had expired by efflux of time.

It is not necessary in this case to express our opinion on the first question, as we are satisfied that even if no second appeal lay to the High Court against the judgmcnt and decree of the Civil judge, the High Court had ample jurisdiction to interfere in the circumstances of the case under s. 35 (1) of

the Act, which reads :

> The High Court may, at any time, call for the record of any case under this Act for the purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit." Reliance is placed by the learned counsel on a decision of this Court in Hari Shankar v. Rao Girdhari Lal Chowdhury (1) in support of the contention that 11962] Supp. I S.C R, 933.
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> the jurisdiction of the High Court under s. 35 of the Act is very limited and does not warrant the High Court's interference in the circumstances of this case. The main question in that decision was whether the plaintiff consented to the subletting of parts of the demised premises and if so, when and to what effect ? The trial judge found that there was no evidence that the landlord was ever consulted. On appeal, the District judge confirmed that finding. In revision, the High Court considered the evidence over again and came to a contrary conclusion. In that context this Court considered the scope of s. 35 of the Act. Hidayatullah, J., expressing the majority view, observed:
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> "The phrase "according to law" refers to the decision as a whole, and is not to be equated to errors of law or of fact simpliciter. It refers to the overall decision, which must be according to law which it would not be, if there is a miscarriage of justice due to a mistake of law. The section is thus framed to confer larger powers than the power to correct error of diction to which s. I 1 5 (of the Code of jurisProcedure) is limited."

Then the learned judge quoted in extenso the observations of Beaumont, C.J. (as he then was) in Bell & Co. Ltd. v. Waman Hemraj (1) and recorded his full concurrence with those observations. By those observations the learned Chief justice gave certain illustrations and made it clear that they were not exhaustive and concluded thus "'But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

(1) (1938) 40 Bom. L.R. 125.

It is clear from the observations of Hidyatullah, J., and those of Beaumont, C. J., which the former has fully extracted, that the power of the High Court under 1st 35 of the Act is wider than that under s. 115 of the Code of Civil Procedure, though it cannot be equated to that of its jurisdiction in an appeal. It is neither possible not advisable to define with precision the scope and ambit of s. 35 of the Act, but it should be left to the High Court to consider in each case whether the impugned judgment is according to law or not, as explained by this Court in the said decision, Bearing the view expressed by this Court in mind we shall proceed to consider whether the High Court had acted within its jurisdiction. The main question turns upon the construction of s. 13(l) of the Act. The material part of the section reads :

"Notwithstanding anything to the contrary contained in any other law or any contract, no decree or order for the recovery of possession of any premises shall be passed by any Court in favour of the landlord against any tenant (including a tenant whose tenancy is terminated) :

Provided that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied-

(a) that the tenant has neither paid nor tendered the whole of the arrears of rent due within one month of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882); or

(b) that the tenant without obtaining the consent of the landlord in writing has, after the commencement of this Act,-

(i) sub-let, assigned or otherwise parted with the possess-

ion of, the whole or any part of the premises.....

Learned counsel for the appellant contends that the provisions of the said section are an additional protection to a tenant and that they do not enable the landlord to dispense with a statutory notice before filing a suit for eviction, and in the present case the notice given did not comply with the provisions of s. 106 of the Transfer of Property Act, 1882. It is not necessary in this appeal to express our opinion on the validity of this contention, for we are satisfied that the term of the tenancy had expired by efflux of time; and, therefore, no question of statutory notice would arise. But the learned counsel contends that this point was not raised either in the plaint or in the lower courts, but was raised for the 'first time before the High Court and that as the question is a mixed question of fact and law, the High Court went wrong in allowing it to be raised for the first time before it. We cannot say that this point was not raised in the plaint. The suit was filed for eviction, and the ground for eviction was two-fold, viz., the rent was not paid and that the appellant had sublet the premises. In the plaint it was not stated that the tanancy was a monthly tenancy; on the other hand, the respondents alleged in the plaint that the appellant was their tanant under the lease deed dated August 8, 1952, and they filed, along with the plaint, the said lease deed, the terms whereof clearly show that the term of the lease was for one year. The appellant admitted those facts. It is, therefore, manifest that the appellant never denied that the term of the lease was not for one year. The High Court was, therefore, justified in considering the point, because the validity of the notice depended upon the term of the tenancy and also because the question of the term of the tenancy depended solely on the construction of the lease deed. On the basis of the lease deed the High Court held that the term of the lease is only for one year and it had expired by efflux of time. The document says that the house had been

> taken on rent for one year by the first party and ends thus, "if the rent falls into arrears then the second party shall be jointly and severally entitled to eject me namely the first party before the expiry of the term of tenancy and realise the rent due." It is, therefore, manifest that the lease was for a period of one year and that it was not a monthly tenancy. As the term fixed under the deed had expired, the appellant was not entitled to any statutory notice under s. 106 of the Transfer of Property Act, 1882.

Even so, it is contended that the appellant had not sublet the premises within the meaning of s.13(1)(b)(i) of the Act. It is said that the sub-section applies only to a case of sub-tenancy created for the first time after the lease was taken and does not cover a case where there was already a sub-tenant and a new sub-tenant was inducted when the previous sub-tenant vacated it. This conclusion is sought to be drawn from the words "sublet, assigned, or otherwise parted with the possession and it is argued if possession had already been parted with by way of sub-lease and what was done was only to substitute another in the place of the earlier sub-tenant, this sub-clause is not attracted. There are no merits in this contention. Section 13(l)(b)(i) clearly says that if a tenant, without obtaining the consent of the landlord in writing has, after the commencement of this Act, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises, he is liable to be evicted. Here, admittedly after the lease deed of 1952 the appellant has sublet some of the rooms of the building to others without obtaining the written consent of the landlord. The fact that there were sub-tenants in the said portions could not conceivably be of any help to the appellant, because the new sub-tenants were not holding under the -earlier sub-tenants, but were inducted by the appellant, after the earlier sub-tenancies were terminated. The appellant, having sublet part of the promises without the consent of the landlord in writing, cannot invoke the protection given to him under s. 13 of the Act.

In this view, the High Court was certainly right in setting aside the decree of the Civil Judge, for the Civil judge refused to past an order of eviction on a wrong legal basis that the appellant was a monthly tenant, ignoring the express term in the lease deed itself. As the decree was not ""according to law", the High Court, in exercise of its jurisdiction under s. 35 of the Act, was certainly within its rights to set aside the said decree.

In the result, the appeal fails and is dismissed with costs. Appeal dismissed.