

PETITIONER:
THE HIMACHAL PRADESH UNIVERSITY, SHIMLA

Vs.

RESPONDENT:
THE PUNJAB UNIVERSITY CHANDIGARH & ORS.

DATE OF JUDGMENT: 03/10/1996

BENCH:
N.P. SINGH, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar. J.

Leave granted in all these three Special Leave petitions.

By consent of learned advocates of parties the appeals were finally heard and are being disposed of by this common judgment.

The contesting parties in these appeals are two universities, namely, Himachal Pradesh University, Shimla and Punjab University, Chandigarh. The dispute centers round the ownership and possession of immovable properties situated at Shimla in the State of Himachal Pradesh. These properties consist of St. Bernard. Building and Dingle Lodge, located at Upper Kaithu, Shimla. It is the case of the appellant-university that these properties have vested in it by virtue of Section 8 of the Himachal Pradesh University Act, 1970 (hereinafter referred to as 'the Act'). The respondent-university opposes this contention and submits that these properties belonged to the respondent-university and their possession by the appellant-university was only as tenant. The contention of the appellant-university has stood rejected in the proceedings initiated before the Trial Court and subsequently in the hierarchy of proceedings in further appeal and revision before the High Court. Decrees for possession have come to be passed against the appellant-university by the Trial Court as well as the Appellate Court and which have got confirmed by the High Court.

There separate proceedings which have culminated into these three appeals were initiated by the respondent-university against the appellant-university. First proceeding was an application for eviction filed by the respondent-university under Himachal Pradesh Urban Rent Control Act praying for an order of eviction on the ground that the appellant-university had not paid rent in respect of these premises. It was also alleged that it had sublet the premises to other persons without the written consent of the landlord, respondent-university. Two other suits were also filed by the respondent-university before the Subordinate judge, 1st Class (I), Shimla against the

appellant-university and another for recovery of possession of two suites, namely, suite no. 2 and suite no. 4 in the very same St. Bernard Building together with damages for use and occupation. In these two suits the respondent-university contended that it owned the property and appellant was a tenant on payment of rent and it had already surrendered its tenancy qua these suites to the respondent. That accordingly the suites were locked and subsequently the appellant-university or its servants broken open the locks and had occupied the suites and also caused damage to the articles. Punjab University thus prayed for recovery of possession of the suites and also claimed damages. In all these proceedings common defence was put forward by the appellant-university, namely, by virtue of Section 8 of the Act these properties had vested in the appellant-university and, therefore, the respondent-university had no right, title or interest therein. This defence was rejected by the Trial Court and it was held that respondent-university was the owner of these premises and the appellant was only a tenant as it had defaulted in payment of rent, application for eviction was required to be allowed and the suits were also required to be decreed as the appellant had no right to remain in the possession thereof. The appeals preferred against decrees in the suits got dismissed by the Appellate Court. Similarly the order passed in eviction proceedings also got confirmed by the Appellate Court and that is how the appellant-university filed two second appeals against decrees passed in title suits of the respondent-university and also moved a revision application against the decree for possession as granted in eviction proceedings by the Rent Controller. As all these three proceedings raised common contention between the parties they were heard together and were disposed of by the common judgment of the High Court. The second appeal as well as revision application of the appellant-university were dismissed and that is how the appellant-university is before us in the present proceedings.

The short question which was placed for our consideration by the learned counsel for the appellant-university was whether the appellant-university had become the owner of the suit properties by virtue of Section 8 of the Act. It was vehemently submitted by the learned counsel for the appellant-university that in view of the express language of the said Section all the assets and liabilities of Punjab University Regional Centre for post Graduated Studies and Punjab University Evening College, Shimla vested in the appellant-university. That these two centres were run by the respondent-university prior to the application of Section 8 of the Act. That earlier Shimla was also a part and parcel of Punjab State and by virtue of the Punjab Reorganisation Act, 1966 (hereinafter referred to as 'as Reorganisation Act') part of the territories of the Punjab State got bifurcated and a separate State of Himachal Pradesh was ultimately constituted. That by virtue of Section 72 of the Reorganisation Act the appellant-university became a successor of the Punjab University qua its earlier functioning and operation at Shimla. That entitled the appellant to step in the shoes of the respondent-university qua these premises and the institutions which were earlier belonging to the respondent-university and which were functioning at Shimla fell within the local jurisdiction of the appellant, successor-university. This was the legal effect of Section 72(1) read with Section 72(3) of the Reorganisation Act. It was next submitted that once that happened by virtue of Section 8 of

the Act all the assets and liabilities of the Punjab University Regional Centre for Post Graduate Studies and Punjab University Evening College, Shimla got statutorily vested in the appellant-university. That these two institutions of the Punjab University were being run at the suit premises and, therefore, the suit premises automatically got vested in the appellant-university. That due to some misconception about the correct legal position, the Vice Chancellor of the appellant-university had acknowledged that the appellant-university had no right, title or interest in the suit premises and was to be permitted to continue as tenant thereof but having realised the legal position payment of rent for occupation of the premises was suspended by the appellant-university and that there could not be any estoppel about the correct legal position as envisaged by Section 8 of the Act and, therefore, the High Court was in error in taking the view that Section 8 did not apply to the facts of the present case and that the suit premises did not vest in ownership of the appellant-university.

On the other hand learned counsel for the respondent-university submitted that since last number of years the appellant-university had treated respondent as the owner of the premises and had acknowledge that they were tenants of the premises. That the subsequent somersault taken by the appellant-university was not legally sustainable. That Section 8 of the Act could not apply to the facts of the case as correctly held by the High Court for the simple reason that the appellant had not established by any cogent evidence that the concerned Centre for post Graduate Studies and the Evening College at Shimla belonged to the Punjab University. That on the contrary the finding of the Trial Court was that this Centre and College were tenants of the building belonging to the Punjab University and hence the building could not vest in the appellant-university by virtue of section 8. It was also submitted that even assuming that the Centre and the College were departments or limbs of the Punjab University there was nothing on the record to show that the premises in question in which this Centre and College were located belonged to either of them or had become the assets of either of them. Even on that ground, therefore, Section 8 would be out of picture. The appellant, therefore, continued to be tenant in arrears and was rightly ordered to be evicted from the premises. Similarly the suits in favour of the respondent were also decreed as the appellant had no right to remain in possession of these two suites which were subject-matter of the Civil Suits.

In order to resolve this controversy between two contesting universities it is necessary to keep in view certain introductory facts. Before 1966 Shimla was part of Punjab State and Punjab University was the only university which was functioning both at Chandigarh and also at Shimla which was within its territorial jurisdiction. It also appears that the respondent-university was running two centres at Shimla, one being the Punjab University Regional Centre for post Graduate Studies and another being Punjab University Evening College, Both these institutions were run by the respondent-university at St. Bernard Building and Dingle Lodge situated at Shimla. These premises were gifted to the respondent-university by a registered Gift Deed dated 7th December 1959 marked as Ex, PW1/A. The said Gift Deed was made by Pt. Thakur Datt Sharma of Dharmarth Trust, Thus from 7th December 1959 the suit premises came into the ownership of respondent-university as a donee and in those

premises the respondent was running the aforesaid institutions at Shimla. In 1966 the bigger State of Punjab came to be bifurcated and on account of reorganisation of the State two separate State of Punjab and Haryana and New Union Territories of Chandigarh and some part of the existing Himachal Pradesh State territory then known as union Territory of Himachal Pradesh came to be formed. The latter territory subsequently became the State of Himachal Pradesh. Section 72 of the Reorganisation Act on which strong reliance is placed by the learned counsel for the appellant along with its sub-sections (1) and (3) reads as Under :

"72. General provisions as to statutory cooperations, (1) Save as otherwise expressly provided by the foregoing provisions of this part, where any body corporate constituted under a Central Act State Act or provincial Act for the existing State of Punjab or any part thereof serves the needs of the successor State or has, by virtue of the provisions of part II become an inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate.

(2)...

(3) For the removal of doubt it is hereby declared that the provisions of this section shall apply also to the Punjab University constituted under the Punjab University Act 1947, (East Punjab Act 7 of 1947) the Punjab Agricultural University constituted under the Punjab Agricultural University Act, 1961, (Punjab Act 32 of 1961) and the Board constituted under the provisions of part III of the Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925)."

In view of the aforesaid statutory provisions of the Reorganisation Act it becomes clear that from 1966 onwards the erstwhile Punjab University was succeeded by the appellant-university insofar as its functioning and operation at Shimla were concerned. Upto this stage there cannot be any serious dispute between the parties. However the real dispute between the parties centers round the operation of Section 8 of the Act which reads as under :

"8. Transfer of assets and liabilities and of employees of certain institutions to the University. On the commencement of this Act, the assets and liabilities of Punjab University-Regional Centre for post Graduate

Studies, Shimla and the Punjab University Evening College, Shimla, shall stand transferred to and shall vest in the University, in accordance with the terms and conditions mutually agreed to between the University and the Punjab University, Chandigarh. All officers and other employees of these institutions holding office as such immediately before the commencement of this Act, shall, on such commencement become the officers and other employees of the University;

provided that :-

(1) such officers and employees of the above-mentioned institutions shall be allowed to exercise an option whether or not they wish their services to be taken over by the University;

(2) the existing rights and service conditions of such employees who opt for service in the University shall be protected;

(3) any service rendered by any such officer or other employee before such transfer of his service to the University shall be deemed to be service rendered in connection with the administration of the University, on the condition that their leave, pension and provident fund and gratuity contribution in respect of the service rendered by them to the Punjab University, Chandigarh, shall be reimbursed to the University by the Punjab University, Chandigarh;

Provided further that in the event of any dispute or difficulty in the matter of implementation of the provisions of this section the matter shall be referred to the Central Government, whose decision shall be final."

A mere look at the aforesaid provision shows that out of different institutions belonging to the respondent-university which might be functioning at Shimla or in any other part of Himachal Pradesh which came under the operational jurisdiction of appellant-university by virtue of Reorganisation Act, the Legislature of the State of Himachal Pradesh in its wisdom selected two such institutions which were earlier run by the Punjab University at Shimla, namely, Punjab University Regional Centre for post Graduate Studies and Punjab University Evening College, Shimla for the purpose of vesting its assets and liabilities in the successor-university, namely, the appellant, For applicability of section 8 of the Act to the suit premises two conditions are required to be satisfied, (i) that the concerned two institutions at Shimla belonged to the erstwhile Punjab University; and (ii) that the assets and liabilities of these two institutions included, amongst

others, the suit premises, namely, St. Bernard Building and Dingle Lodge wherein they were run so that they could also vest in the appellant-university as successor-in-title to the respondent-university, So far as the aforesaid two conditions for applicability of Section 8 are concerned it may be noted that the learned Appellate Judge came to the following finding:

"While deciding issue No. 1, the learned Rent Controller had held that the respondent is not the owner of premises in question but is only a tenant thereof and the relationship of landlord and tenant exists between the parties. This finding objections on behalf of the respondent despite opportunity nor has been assailed at the time of arguments. I do not find any infirmity in the findings returned by the Rent Controller on this issue and accordingly confirm the same."

This finding of the appellate Court was not challenged by the appellant-university in appeal as clearly noted by the Appellate Court in paragraph eleven of its judgment. However as the said contention which went to the root of the matter was allowed to be urged by the High Court in further appeals and revision we have considered this contention on its own merits. While considering this contention, we must observe that the finding reached by the Trial Court that the institutions, namely, Centre for post Graduate Studies and the Evening College, Shimla were the tenants of the Punjab University, cannot be sustained in the light of the express language of Section 8 of the Act. Section 8 itself contemplates that these institutions belonged to Punjab University otherwise there would have been no occasion for the Legislature to lay down that the terms and conditions of vesting of these institutions in the appellant-university would be mutually agreed to between the appellant-university on the one hand and Punjab university, Chandigarh on the other. Implicit in this provision is the statutory assumption that these institutions which were run at Shimla belonged to the respondent-university, That also contra-indicates the contention of the respondent-university that it was the landlord of the premises and the centres which were run therein were its tenants, It has to be kept in view that it is nobody's case that these two centres had any legal entity or were corporation soles. It appeared they were just the limbs of respondent-university and were part and parcel of its own establishment and organisation. We must, therefore, hold disagreeing with the Trial Court as well as the High Court that the Punjab University Regional Centre for post Graduate Studies and Punjab University Evening College at Shimla which were being run at the suit premises belonged to respondent-Punjab University and were owned by it. The first condition for applicability of Section 8, therefore, stands satisfied. However the real difficulty centers round applicability of the second condition which must also be cumulatively found to be satisfied before the sweep of Section 8 can be effectively utilised by the appellant-university for proving its ownership over the suit premises. It must, therefore, be shown by the appellant-university that not only the aforesaid two institutions at Shimla belonged to the respondent-university but the suit premises wherein these

institutions were functioning and located also formed a part and parcel of the assets of the said two institutions. It is obvious that unless they belonged to these institutions they would not get vested by the statutory operation of Section 8 in the appellant-university. Learned counsel for the appellant despite his best efforts could not point out any relevant evidence for showing that the suit premises, namely, the St. Bernard Building and the Dingle Lodge which admittedly belonged to the respondent-university as per the Gift Deed of 1959 had at any subsequent time got handed over in the ownership of the aforesaid two institutions run by the respondent-university at Shimla. In other words the ownership of these suit premises continued to remain with the respondent-university wherein these two institutions were permitted to be run by the respondent-university presumably as its licensees. All the assets of these institutions comprising of movable properties and cash as well as other furnitures and fixtures located at these premises might have got vested in the appellant-university along with the liabilities of these institutions by virtue of Section 8 but the further question whether the very building in which these two institutions were functioning had also got transferred in ownership from the Punjab University to these two institutions and had thus become their assets was required to be answered in the light of the available evidence on record. Learned counsel for the appellant was not able to enlighten us on this aspect. He could not point any evidence to show as to when if at all respondent-university divested itself of its ownership of these premises and vested it in these two institutions. On the contrary the evidence on record suggested that the appellant-university consistently took the view that even though the institution with assets and liabilities might have vested in the appellant-university by virtue of Section 8 the ownership of the building had not got vested in these institutions which had no independent legal existence. And that is how years back the Vice Chancellor of the appellant-university by letter Ex. P-8 had requested the respondent-university to permit the appellant-university to continue these institutions in the suit premises for some time and had agreed to pay rent and that is how by Ex. P-11 the respondent-university having accepted this request of the vice chancellor of the appellant-university had decided that the suit premises may be placed at the disposal of the appellant-university for a period of two years on the same terms on which they were made available to Centre for post Graduate Studies and the Evening College. It must, therefore, be held that the appellant-university failed to establish the second condition for the applicability of Section 8 of the Act, namely, that the suit premises were belonging to these two institutions and were forming part and parcel of their assets at Shimla. It is easy to visualise that respondent-university could run its own institutions which may also be treated as its own departments at Shimla either in a rented premises or in its own premises by permitting the concerned institutions to occupy them on their behalf, but for applicability of Section 8 and for statutory vesting of these premises in the appellant-university it must be shown that by any overt act on the part of the respondent-university which was admittedly the owner of the premises it had parted with its ownership in favour of these institutions or had treated them as the full owners thereof so that the institutions could be said to be having the premises themselves as a part and parcel of their own assets. Till that stage was reached

statutory vesting of these premises in the appellant-university by virtue of Section 8 could not be reached. On this aspect, therefore, in the absence of any relevant evidence on record no finding could be reached in favour of the appellant. Learned advocate for the appellant submitted that he has got evidence by way of public documents to point out that the respondent-university used to sanction grants for running these institutions at Shimla. Even assuming that to be so all that could be held in favour of the appellant is that these institutions belonged to the respondent-university. But we have shown earlier that by itself would not be sufficient for attracting Section 8 of the Act. Further requirement of Section 8 was to the effect that these suit premises wherein these institutions were located must have become part and parcel of the assets of these institutions. As that second and more important condition is found to be lacking in the present case the appellant-university cannot get the benefit of statutory vesting of these premises in its favour by virtue of Section 8 of the Act. The sole basis of the defence of the appellant against the legal actions taken out by respondent-university is found to be unsustainable. Consequently no relief can be given to the appellant-university on that ground. There is no dispute that the appellant-university had not paid rent to the respondent for the concerned period and was a defaulter. Hence on merits also it could not be said that the Trial Court as well as the appellate Court and the High Court had committed any error in decreeing the suits as well as eviction proceedings initiated by the respondent against the appellant.

In the result these appeals fail and are dismissed. There shall be no order as to costs.