

Balkrishan Gupta And Ors vs Swadeshi Polytex Ltd. And Anr on 12 February, 1985

Equivalent citations: 1985 AIR 520, 1985 SCR (2) 854, AIR 1985 SUPREME COURT 520, 1985 TAX. L. R. 2066, 1985 SCC (TAX) 215, 1985 (2) SCC 167, (1985) 2 COM LJ 1

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, Sabyasachi Mukharji

PETITIONER:
BALKRISHAN GUPTA AND ORS.

Vs.

RESPONDENT:
SWADESHI POLYTEX LTD. AND ANR.

DATE OF JUDGMENT 12/02/1985

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1985 AIR 520 1985 SCR (2) 854
1985 SCC (2) 167 1985 SCALE (1) 236
CITATOR INFO :
RF 1988 SC 782 (8,19,54)

ACT:

Companies Act, 1956-Sections 41, 87, 137, 150 and 169-Member/ share-holder of a company-Meaning of-When does a person cease to be a member/shareholder-Rights and Privileges of a shareholder when a Receiver appointed in respect of the shares-Scope of-Sections 182A, 149 of the U.P. Land Revenue Act 1901 and s. 51 and Order XL of P.C.

U.P. Land Revenue Act 1901, ss. 182A, 149 and s. 51 and order XL of C.P C.-Appointment of Receiver in respect of shares-Attachment and Pledge of shares-Whether it deprives the shareholder of its title or right to vote and other privileges-Whether ownership of shares vests in the Receiver-A charging order and order of attachment-Distinction between.

Industrial (Development and Regulation) Act 1951, s.

18AA(1) (a)- Order of Central Government taking over management of shareholder-company- Whether deprives the share-holder company of its right to vote in respect of shares.

Indian Contract Act 1972-Sections 172and 178A-Pledge and mortgage-Distinction between.

HEADNOTE:

Section 169 (1) of the Companies Act provides that the Board of directors of a company shall, on the requisition of such number of members of the company as is specified in sub-section (4), forthwith proceed duly to call an extraordinary general meeting of the company, Sub-section 4(a) says that the number of members entitled to requisition a meeting in regard to any matter shall be in the case of a company having a share capital, such number of them as held at the date of the deposit of the requisition, not less than one-tenth of such of the paid up capital of the company as at that date carries the right of voting in regard to that matter.

The Swadeshi Cotton Mills Company Ltd. (for short, the Cotton Mills Company), had 10 lakhs shares out of 39,00,000 shares of Rs. 10/- each in the respondent Swadeshi Polytex Ltd. (for short, the Polytex Company). On

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27th October, 1977, the Collector of Kanpur passed an order under s. 182A A of the U.P. Land Revenue Act 1901 (for short, the Land Revenue Act, read with s. 5 of the U.P. Government Electrical Undertakings (Dues Recovery Act 1958 appointing a Receiver in respect of the Cotton Mills Company, since it could not meet the wage bill, the dues of the U.P. Electricity Board and several other monetary claims against it from about 1975-76 on account of a serious set back in its financial position. By the said order, he empowered the Receiver to seize 1 lakh of shares of the Polytex Company and to pledge them in favour of the State Government of Uttar Pradesh against a loan for the purpose of meeting the dues payable to the employees of the Cotton Mills Company. He made a further order under s. 14g of the Land Revenue Act read with s. 5 of the U.P. Government Electrical Undertakings (Dues Recovery) Act 1958 attaching the remaining 9 lakhs shares of the Polytex Company held by Cotton Mills Company and empowering the Receiver to seize them. Pursuant to the Orders of the Collector, the Receiver seized 10 lakhs shares held by the Cotton Mills Company and pledged 3-5 lakhs shares in favour of the Government of U.P. and kept the remaining 6.5 lakhs shares with him.

The Cotton Mills Company and four others share-holders who together held 10,01,950 shares of Rs. 10 each in the Polytex Company sent a notice to the Polytex Company under s. 169 of the Act requiring the Board of Directors of

Polytex Company to consider and pass certain resolutions regarding removal of its Managing Director and three directors and appointment of some other persons in their place. Pursuant to such requisitions, the directors of the Polytex Company resolved to hold the extraordinary meeting on March 28, 1984. However, the meeting could not be held, since some of the share holders had obtained temporary injunctions restraining the holding of the meeting. The matter ultimately came up before the Supreme Court in Special Leave Petitions when it directed the High Court to make an order for holding the meeting notwithstanding any order of injunction etc. issued by any other court or authority in India. Accordingly, the meeting was held on 14th August 1984. But, in the meanwhile, appellant No. 1 moved an application before the High Court, in an appeal already pending between the Cotton Mills Company and the Polytex company questioning the right of the requisitionists to issue notice under s. 169 of the Act to call the extraordinary general meeting. The High Court dismissed the application. Hence this appeal by Special Leave.

The appellants contended that: (1) Since a Receiver had been appointed by the Collector in respect of the shares held by the Cotton Mills Company and they had also been attached, the shares held by the Cotton Mills Company could not be taken into consideration for determining the required qualification to issue the notice under s 169 of the Act requisitioning the extraordinary general meeting and that if those shares were omitted from consideration then the shares held by the other requisitionists would not be sufficient to issue the said notice. In other words the extraordinary general meeting had not been validly called since the Cotton Mills Company had

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ceased to enjoy the privileges of a member of the Polytex Company by reason of the appointment of a Receiver by the Collector of Kanpur in respect of the ten lakhs shares in the POLYTEX Company held by the Cotton Mills Company, the attachment of the 9 lakhs shares out of the said 10 lakhs and also the pledge of 3,50,000 shares out of the said 10 lakhs shares with the Government of Uttar Pradesh as security for the loans advanced by it; (ii) The order of the Collector being an order in the nature of a charging order; the Receiver had obtained an equitable right in the shares in question and there being no other legal or equitable right which would prevail over it, the Cotton Mills Company had lost its right to the shares; and (iii) By virtue of an order made by the Central Government on April 13, 1978 under 8. 18AA (1) (a) of the Industrial (Development & Regulation) Act 1951 taking over the management of Swadeshi Cotton Mills along with its five other industrial units, the Cotton Mills Company had lost the right to exercise its voting rights in respect of the shares in question.

Dismissing the appeal,

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HELD: In the Act, the expressions 'a member', 'a share holder' or 'holder of a share' are used as synonyms to indicate the person who is recognised by a company as its owner for its purposes. What does ownership of a share connote ? Ownership in its most comprehensive signification says Salmond, 'denotes the relation between a person and any right that is vested in him. That which a man owns in this sense is a right'. The right of ownership comprises benefits like claims liberties, powers, immunities and privileges and burdens like duties, liabilities, disabilities. Whatever advantages a man may have as a result of the ownership of a right may be curtailed by the disadvantages in the form of burdens attached to it. As observed by Dias, an owner may be divested of his claims etc. arising from the right owned to such an extent that he may be left with no immediate practical benefit. He remain the owner nonetheless because his interest will outlast that of other persons in the thing owned. The owner possesses that right which ultimately enables him to enjoy all rights in the thing owned by attracting towards himself those rights in the thing owned which for the time being belong to others, by getting rid of the corresponding p73 burdens. [871 D-F]

1. (ii) Section 41 of the Act defines the expression "member" of a company. Subject to s. 42 of the Act, a company or a body corporate may also become a member. When once a person becomes a member, he is entitled to exercise all the rights of a member until he ceases to be a member in accordance with the provisions of the Act. A person ceases to be a member by transferring his share to another person, by transmission of his share by operation of law, by forfeiture of share, by death, or by any other reason known to law. A person who is a shareholder of a company has many rights under the Act. Some of them, are: (i) the right to vote at all meetings Section 87. (ii) the right to requisition an extraordinary general meeting of the company or to be a joint requisitionists (Section 169), (iii) the 857

right to receive notice of a general meeting (Section 172). (iv) the right to appoint proxy and inspect proxy register (Section 176), (v) in the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf (Section 181) and (vi) the right to require the company to circulate his resolution (Section 188). Therefore, it is clear from the relevant provisions of the Act which are referred to above that a member can participate and exercise his vote at the meetings of a company in accordance with the Act and the articles of association of the company. [875 G, 876 A, 878 A-B,]

2. (i) Section 150 of the Act requires every company to keep a register of members containing the names, address and the occupation, IF any, of each member and other

particulars mentioned therein. The privileges of a member can be exercised by only that person whose name is entered in the Register of Members. A Receiver whose name is not entered in the Register of Members cannot exercise any of these rights unless in a proceeding to which the Company concerned is a party an order is made authorising him to do so. Even where the holder of a share whose name is entered in the Register of Members hands over his shares with blank transfer forms duly signed, the transferee would not be able to claim the rights of a member as against the company concerned until his name is entered in the Register of Members. [875 D, 880 D-13, 881 G]

Mathalone v. Bombay Life Assurance Co. Ltd., [1954] S.C.R. 117 and *Messers Howrah Trading Co. Ltd. v. The Commissioner of Income-tax, Calcutta*, [1959] Supp. 2 S.C.R. 448, followed.

In *re: Wala Wynaad Indian Gold Mining Company*, [1882] 21 Ch. D. 849, *Kurapati Venkata Mallayya & Anr. v. Thondeput Ramaswami & Co. & Anr.* [1963] Supp. 2 S.C.R. 995 and *Jagat Tarini Dasi v. Naba Gopal Chaki*, [1907] I.L.R. 34 Cal. 305, referred to.

Wise v. Landsdell, [1921] 1 Ch. 420 and *Morgan & Anr. v. Gray & Ors.*, [1953] 1 Ch. 83 at p.87, relied upon.

2, (ii) A perusal of the provisions of s.182A of the Land Revenue Act shows that there is no provision in it which states that on the appointment of a Person as a receiver the property in respect of which he is so appointed vests in him similar to the provision in s.17 of the Presidency Towns Insolvency Act, 1909 where on the making of an order of adjudication the property of the insolvent wherever situate would vest in the official assignee, or in s.28(2) of the Provincial Insolvency Act, 1920 which states that on the making of an order of adjudication, the whole of the property of the insolvent would vest in the court or in the official Receiver. Sub-section (4) of section 182A of the Land Revenue Act provides that Rules 2 to 4 of Order XL of the Code of Civil Procedure 1908 shall apply in relation to a Receiver appointed under that section. A Receiver appointed under order XL of the Code of Civil Procedure only holds the property committed to

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his control under the order of the court but the property does not vest in him. A receiver appointed by a court or authority in respect of a property holds it for the benefit of the true owner subject to the orders that may be made by such court or authority. Under s.51 of the Code of Civil Procedure, 1908 a Receiver may be appointed by a civil court on the application of a decree-holder in execution of a decree for purposes of realising the decree-debt. This is only a mode of equitable relief granted ordinarily when other modes of realisation of the decretal amount are impracticable. A Receiver appointed under that section will be able to realise the amounts due from a garnishee and his

powers are akin to the powers of a Receiver appointed under Order 40 Rule I of the Code of Civil Procedure, 1908. But he would not have any beneficial interest in the assets of the judgment debtor. He collects the debts not as his own but as an officer of the court. Thus whatever may be the other powers of a Receiver dealing with the property which is custodia legis while in his custody, he is not to be construed as either an assignee or beneficial owner of such property. [880 A, 887 H, 888 A-B, 882 H]

2. (iii) Section 137 of the Act provides that if any person obtains an order for the appointment of a Receiver of, or of a person to manage, the property of a company, or if any person appoints such Receiver and any powers contained in any instrument he shall within thirty days from the date of the passing of the order of the making of the appointment under the said powers, give notice of the fact to the Registrar; and the Registrar shall on payment of the prescribed fee, enter the fact in the register of charges maintained under s.130 of the Act. It is not clear in the instant case whether any entry had been made in the register of charges of the order of appointment of Receiver. Even granting that such an entry had been made, it would not have the effect of taking away the right of the Cotton Mills Company to exercise the right to vote in respect of the shares in question. [884 C-E]

3. There is no substance in the argument based on ss.153B, 187B and 187C of the Act. Section 153 of the Act states that no notice of any trust, express implied or constructive, shall be entered in the register of members or of debenture holders. Section 153B of the Act requires that notwithstanding anything contained in s.153 where any shares in, or debentures of a company are held in trust by any person, the trustee shall, make a declaration to the public trustee. Section 187B of the Act provides that save as otherwise provided in s.153B but notwithstanding anything contained in any other provisions of the Act or any other law or any contract, memorandum or articles, where any shares in a company are held in trust by a person as trustee, the rights and powers (including the right to vote by proxy) exercise

able at any meeting of the company or at any meeting of any class of members of the company by the trustee as a member of the company cease to be exercisable by the trustee as such member and become exercisable by the public trustee. Section 187C of the Act makes it incumbent upon a person whose name is entered in the Register of Members of a company but who does not hold the beneficial interest in the share in question in such form as may be prescribed specifying the name and other particulars of the persons who holds the beneficial interest in such share. The Companies (Declaration of beneficial Interest in shares) Rules, 1975 are made in this connec

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tion. It is obvious from the foregoing that none of the provisions referred A to above has any bearing on the question before this Court. Thus, more appointment of a Receiver in respect of certain shares of a company without more cannot, therefore, deprive the holder of the shares whose name is entered in the Register of Members of the Company the right to vote at the meeting of the company or to issue a notice under s.169 of the Act. 1884 F-H, 885 A-C]

4. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a Corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77 the purchases acquires title. Until such sale is effected, all other rights of the judgment debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment-debtor or on the company concerned. The consequence of attachment of certain shares of a company held by a shareholder for purposes of sale in a proceeding under s.149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what s.149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil court [886 B-C, 885 D]

5. (i) It is to be noted that a charging order under the English Law is not the same as an attachment of property or appointment of a Receiver under the Land Revenue Act. Charging Orders under the English Law are made under order 50 of the English Supreme Court Practice under which the English court may for the purpose of enforcing a judgment or order of that court under which a debtor is required to pay a sum of money to a creditor make an order imposing on any such property of the debtor as may be specified in the order, a charge for securing the payment of any money due or to become due under the judgment or order. Such an order is referred to as the 'charging order'. A charging order on the property or assets of the debtor is one of the modes of enforcement of a judgment or order for the payment of money to the creditor. It is, however, not a direct mode of enforcement in the sense that the creditor can immediately proceed to recover the fruits of his judgment, but it is rather an Indirect mode of enforcement in the sense that it provides the creditor with security, in whole or in part, over the property of the debtor. It makes the creditor secured creditor who having obtained his charging order must proceed, as may be necessary according to the nature of the property charged, to enforce his charge in order to obtain the actual proceeds of his charge to satisfy his judgment,

in whole or in part. Subject to the other provisions of law a charge imposed by a charging order will have effect and will be enforceable in the same court and in the same manner as an equitable mortgage created by the debtor by writing under his hand. An order of attachment cannot, therefore, have the effect of depriving the holder of the shares of his title to the shares. Therefore, the attachment of the shares in the Polytex Company held by the Cotton

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Mills Company had not deprived the Cotton Mills Company of its right to vote at the meeting or to issue the notice under s.169 of the Act.

[887 B-F, 888 C]

Hawks v. Mc Arthur & Ors. [1951] 1 All E.R. 22, inapplicable.

5. (ii) The fact that 3,50,000 shares have been pledged in favor of the Government of Uttar Pradesh also would not make any difference. Sections 172 to 178-A of the Indian Contract Act, 1872 deal with the contract of pledge. A pawn is not exactly a mortgage. The two ingredients of a pawn are: "(1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the pawnee and (2) a pawnee has only a special property in the pledge but the general property therein remains in the pawner and wholly reverts to him on discharge of the debt. A pawn therefore is a security where by contract a deposit of goods is made as security for a debt- The right to property vests in the pledged only so far as is necessary to secure the debt. The pawner however has a right to redeem the property pledged until the sale. Under s.116 of the Indian Contract Act, 1872 if the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale- In the case of a pledge, however, the legal title to the goods pledged would not vest in the pawnee. the pawnee has only a special property. A pawnee has no right of foreclosure since he never had absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense, a pledge differs from a mortgage in view of the foregoing the pawnee in the instant case i.e. the Government of Uttar Pradesh could not be treated as the holder of the shares pledged in its favour. The Cotton Mills Company continued to be the member of the Polytex Company in respect of the said shares and could exercise its right under s.169 of the Act. [888 D-H, 889 A.C]

Lallan Prasad v. Rahmat Ali & Anr., [1967] 2 S.C.R. 233 pp. 238-239 Bank of Bihar v. State of Bihar & Ors., [1971] Supp. S.C.R. 299 and Swadeshi Cotton Mills v. Union of

India, [1981] 2 S.C.R. 533. refereed to.

6. There is no substance in the contention that on the passing of an order by the Central Government under s 18A (1) (a) of the Industries (Development and Regulation) Act, 1951 taking over the management of the Cotton Mills Company alongwith its five other industrial units, the Cotton Mills Company lost its right to exercise its voting rights

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in respect of the shares in question. What was taken over under the above A said orders was the management of the six industrial units referred to therein and not all the rights of the Cotton Mills Company. The shares belong to the company and the orders referred to above cannot have any effect on them. Hence the passing of the orders under s.18AA (1) (a) of the Industries (Development and Regulation) Act, 1951 has no effect of the voting rights of the Cotton Mills Company. [889 B-H, 890 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4803 of From the Judgment and Order dated 7.8.84 of the Allahabad High Court in Civil Misc. Application No. 10968 of K.K. Venugopal, R N. Karanjawala & Mrs. Manik Karanjawala for the appellant.

R.Parasaran, Attorney General of India. K S. Cooper, Csril S. Shroff, S. S. Shroff and S. A. Shroff for the respondents.

Ashok Desai, Anil Diwan Pinaki Mishra and Praveen Kumar for respondent No. 1,.

Dr. Y. S. Chitale, V.D. Mehta V. A. Bobde, S Swarup K.J. John for respondent No. 2.

Soli J. Sorabjee, Y. D. Mehta, S- Swarup and K, J. John for respondents Nos. 6-8.

Anil Dewan, R. Karanjawala, Mrs. Manik Karanjawala and Arun Jetly for the Intervenor.

Miss Bina Gupta for the Intervenor.

T S. Krishnamurthi and Vineet Kumar for the Intervenor.

The Judgment of the Court was delivered by VENKATARAMIAH, J. This appeal by special leave is filed against the order dated August 7, 1984 passed by the High Court of Allahabad in Civil Misc. Application No. 10968 of 1984 in Special Appeal No. 2 of 1982 on its file. The dispute involved in this case relates to the validity of an extraordinary general meeting of the Swadeshi Polytex Ltd. (hereinafter referred to as 'the Polytex Company'), a company governed by the Companies Act, 1956 (hereinafter referred to as 'the Act') held pursuant to a notice dated February 11, 1984 issued under section 169 of the Act by some of its members.

The controlling interest in the Swadeshi Cotton Mills Company Ltd. (hereinafter referred to as 'the Cotton Mills Company') which is also governed by the Act was acquired by Mangtaram Jaipuria and his family in 1946. Sitaram Jaipuria is the adopted son of Mangtaram Jaipuria. After his adoption Mangtaram Jaipuria got a natural son, Rajaram. In or about the year 1964, Sitaram Jaipuria became the Chairman and Managing Director of the Cotton Mills Company. In 1970, the Jaipuria family decided to promote another company and accordingly the Polytex Company was established. In 1970, Rajaram became the Managing Director of the Cotton Mills Company and Sitaram continued as its Chairman. Sitaram became the Chairman and Managing Director of the newly established Polytex Company in which the Cotton Mills Company had acquired 10 lakhs shares of Rs. 10 each. From about 1975-76 on account of a very serious set back in its financial position the Cotton Mills Company could not meet the wage bill, the dues of the U.P. Electricity Board and several other monetary claims against it. There were serious labour troubles in its factory and its work virtually became paralysed. The total liability of the Cotton Mills Company was in the order of Rs. 2 34 crores in the year 1977. On October 27, 1977, the Collector of Kanpur passed an order under section 128-A of the U.P. Land Revenue Act, 1901 (hereinafter referred to as 'the Land Revenue Act' read with section 5 of the Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 appointing a Receiver in respect of the Cotton Mills Company for a period of six months with various powers specified therein and in particular to seize I lakh of shares of the Polytex Company of the face value of Rs 10 lakhs held by the Cotton Mills Company and to pledge them in favour of the State Government of Uttar Pradesh against a loan for the purpose of meeting the dues payable to the employees of the Cotton Mills Company and he made a further order under section 149 of the Land Revenue Act read with section 5 of the U. P. Government Electrical Undertakings (Dues Recovery) Act, 1958 attaching the remaining 9 lakhs shares of the Polytex Company held by the Cotton Mills Company and empowering the receiver to seize them Both the order appointing the Receiver and the order attaching 9 lakhs shares were incorporated in the same document, the relevant part of which read thus:

ORDER "Whereas electricity dues are payable by M/s Swadeshi Cotton Mills Co. Ltd., Kanpur, to the U.P. State Electricity Board and recovery certificates for the amount enumerated below have been received for realisation of the dues above mentioned from the said consumer:

Recovery certificates dated 29.9.76, 31.12.76, 16.12.76, 29.12.76, 16.7.76, 17.9.76 and 3.10.77 1,06,22,423.17 Less amount paid 19,00,000.00 Balance 87,22,423.17 Add: Collection charges 10,62,242.31 TOTAL RECOVERABLE 97,84,665.48 And whereas, for the expeditious recovery of the dues outstanding as above, without affecting adversely the running of the mills, it is just and proper that a Receiver be appointed over the mills at Kanpur, belonging to M/s Swadeshi Cotton Mills Co. Ltd.

Now, therefore, I, K.K. Baksi, Collector, Kanpur, in exercise of the power under sub-section (1) of section 182-A of U.P. Land Revenue Act of 1901 read with section 5 of U.P. Government Electrical Undertakings (Dues Recovery) Act, 1958, do hereby appoint Shri L.N. Batra, A.D.M. Kanpur as Receiver of the said mills belonging to M/s Swadeshi Cotton Mills Co. Ltd., for a period of six months with immediate effect and direct that the Receiver shall exercise the following powers:

1. The Receiver shall exercise supervision over the sales of products of the said mills and the disbursement of receipts from day to day.

2. That the receiver shall ensure that the receipts of the said mills are, after the payment of labour dues and other essentials for the running of the Mill, appropriated towards recoverable arrears against M/s Swadeshi Cotton Mills Co. Ltd. as Land Revenue.

3. That the receiver shall, if necessary, for the running of the said mills borrow money from State Government or other financial institutions and other appropriate arrangement in this behalf for the repayment of the amount and the recovery thereof as arrears of land revenue.

4. That the Receiver shall seize the shares held by M/s. Swadeshi Cotton Mills Co. Ltd., of M/s.

Swadeshi Polytex Ltd. Of the face value of Rs. 10 lacs (Ten lacs) and shall be competent to pledge, the same by way of security for the borrowings referred to above.

5. That the Receiver shall be competent also to make payment to the Punjab National Bank against the guarantee dated 16.12.1976 and relieve the State Government of its liabilities thereunder correspondingly.

6. That in the event of Guarantee furnished by the State Government in favour of Punjab National Bank dated. 16.12.76. being invoked, the Receiver shall be competent to make the payment to the State Government against the liability accruing therefrom

7. That the Receiver shall have access to all books of accounts. ledger, cash books, Stock books and all other documents kept or maintained by M/s Swadeshi Cotton Mills Co. Ltd. in course of business.

8. That the Receiver shall be competent for the reasons to be recorded also to put a restraint against any transaction being entered into by M/s. Swadeshi Cotton Mills Co. Ltd., involving the business and assets of the mills and which are not in the interest thereof or may be detrimental to the same in his opinion.

9. That the Receiver shall have all powers incidental or ancillary for Carrying out of the functions and the powers referred to above.

10. That subject to the above and to any directions that I may, hereafter issue from time to time, the present management of the said mills shall continue to run A the mill and business.

In view of the urgency the order is being made expert with the direction, however, that a notice to show cause shall issue to M/s. Swadeshi Cotton Mills Company Ltd. for November 15, 1977.

And further, in exercise of the power under section 149 of U.P. Land Revenue Act 1901 read with section 5 of U.P. Government Electrical Undertakings (Dues Recovery) Act of 1958, I hereby direct attachment and sale of shares held by M/s. Swadeshi Cotton Mills Co. Ltd. in M/s. Swadeshi Polytex of the face value of Rs. 90 lacs (Ninety lacs) and hereby empower the Receiver to seize the same.

Sd/-

Dated : Kanpur
October 27, 1977."

K.K. Baksi
Collector, Kanpur

On the same date i.e. On October 27, 1977 the Receiver pledged 1 lakh of shares as per the order of the Collector in favour of the Government of Uttar Pradesh against a loan of Rs. 13.5 Lakhs. i he Receiver also took possession of 9 Lakhs shares as per the order made under section 149 of the Land Revenue Act. Subsequently the Receiver pledged on November 9, 1977, 1 lakh shares out of the above 9 lakhs shares in favour of the Government of Uttar Pradesh against a loan of Rs. 15 lakhs and on January 4, 1977, 1.5 lakhs shares against a further loan- Thus out of the 10 lakhs shares of the Polytex Company of the face value of Rs. 1 crore held by the Cotton Mills Company, 3.5 Lakhs shares stood pledged in favour of the Government of Uttar Pradesh and the remaining 6.5 lakhs shares of the face value of Rs. 65 lakhs remained with the Receiver.

The events which have led to this appeal are, however, these: In the year 1976, the Cotton Mills Company filed a petition under sections 397 and 398 of the Act against the Polytex Company alleging oppression and mismanagement of the Polytex Company by Sitaram Jaipuria and other directors of the Polytex Company in Company Petition No. 20 of 1976 on the file of the Allahabad High Court. That petition was dismissed by the Company Judge of the High Court on April 19, 1982. Against his decision an appeal was filed by the Cotton Mills Company in August, 1982 in Special Appeal No. 2 of 1982 before the Division Bench of the High Court. That appeal is still pending. On February 11, 1981, the Cotton Mills Company and four others, namely, Rajaram Jaipuria, Mahabir Prasad Dalmia, Siyaram Sharma and K.B. Agarwal who together held 10, 01, 950 shares of the value of Rs. 10 each sent a notice to the Polytex Company which was received by it on February 15, 1984 under section 169 of the Act requiring the Board of Directors of the Polytex Company to call an extraordinary general meeting of the Polytex Company to consider and, if thought fit, to pass with or without modification the following as ordinary resolutions:

"1. "RESOLVED that the appointment of Shri Sitaram Jaipuria as Managing Director of Swadeshi Polytex Ltd., be and is hereby terminated prior to the expiry of his term, in exercise of the powers conferred by Article 110 of the Articles of Association of the Company."

2. "RESOLVED further that Shri Sitaram Jaipuria be and is hereby removed from the office of Director and consequently from the office of the Managing Director of the Swadeshi Polytex Ltd."

3. "RESOLVED further that resolution passed at the 13th Annual General Meeting of Swadeshi Polytex Ltd. in respect of item 7 "Special Business" of the Notice dated 31st January, 1983 of the said

13th Annual General Meeting for the remuneration of Shri Sitaram Jaipuria as Managing Director be and is hereby rescinded".

4. "RESOLVED that Shri Ashok Jaipuria be and is hereby removed from the office of Director of Swadeshi Polytex Ltd."

5. "RESOLVED that in the vacancy caused by the a removal of Shri Ashok Jaipuria, Shri Sitaram Singhanian, be and is hereby appointed as a Director of Swadeshi Polytex Ltd. and in respect of whose appointment special notices have been received from some members indicating their intention to appoint Shri Sitaram Singhanian as a Director of the Company."

6. "RESOLVED that Shri B.M. Kaul be and is hereby removed from the office of Director of Swadeshi Polytex Limited."

7. "RESOLVED that in the vacancy caused by the removal of Shri B.M. Kaul, Dr. Rajaram Jaipuria be and is hereby appointed as a Director of Swadeshi Polytex Ltd. and in respect of whose appointment special notices have been received from some members indicating their intention to appoint Dr. Rajaram Jaipuria as a Director of the Company."

8. "RESOLVED that Shri P.B. Menon be and is here removed from the office of Director of Swadeshi Polytex Ltd."

9. "RESOLVED that in the vacancy caused by the removal of Shri P.B. Menon, Shri R-D. Thapar, be and is hereby appointed as a Director of Swadeshi Polytex Ltd., and in respect of whose appointment special notices have been received from some members indicating their intention to appoint Shri D.R. Thapar as a Director of the Company." "

The requisitionists of the meeting also asked the Polytex Company to treat the said notice as a special notice under section 284 (2) and (5) read with section 190 of the Act for appointment of Sitaram Singhanian, Rajaram Jaipuria and R.D. Thapar in place of Ashok Jaipuria, B.M. Kaul (who was also the Chairman of the Cotton Mills Company) and P.B. Menon respectively as directors of the Polytex Company. They enclosed an explanatory statement as required by section 173 of the Act to the notice containing reasons for moving the aforeaid resolutions. On receipt of the notice, an emergent meeting of the Directors of the Polytex Company was held on February 23, 1984 to consider the above said notice issued under section 169 of the Act. the following is the material part of the minutes of the said meeting:

"REQUISITION NOTICE"

The Board was informed that a notice had been received at the Registered Office of the Company on 15th February 1984 from Swadeshi Cotton Mills Co. Ltd.

(SCM) and four other shareholders questioning an Extraordinary General Meeting of the Company under Section 169 of the Companies Act, 1956.

The requisition notice received from SCM was read before the Board. The Board considered the motives behind the requisition and took serious note of the false and baseless allegations made in the explanatory note enclosed to the notice of requisition. The Secretary pointed out few technical defects in the requisition notice. The draft notice and the explanatory statement was placed before the meeting. The same was perused and discussed and the following resolutions were passed:

"RESOLVED that an Extraordinary General Meeting of the Company, pursuant to the requisition received by the Company on 15th February, 1984 under Section 169 of the Companies Act 1956 from Swadeshi Cotton Mills Co. Ltd. & others be held at the Registered Office of the Company on Wednesday, the 28th March 1984 at 10.30 A.M."

"RESOLVED further that the Secretary be and is hereby authorised to issue notice for convening the aforesaid meeting, as per draft placed before the Board and initialed by the Chairman for the purposes of identification and to take such other steps as may be required in this regard."

The Board was of the view that the financial institutions should be informed of this development and the directors who wish to make their representation to the shareholders may be requested to do so. The Secretary was directed to take necessary steps in this regard."

The Board of Directors also prepared and circulated an explanatory statement pursuant to section 173 of the Act along with the notice issued to the shareholders calling the extraordinary general meeting to be held on March 28, 1984. The requisitionists of the meeting filed an application before the Division Bench in special Appeal No. 2 of 1982 for appointing a Chairman of the meeting. S. Jagannathan who was a member of the Board of Directors as the nominee of I.F.C.I. was appointed as the chairman of the meeting by the Division Bench on March 23, 1984. The meeting was, however, adjourned.

ned as a shareholder had obtained an order of temporary injunction restraining the holding of the meeting in a suit filed by him at the court of the Munsif, Alipore (West Bengal). When the requisitionists applied to the High Court of Allahabad to fix a fresh date of the meeting, the High Court declined to do so by its order dated May 22, 1984 because the temporary injunction order had been issued by a court not subordinate to it. It appears that another shareholder applied for injunction in a suit filed in the Civil Judge's court at Gwalior and a third shareholder moved the City Civil Court, Madras for a similar relief. Then the requisitionists filed two special Leave Petitions before this Court against the order of the Allahabad High Court passed the following order on the said petitions which were numbered as Civil Appeals Nos. 2597-98 of 1984:

"Special leave granted.

The High Court of Allahabad shall make a fresh order directing the holding of the meeting of the Company and that meeting shall be held in accordance with the order of the High Court notwithstanding any order of injunction etc. issued by any other court or authority in India or to be issued hereafter. If any person has any grievance about the holding of the meeting he shall approach the High Court of Allahabad for appropriate directions. If the requisitionists or the Company wish to held the meeting early they may approach the vacation Judge of the High Court of Allahabad who has all the powers- of the Company Judge to make fresh orders. The appeals are disposed of accordingly."

Again on July 4, 1984 a further order was passed by this Court as follows:

"Mr. Sorabjee and Mr. Mridul state that the extra- ordinary general meeting may be called on any day to be fixed by the High Court in the second week of August, 1984. They also state that the venue of the meeting shall be determined by the Chairman, Shri Jagannathan, appointed by the High Court. No further orders are necessary on prayer b and c in the application dated 25th June, 19 i-l made before the Allahabad High Court by the petitioner."

Accordingly the meeting W3S fixed to be held on August 14, 1984. Since there was a motion for the adjournment of the meeting this Court was again approached by the parties by an application for a further direction which was disposed of on September 4, 1984. In the meanwhile the appellant No. I Balkrishan Gupta had filed an application before the High Court of Allahabad in Special Appeal No. 2 of 1982 questioning the right of the requisitionists issue notice under section 169 of the Act to call the extraordinary general meeting. His contention was that since a Receiver had been appointed by the Collector in respect of the shares held by the Cotton Mills Company and they had also been attached, the shares held by the Cotton Mills Company could not be taken into consideration for determining the required qualification to issue the notice under section 169 of the Act requisitioning the extraordinary general meeting and that if those shares were omitted from consideration then the shares held by the other requisitionists would not be sufficient to issue the said notice. That application was dismissed by the High Court by its order dated August 7, 1984. This appeal by special leave is filed against the said order of the High Court. In this appeal this Court passed the following order on September 14, 1984:

"All the learned counsel for the parties in this petition agree that the meeting which is now adjourned to 24.9.84 should be held on that day and the agenda of the meeting should be discussed and voted upon. We make an order accordingly. The result of the voting shall be reported to this Court by the Chairman within one week after it is ascertained The resolutions passed at the meeting shall not come into effect until further orders by this Court. The matter may be listed in the third week of October, 1984."

After the report submitted by the Chairman of the meeting was received by this Court, this Court passed a further order on October, 12, 1984 which reads as follows:

"The report of the Chairman of the extraordinary general meeting which has been submitted to this Court in a sealed cover is - opened and perused by the Court. The report states that all the resolutions other than the resolution for adjournment have been lost. The photostat copies of the report along with the enclosures may be made avail able to the parties at their expense. List the matter on 29.10.1984 before this Bench."

After the above order was passed, the Industrial Development Bank of India and the Industrial Finance Corporation of India WHO were aggrieved by the result of the counting of votes given on the taking of poll at the meeting filed applications before this Court questioning the correctness of the report of the Chairman as regards the result of the meeting- They contended that the Chairman had wrongly rejected the votes cast on their behalf and if these votes had been taken into consideration the resolutions would have been duly passed. Some shareholders who were opposed of the removal of the sitting Directors also filed an application for being impleaded. All these applications were allowed on November 19, 1984 and all parties agreed that the validity of the meeting and of its result reported to the court should be decided by this Court- During the hearing a writ petition filed in the High Court of Bombay was also withdrawn to this Court for being heard along with these cases. At the conclusion of the hearing of the above cases, the parties filed a compromise petition requesting the Court to make an order in terms thereof. On the basis of the said compromise the Court passed an order on February 1, 1985, the material part of which reads thus:

1. The Board of Directors of Swadeshi Polytex Ltd.

(hereinafter referred to as 'SPL') shall be re-constituted pending the holding of the next Annual General Meeting of SPL as under:

(a) Four nominees of Financial Institutions (including one to be selected and communicated by IDBI/ IFCI to SPL) including the representative of the U.P. State Industrial Development Corporation.

(b) Four nominees of Shri Sitaram Jaipuria (herein after referred to as 'SRJ') including SRJ.

(c) Four nominees of Dr. Rajaram Jaipuria(herein after referred to as 'RRJ') including RRJ.

All nominations under sub-clauses (b) and (c) above shall be made by February 9, 1985. Nominations under sub- clause (a) (except the nominee of the U. P. State Industrial Corporation) shall be made within ten days of the date of this order. The re-constituted Board shall start functioning from February I 1, 1985. The Secretary of SPL is directed to convene the re-constituted Board meeting within 15 days of the order.

2(a) SRJ and RRJ shall designate one nominee each out of their respective nominees directors as Executive Directors. The said Executive Directors shall jointly carry on the management of SPL and will have all the powers of the Managing Director and control of finance. If any difference of opinion arises it shall be referred to the Board of Directors.

2 (b) All committees of the Board shall stand dissolved.

3. SRJ shall continue as the Managing Director of the Company and he voluntarily undertakes not to exercise any powers or functions of the Managing Director till his re election at the next Annual General Meeting of SPL.

4. SRJ will continue to be the Chairman of the Company and as such will preside over the Board meetings of SPL. He voluntarily undertakes not to have any second or casting vote.

5. All minutes of the Board meetings shall be prepared by a nominee of the Financial Institutions and shall be signed by the Chairman,

6. The next Annual General Meeting of the SPL shall be called and held on May 15, 1985. Th, Chairman of the said Annual General Meeting shall be appointed by this Court.

7. All the Members of the re-constituted Board appointed pursuant to clause 1 above (excluding nominees mentioned in clause 1 (a)) including non- rotational Directors i. e. SRJ and/or Shri F. R. Beshania shall resign and a new Board shall be elected at the said Annual General Meeting. All shareholders of SPL (including SRJ and RRJ shall be entitled to propose names of any persons for appointment as Directors of SPL at the said Annual General Meeting. Members of the re-constituted Board may if they so desire seek re- election at the said Annual General Meeting.

8. All pending matters before this Court including the Transfer Case No. I of 1985 and all Civil Misc. Petitions in Civil Appeal No. 4803 of 1984 save and except Civil Appeal No. 4803 of 1984 (Balkrishan Gupta & Ors. v. Swadeshi Polytex Ltd & Ors.) shall stand withdrawn and all questions raised in all such withdrawn proceedings are expressly left open. All allegations against the Financial Institutions, the Chairman of the IDBI and the Government in Transfer Case No. 1 of 1985 and Civil Misc. Petitions Nos. 39900 of 1984 and 340 of 1985 shall stand withdrawn.

9. Votes cast by the Financial Institutions at the next Annual General Meeting of SPL to be held on May 15, 1985 shall not be questioned by the parties hereto an any ground.

10. The Civil Appeal No. 4803 of 1984 (Balkrishan Gupta & Ors. v. Swadeshi Polytex Ltd. & Ors.) shall be disposed of on merits.

11. Notice of Board meeting to all members of the re-constituted Board shall be sent by Registered Post Acknowledgment due.

12. It shall be open to the Board of Directors if it so chooses to review any delegation of powers.

13. There shall be no disciplinary action by way of victimization of any employee.

14. SRJ shall obtain the resignation of the present members of the Board of Directors (excluding the nominees of Financial Institutions).

15. Liberty is reserved to the parties to apply to this Court.

The undertakings that have to be filed in accordance with the above order shall be filed in this Court within one week from today. The next Annual General Meeting which is ordered to be held on May 15, 1985 shall be held notwithstanding any order, direction or injunction of any other Court in India. The parties are at liberty to apply to this Court for nominating a Chairman for the next Annual General Meeting.

Judgment in Civil Appeal No. 4803 of 1984 is reserved. All the other cases referred to above stand disposed of in terms of this order."

The parties, however, requested the Court to decide the question relating to the right of the Cotton Mills Company to join as a requisitionist of a meeting under section 169 of the Act or to vote at a meeting of the company since it was likely that one or the other member might raise it as an issue at the next meeting. We shall, therefore, proceed to decide the said question by this judgment.

The principal ground urged on behalf of the appellants is that the extraordinary general meeting had not been validly called since the Cotton Mills Company had ceased to enjoy the privileges of a member of the Polytex Company by reason of the appointment of a Receiver by the Collector of Kanpur in respect of the ten lakhs shares in the Polytex Company held by the Cotton Mills Company, the attachment of the 9 lakhs shares out of the said 10 lakhs shares and also the pledge of 3,50,000 shares out of the said 10 lakhs shares with the Government of Uttar Pradesh as security for the loans advanced by it. The total paid-up equity share capital of the Polytex Company is Rs. 3,90,00,000 (39,00,000 shares of Rs. 10 each) and it is not disputed that if the 10 lakhs shares held by the Cotton Mills Company are omitted from consideration, the remaining requisitionists would not have sufficient voting strength to issue a notice under section 169 of the Act. The appellants contend that the Cotton Mills Company could not, therefore, join the other requisitionists in issuing the notice under section 169 of the Act calling upon the Polytex Company to call the extraordinary general meeting and without the support of the shares held by the Cotton Mills Company, the remaining requisitionists would not have been eligible to requisition the meeting. The material part of section 169 r.f the Act reads:

"Calling of extraordinary general meeting on requisition.-

169. (1) The Board of directors of a company shall, on the requisition of such member or members of the company as is specified in sub-section (4), forthwith proceed duty to call an extraordinary general meeting of the company.

(2) The requisition shall set out the matters for the consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) The number of members entitled to requisition a meeting in regard to any matter shall be:

(a) in the case of a company having a share capital. such number of them as held at the date of the deposit of the requisition, not less than one-tenth of such of the paid up capital of the company as at that date carries the right of voting in regard to that matter;.. "

We have already referred to the order of the Collector appointing the Receiver in respect of the shares in question, attaching them and ordering that 3,50,000 shares be pledged in favour of the Government of Uttar Pradesh.

Section 150 of the Act requires every company to keep a register of members containing the names, address and the occupation, if any, of each member and other particulars mentioned therein. Section 153 of the Act provides that no notice of any trust, express, implied or constructive, shall be entered on the register of members. Section 153B of the Act, however, provides that notwithstanding anything contained in section 153, where any shares in a company are held in trust by any person, he (the trustee) shall within such time and in such form as may be prescribed make a declaration to the public trustee appointed under section 153A of the Act in accordance with and subject to the rest of the provisions of section 153B of the Act.

It is clear from the relevant provisions of the Act which are referred to hereafter that a member can participate and exercise his vote at the meetings of a company in accordance with the Act and the articles of association of the company. Section 41 of the Act defines the expression "member" of a company. The subscribers of the memorandum of association of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members. A subscriber of the memorandum is liable as the holder of shares which he has undertaken to subscribe for. Any other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company. In his case the two conditions namely that there is an agreement to become a member and that his name is entered in the register of members of the company are cumulative. Both the conditions have to be satisfied to enable him to exercise the rights of a member. Subject to section 42 of the Act, a company or a body corporate may also become a member. When once a person becomes a member, he is entitled to exercise all the rights of a member until he ceases to be a member in accordance with the provisions of the Act. The voting rights of a member of a company are governed by section 87 of the Act. Section 87 of the Act says that subject to the provisions of section 89 and sub-section (2) of section 92 of the Act every member of a company limited by shares and holding any equity

share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company and his voting right on a poll shall be in proportion to his share of the paid-up equity capital of the company. Regulations 8 and 86 (a) of the Articles of the Polytex Company read:

"8. Save as herein otherwise provided, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not, except as ordered by a court of competent jurisdiction or as by law required, be bound to recognise any trust, be-nami or equitable or other claim to or interest in any such share or any fractional part of such share on the part of any other person whether or not it shall have express or other notice thereof.

86. (a) On show of hands every holder of Equity shares entitled to vote and present in person or by proxy shall have one vote and upon a poll every holder of equity shares entitled to vote and present in person or by proxy shall have one vote for every Equity share held by him."

A person ceases to be a member by transferring his share to another person, by transmission of his share by operation of law, by forfeiture of share, by death, or by any other reason known to law. In the case before us therefore three points arise for consideration at this stage.

They are:

(i) Whether by reason of the appointment of the Receiver under the Land Revenue Act in respect of the shares of the Polytex Company held by the Cotton Mills Company, the Cotton Mills Company had ceased to have the rights of a member under section 169 of the Act ?

(ii) Whether by the attachment of the shares under section 149 of the Land Revenue Act, the Cotton Mills Company suffered any diminution or curtailment in its rights as a shareholder in respect of the shares so attached ?

(iii) Whether by the pledge of certain shares, the Cotton Mills Company suffered any such diminution or curtailment ?

In the Act, the expressions 'a member', 'a share holder' or 'holder of a share' are used as synonyms to indicate the person who is recognised by a company as its owner for its purposes. What does ownership of a share connote? 'Ownership in its most comprehensive signification; says Salmond, 'denotes the relation between a person and any right that is vested in him. That which a man owns in this sense is a right. The right of ownership comprises benefits like claims, liberties, powers, immunities and privileges and burdens like duties, liabilities, disabilities. Whatever advantages a man may have as a result of the ownership of a right may be curtailed by the disadvantages, in the form of burdens attached to it. As observed by Dias, an owner may be divested of his claims etc. arising from the right owned to such an extent that he may be left with no immediate practical benefit. He remains the owner nonetheless because his interest will outlast that of other persons in

the thing owned. The owner possesses that right which ultimately enables him to enjoy all rights in the thing owned by attracting towards himself those rights in the thing owned which for the time being belong to others, by getting rid of the corresponding burdens. An owner of a land may get rid of the interest of a mortgagee in it by redeeming the mortgage, may get physical possession of land by terminating a lease and may get rid of an attachment by discharging the debt for which it is attached. A Receiver appointed by a court or authority in respect of a property holds it for the benefit of the true owner subject to the orders that may be made by such court or authority. the different kinds of rights of ownership flowing from the ownership of a right depend upon the nature of the right owned. A person who is a shareholder of a company has many rights under the Act. Some of them, with which we are concerned in this appeal principally, are (i) the right to vote at all meetings (Section 87), (i;) the right to requisition an extraordinary general meeting of the company or to be a joint requisitionist (Section 169), (iii) the right to receive notice of a general meeting (Section 172), (iv) the right to appoint proxy and inspect proxy registers (Section 176), (V) in the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf (Section 187) and (vi) the right to require the company to circulate his resolution (Section 188). The question for consideration is when does a shareholder cease to be entitled to exercise any of these rights ?

Section 182-A of the Land Revenue Act which provides for the appointment of a Receiver in respect of the assets of a defaulter who is liable to pay an arrear of revenue or any other sum recoverable as an arrear of revenue reads thus:

"182-A. Appointment of Receiver-(1) Notwithstanding anything in this Act, when an arrear of revenue or any other sum recoverable as an arrear of revenue is due, the Collector may, in addition to or instead of any of the processes hereinbefore specified, by order-

(a) Appoint, for such period as he may deem fit, a Receiver of any movable or immovable property of the defaulter:

(b) Remove any person from the possession or ousted of the property:

(c) Commit the same to the possession, custody or management of the Receiver;

(d) Confer upon the receiver all such powers, as to bringing and defending suits and for the realisation, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents, as the defaulter himself has or such of those powers as the Collector thinks fit.

(2) Nothing in this Section shall authorise the Collector to remove from the possession or custody of property any person whom the defaulter has not a present right to remove.

(3) The Collector may from time to time extend the A duration of appointment of the Receiver.

(3-A) No order under sub-section (1) or sub- section (3) shall be made except after giving notice to the defaulter to show cause, and after considering any representations that may be received by the Collector in response to such notice:

Provided that an interim order under sub- section (1) or sub-section (3) may be made at any time before or after the issue of such notice:

Provided further that where an interim order is made before the issue of such notice the order shall stand vacated if no notice is issued within two weeks from the date of the interim order. (4) The provisions of Rules 2 to 4 of Order XL, contained in the First Schedule to the Code of Civil Procedure, 1908, shall apply in relation to a Receiver appointed under this section as they apply in relation to a Receiver appointed under this section as they apply in relation to a Receiver appointed under the Code with the substitution of references to the Collector for references to the Court."

Section 149 of the Land Revenue Act which provides for the attachment and sale of movable property belonging to a defaulter reads thus:-

"149. Attachment and sale of movable property- I`he Collector may, whether the defaulter has been arrested or not, attach and sell his movable property.

Every attachment and sale ordered under this section shall be made, according to the law in force for the time being for the attachment and sale of movable property under the decree of a Civil Court. In addition to the particulars mentioned in clauses (a) to

(c) of the proviso to Section 60 of the Code of Civil Procedure, 1908 (Act V of 1908), articles set aside exclusively for the use of religious endowments shall be exempted from attachment and sale under this section. The costs of the attachment and sale shall be added to the arrear of revenue, and shall be recoverable by the same procedure."

We shall first consider the effect of appointment of a Receiver in respect of the shares in question. A perusal of the provisions of section 182-A of the Land Revenue Act shows that there is no provision in it which states that on the appointment of a person as a Receiver the property in respect of which he is so appointed vests in him similar to the provision in section 17 of the Presidency Towns Insolvency Act, 1909 where on the making of an order of adjudication the property of the insolvent wherever situate would vest in the official assignee, or in section 28 (2) of the Provincial Insolvency Act, 1920 which states that on the making of an order of adjudication, the whole of the property of the insolvent would vest in the court or in the Official Receiver. Sub-section (4) of section 182-A of the Land Revenue Act provides that Rules 2 to 4 of Order XL of the Code of Civil Procedure, 1908

shall apply in relation to a Receiver appointed under that section. A Receiver appointed under Order XL of the Code of Civil Procedure only holds the property committed to his control under the order of the court but the property does not vest in him. The privileges of a member can be exercised by only that person whose name is entered in the Register of Members. A Receiver whose name is not entered in the Register of Members cannot exercise any of those rights unless in a proceeding to which the company concerned is a party and an order is made therein. In *Mahathalone v. Bombay Life Assurance Co. Ltd* 1 it has been laid down clearly that a Receiver appointed by a court in respect of certain shares which had not been duly entered in the Register of Members of the company concerned as belonging to him could not acquire certain newly issued shares which could be obtained by the members of the company. This Court observed at page 143 thus:

"Mr. Pathak argued that the plaintiff was entitled to reliefs A and B, both in his suit as well as in the receiver's suit and that the receiver's suit was wrongly dismissed by the High Court. We are unable to agree. In our opinion, the High Court rightly held that the receiver appointed in the suit of *Sir Padampat* could not acquire the newly issued shares in his name. That privilege was conferred by section 105 only on a person whose name was on the register of members. The receiver's name admittedly was not in the register and the company was not bound to entertain that application. Mr. Pathak argued that may be so but the receiver was not making an application in his individual (1) [1954] S.C.R. 117.

right but he had been armed by the court with power to act in the right of the defendant Reddy. The fact however is that the receiver made the application in his own name. Even if Mr. Pathak's contention is right the company was no party to the suit filed by *Sir Padampat* against Reddy and that being so, no order could be issued to the company in that suit to recognize the receiver as a shareholder in place of Reddy."

Even where the holder of a share whose name is entered in the Register of Members hands over his shares with blank transfer forms duly signed, the transferee would not be able to claim the rights of a member as against the company concerned until his name is entered in the Register of Members. This Court in *Messrs Howrah Trading Co. Ltd. v. The Commissioner of Income-tax, Calcutta* has observed at pages 453-454 thus:

"The position of a shareholder who gets dividend when his name stands in the register of members of the company causes no difficulty whatever. But transfers of shares are common, and they take place either by a fully executed document such as was contemplated by Regulation 18 of Table A of the Indian Companies Act, 1913, or by what are known as 'blank transfers' - In such blank Transfers, the name of the transferor is entered, and the transfer deed signed by the transferor is handed over with the share scrip to the transferee, who, if he so chooses, completes the transfer by entering his name and then applying to the company to register his name in place of the previous holder of the share. The company recognises no person except one whose name is on the register of members, upon whom alone calls for unpaid capital can be made and to whom only the dividend declared by the company is legally

payable. Of course, between the transferor and the transferee, certain equities arise even on the execution and handing over of 'a blank transfer', and among these equities is the right of the transferee to claim the dividend declared and paid to the transferor who is treated as a trustee on behalf of the transferee. These equities, however, do not touch the company, and no claim by the transferee whose name is not in the register of members can be made against the company, if the transferor retains the money in his own hands and fails to pay it to him. (1) [1959] Supp. 2 S.C.R. 448- A Glance at the scheme of the Indian Companies Act, 1913, shows that the words "member", "shareholder"

and "holder of a share" have been used interchangeably in that Act. Indeed, the opinion of most of the writers on the subject is also the same. Buckley on the Companies Act, 12th Edition, Page 803 has pointed out that the right of a transferee is only to call upon the company to register his name and no more. No rights arise till such registration takes place." In this case this Court followed the dictum of Chitty, J. in re: Wala Wynaad Indian Gold Mining Company(1) which emphasised that the entry of the name of person in the Register of Members was an essential condition for exercising voting rights at the meeting of the company concerned. In "Buckley on the Companies Acts" (14th Edn.), Vol. I, page 972 it is stated thus:

"Company cannot enquire into beneficial ownership- As between the shareholder and the company, the person entitled to exercise the right of voting is the person legally entitled to the shares, the member whose name is on the register."

In Kurapati Venkata Mallayya & Anr. v. Thondepu Ramaswami & Co. & Anr.(2) this Court had occasion to consider the validity of a suit instituted by a Receiver to collect debts due to a party to a suit in his own name. The Court upheld the right of the Receiver to maintain the suit observing that a Receiver invested with full powers to administer the property which is Custodian legis or who is expressly authorised by the court to institute a suit for collection of debts was entitled to institute a suit in his own name provided he did so in his capacity as a Receiver. But in the course of the said decision this Court approved the decision of the Calcutta High Court in Jagat Tarini Dasi v. Naba Gopal Chaki(3) in which it had been stated: "On the whole, we are disposed to take the view that, although a Receiver is not the assignee or beneficial owner of the property entrusted to his care, it is an incomplete and inaccurate statement of his relation to the property to say that he is merely its custodian" (Underlining by us). Thus whatever may be the other powers of a Receiver dealing with the property which is in custodian legis while in his custody, he is not to be construed as either an assignee or beneficial owner of such property.

(1) [1882] 21 Ch. D. 849.

(2) [1963] Supp. 2 S.C.R. 995.

(3) [1907] . 34 Cal. 305, In Wise v. Lansdell(1) it was held that in the case of a bankrupt A whose name was still on the Register of Members of a company as between himself and the company, the bankrupt, so long as his name remained on the register was entitled to vote in respect of the shares,

though as between himself and the mortgagees he could vote only as they dictated. But the right to vote was held to be unimpaired as long as his name appeared on the Register.

In a later case, *Morgan & Anr. v. Gray & Ors* (2) after referring to the decision in *Wise v. Lansdell* (supra) Danckwerts J. observed:

"It seems to me that, unless there is some provision in the company's articles or in the Companies Act which empowers me to say that the bankrupt is no longer a member of the company, and is, therefore, unable to vote, expressly. I must come to the conclusion that the bankrupt still remains a member as long as he is on the register, notwithstanding that by taking appropriate steps under the appropriate provisions the trustee in bankruptcy may be able to secure registration of himself as the proprietor of the shares. Unless and until that is done, and as long as the bankrupt remains on the register of the company, he remains a member in respect of those shares and is entitled, as it seems to me, to exercise the votes which are attribute able to that states, notwithstanding that he has no longer any beneficial interest in the shares and that the company is entitled to pay any dividends to his trustee in bankruptcy."

The following statement in *Kerr on Receivers* (13th Edn.) at page 310: "the power of the company and its directors to deal with the property comprised in the appointment (both property subject to a floating charge and property subject to a fixed charge), except subject to the charge, are paralysed" which was relied on by the appellants is not of much use to them. it only means that the authority competent to appoint a Receiver may give directions regarding the property It does not imply that the right of the company to exercise the right to vote on the basis of the shares of another company held by it at the meeting of such other company becomes automatically suspended.

Under section 51 of the Code of Civil Procedure, 1908 a (1)[1921] I Ch. 420.

(2)[1953] I Ch. 83 at p. 87.

Receiver may be appointed by a civil court on the application of a A decree-holder in execution of a decree for purposes of realising the decree-debt. This is only a mode of equitable relief granted ordinarily when other modes of realization Or the decretal amount are impracticable. A Receiver appointed under that section will be able to realise the amounts due from a garnishee and his powers are taking to the powers of a Receiver appointed under Order 40 rule 1 of the Code of Civil Procedure, 1908. But he would not have any beneficial interest in the assets of the judgment-debtor. He collects the debts not as his own but as an officer of the court.

We do not also find any substance in the contention of the appellant based on section 137 of the Act. Section 137 of the Act provides that if any person obtains an order for the appointment of a Receiver of, or of a person to manage, the property of a company, or if any person appoints such Receiver under any powers contained in any instrument he shall, within thirty days from the date of the passing of the order or of the making of the appointment under the said powers, give notice of the

fact to the Registrar, and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charges maintained under section 130 of the Act. It is not clear in this case whether any entry had been made in the register of charges of the order Or appointment of Receiver in this case. Even granting that such an entry had been made, it would not have the effect of taking away the right of the Cotton Mills Company to exercise the right to vote in respect of the shares in question. We do not also find any substance in the argument based on sections 153B, 187B and 187C of the Act. Section 153 of the Act states that no notice of any trust, express, implied or constructive, shall be entered in the register of members or of debenture holders. Section 153B of the Act requires that notwithstanding anything contained in section 153, well any shares in, or debentures of, a company are held in trust by any person, the trustee shall, make a declaration to the public trustee. Section 187B of the Act provides that save as otherwise provided in section 153B but notwithstanding anything contained in any other provisions of the Act or any other law or any contract, memorandum or articles, where any shares in a company are held in trust by a person as trustee, the rights and powers (including the right to vote by proxy) exercisable at any matinee of the company or at any meeting of any class of members of the company by the trustee as a member of the company cease to be exercisable by the trustee as such member and become exercisable l-l by the public trustee. Section 187C of the Act makes it incumbent upon a person whose name is entered in the Register of Members of a company but who does not hold the beneficial interest in the share in question in such form as may be prescribed specifying the name and other particulars of the person who holds the beneficial interest in such share. The Companies (Declaration of Beneficial Interest in Shares) Rules, 1975 are made in this connection. it is obvious from the foregoing that none of the provisions referred to above has any bearing on the question before us.

Mere appointment of a Receiver in respect of certain shares of a company without more cannot, therefore, deprive the holder of the shares whose name is entered in the Register of Members of the company the right to vote at the meetings of the company or to issue a notice under section 169 of the Act.

The consequence of attachment of certain shares of a company held by a shareholder for purposes of sale in a proceeding under section 149 of the Land Revenue Act is more or less the same. The effect of an order of attachment is what section 149 of the Land Revenue Act itself says. Such attachment is made according to the law in force for the, time being for the attachment and sale of movable property under the decree of a civil court. Section 60 of the Code of Civil Procedure, 1908 says that except those items of E property mentioned in its proviso, lands, houses, or other buildings, goods money, banknotes, cheques, bills of exchange, hands, promissory notes, Government securities, bonds or other securities of money, debts, shares in a corporation and all other saleable property, movable or immovable, belonging to a judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor, or by another person in trust for him or on his behalf, is liable for attachment and sale in execution of a decree against him. Section 64 of the Code of Civil Procedure, 1908 states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. What is forbidden under section 64 of the Code of Civil Procedure is a private

transfer by the judgment-debtor of the property attached contrary to the attachment, that is, contrary to the claims of the decree holder under the decree for realisation of which the attach-

ment is effected. A private transfer under section 64 of the Code of Civil Procedure is not absolutely void, that is, void as against all the world but void only as against the claims enforceable under the attachment. Until the property is actually sold, the judgment-debtor retains title in the property attached. Under Rule 76 of Order 21 of the Code of Civil Procedure, 1908, the shares in a Corporation which reattached may be sold through a broker. In the alternative such shares may be sold in public auction under Rule 77 thereof. On such sale either under Rule 76 or under Rule 77, the purchaser acquires title. Until such sale is effected, all other rights of the judgment-debtor remain unaffected even if the shares may have been seized by the officer of the court under Rule 43 of Order 21 of the Code of Civil Procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or through an order in terms of Rule 46 of Order 21 of the Code of Civil Procedure may have been served on the judgment-debtor or on the company concerned.

On behalf of the appellants, relying upon the decision in *Hawks v. Mc. Arthur & Ors*⁽¹⁾ it is contended that the order of the Collector attaching the shares was in the nature of a charging order which 'deprived the Cotton Mills Company of its rights in them. Having carefully gone through the said decision, we find that it has not much relevance to the case. In that case the Chairman and the Manager of a company had purchased certain shares of the company held by one of its members in two separate lots after paying consideration therefore contrary to Article 13 of the Company's Articles of Association which granted a right of pre-emption to all the other members in respect of the shares in question. Immediately after the said purchases were made another member of the company obtained a money decree against the transferor of the shares and also a charging order over the shares standing in the name of the transferor but which had been sold earlier either to the Chairman or the Manager. He claimed that since the transfer of the shares was contrary to Article 13 of the company's Articles of Association, the transfer was void and hence he was entitled to enforce the charging order against those shares for realising his decretal amount. The Court negatived his claim holding that notwithstanding the complete failure to comply with the company's articles in regard to the procedure to be followed before shares could be transferred, the transferees having paid to the transferor the full consideration for the shares had obtained equitable rights therein and as their rights accrued earlier than the equitable right (1)[1951] 1 A 11 E.R. 22 of the plaintiff under the charging order, their rights must prevail over his claim. It was argued before us that the order of the Collector being an order in the nature of a charging order the Receiver had obtained an equitable right in the shares in question and there being no other legal or equitable right which would prevail over it, the Cotton Mills Company had lost its right to the shares. The statement of facts of the above decision itself shows that it has no bearing on the case before us. It is to be noted that a charging order under the English Law is not the same as an attachment of property or appointment of a Receiver under the Land Revenue Act. We may here state that charging orders under the English Law are made under Order 50 of the English Supreme Court Practice under which the English court may for the purpose of enforcing a judgment or order of that court under which a debtor is required to pay a sum of money to a creditor, make an order imposing on any such property of the debtor as may be specified in the order, a charge for securing the payment of any money due or to become due under the judgment or order- Such an order is referred to as the 'charging order'. A charging order

on the property or assets of the debtor is one of the modes of enforcement of a judgment or order for the payment of money to the creditor. It is, however, not a direct mode of enforcement in the sense that the creditor can immediately proceed to recover the fruits of his judgment, but it is rather an indirect mode of enforcement in the sense that it provides the creditor with security, in whole or in part, over the property of the debtor. It makes the creditor a secured creditor who having obtained his charging order must proceed, as may be necessary according to the nature of the property charged, to enforce his charge in order to obtain the actual proceeds of his charge to satisfy his judgment, in whole or in part. Subject to the other provisions of law, a charge imposed by a charging order will have effect and will be enforceable in the same court and in the same manner as an equitable mortgage created by the debtor by writing under his hand. A short passage in Mull's Code of Civil Procedure (14th Edn), Vol. II at page 1510 is instructive and it reads thus:

"There is no provision in the Code for charging orders, but on the Original Side of the High Courts, which has inherited the older jurisdiction of the Court of Chancery, it is the practice in cases where it is considered undesirable to grant immediate execution to make a charging order in the form made in the case of *Kewny v. Attril* (1886) 34 Ch. D. 34S. When the assets require nursing, the advantage of a charging order is that it enables the Court on the one hand to gain time and on the other hand to protect the decree holder. It also avoids the confusion that might ensue if the Court were to allow a direct attachment while it is administering the assets of the partnership. The effect of a charging order is to constitute the decree-holder a secured creditor although he undertakes to deal with the charge subject to the further orders of the Court."

An order of attachment cannot, therefore, have the effect of depriving the holder of the shares of his title to the shares. We are of the view that the attachment of the shares in the Polytex Company held by the Cotton Mills Company had not deprived the Cotton Mills Company of its right to vote at the meeting or to issue the notice under section 169 of the Act. The fact that 3,50,000 shares have been pledged in favour of the Government of Uttar Pradesh also would not make any difference. Sections 172 to 178-A of the Indian Contract Act, 1872 deal with the contract of pledge. A pawn is not exactly a mortgage. As observed by this Court in *Lallan Prasad v. Rahamat Ali & Anr.*(1) the two ingredients of a pawn are: "(1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the Pawnee and (2) a Pawnee has only a special property in the pledge but the general property therein remains in the pawner and wholly reverts to him on discharge of the debt. A pawn therefore is a security, where, by contract a deposit of goods is made as security for a debt. The right to property vests in the pledge only so far as is necessary to secure the debt -.-The pawner however has a right to redeem the property pledged until the sale." In *Bank of Bihar v. State of Bihar and Ors.* (2) also this Court has reiterated the above legal position and held that the pawnee had a special property which was not of ordinary nature on the goods pledged and so long as his claim was not satisfied no other creditor of the pawner had any right to take away the goods or its price. Beyond this no other right was recognised in a pawnee in the above decision. Under section 176 of the Indian Contract Act, 1872 if the pawner makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon (1)[1967] 2 S.C.R. 233 at p. 238-239.

(2)1971] Supp, S.C.R. 299.

the debt or promise, and retain the goods pledged as a collateral A security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. in the case of a pledge, however, the legal title to the goods pledged would not vest in the pawnee. The pawnee has only a special property. A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense a pledge differs from a mortgage. In view of the foregoing the pawnee in the instant case i. e. the Government of Uttar Pradesh could not be treated as the holder of the shares pledged in its favour. the Cotton Mills Company continued to be the member of the Polytex Company in respect of the said shares and could exercise its rights under section 169 of the Act.

It may be stated here that the Government of Uttar Pradesh and the Collector who are parties to this appeal have not questioned the correctness of the judgment of the High Court.

One other subsidiary contention urged on behalf of the appellants relates to the effect of an order made by the Central Government on April 13, 1978 under section 18 AA (1)'(a) of the Industries (Development and Regulation) Act, 1951 taking over the management of Sideshow Cotton Mills along with five other industrial units belonging to the Cotton Mills Company which was the subject matter of dispute in *Sideshow Cotton Mills v. Union of India*(1) and the order of extensions passed by the Central Government on November 26, 1983 which is the subject matter of dispute in a case now pending before this Court. It is urged on behalf of the appellants that on the passing of the above said orders the Cotton Mills Company lost its right to exercise its voting rights in respect of the shares in question. There is no substance in this contention. What was taken over under the above said orders was the management of the six industrial units referred to therein and not all the rights of the Cotton Mills Company. The shares belong to the company and the orders referred to above cannot have any effect on them. The Department of Company Affairs, Government of India rightly expressed its view in the letter written by C. Khushaldas, Director in the Department of Company Affairs on April 9, 1979 to B. M. Kaul, Chairman of the Cotton Mills Company that the voting rights in respect of these shares continued to vest with the Cotton Mills Company and the manner in which those voting rights were to be exercised was to be determined by the Board of Directors (1) 11981]2 S.C.R.533 of the Cotton Mills Company. Hence the passing of the orders under section 18AA (1) (a) of the Industries (Development and Regulation) Act, 1951 has no effect on the voting rights of the Cotton Mills Company.

It is also significant that the Directors of the Polytex Company who what that a Receiver had been appointed in respect of the shares in question, that they had been attached by the Collector, that a part of them had also been pledged in favour of the Government of Uttar Pradesh and that orders had been passed under section 18AA (1) (a) of the Industries (Development and regulation) Act, 1951 taking over six industrial units of the Cotton Mills Company did not question the validity of the notice. The Polytex Company had in this case rightly treated the registered holder i.e. the Cotton Mills Company as the owner of the shares in question and to call the meeting in accordance with the notice issued under section 169 of the Act. The appellant cannot, therefore, be allowed to raise any dispute about the validity of the meeting on any of the grounds referred to above.

In the result the appeal fails and it is dismissed with costs. The costs of all the parties to the above appeal and other connected cases shall, however, be borne by the Polytex Company.

Subject to the above order, the order passed by this Court on February 1, 1985 shall remain in force.

M.L.A.

Appeal dismissed.