

PETITIONER:
FRUIT AND VEGETABLE MERCHANTS UNION

Vs.

RESPONDENT:
DELHI IMPROVEMENT TRUST

DATE OF JUDGMENT:
06/11/1956

BENCH:
SINHA, BHUVNESHWAR P.
BENCH:
SINHA, BHUVNESHWAR P.
JAGANNADHADAS, B.
IMAM, SYED JAFFER

CITATION:
1957 AIR 344 1957 SCR 1

ACT:

Ejectment-Market constructed by Improvement Trust on Government land with Government money whether market Government Premises-Whether lessee of market Protected from ejectment- Connotation of the word 'vest'-Delhi and Ajmer Rent Control Act, (XXXVIII Of 1952), s. 3(a)-U. P. Town Improvement Act, (U. P. Act VIII of 1919) as extended to Delhi, s. 54A(2).

HEADNOTE:

Under an agreement the Government placed certain lands belonging to it at the disposal of the Improvement Trust for the construction of a market. The Trust constructed the market with funds advanced by the Government by way of loan at interest. Under the agreement the Trust had to pay a certain fixed sum by way of revenue on the property; the income from the market had to be applied to the payment of interest on the money advanced by Government, and to the payment of expenses for the management of the market and the surplus had to be placed at the disposal of, Government to be spent according to its directions. The lessee of the market from the Trust filed a suit for a declaration that it was protected from ejectment by the provisions of the Delhi and Ajmer Rent Control Act. It was contended by the lessee that the market was the property of the Trust to which the Act applied. It was further contended by the lessee relying upon the language of s. 54A(2) of the U. P. Town Improvement Act, that the market vested in the Trust for otherwise it could not upon transfer by the Trust vest in the Chief Commissioner as provided by this section.

Held, that upon a proper construction of the terms of the agreement between the Trust and the Government, the Trust was in the position of a statutory agent of the Government and that the market was Government premises to which the provisions of the Delhi and Ajmer Rent Control Act were not applicable by virtue of s. 3(a).thereof, and consequently the lessee was liable to ejectment upon termination. of the period of the lease.

The word 'vest' has not got a fixed connotation, meaning in all cases that the property is owned by the person or authority in whom it vests. It may vest in title, or it may

vest in possession or it may vest in a limited sense.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 32 of 1955.

Appeal from the judgment and decree dated May 5, 1954, of the High Court of Punjab at Chandigarh in Regular First Appeal No. 115 of 1953 arising out of the decree dated -June 6, 1953, of the Court of the Subordinate Judge, 1st Class, Delhi, in suit No. 26 of 1953.

Dewan Chaman Lal and Ratan Lal Chawla, for the appellant.

M. C. Setalvad Attorney-General for India, Porus A. Mehta and R. H. Dhebar, for the respondent.

1956. November 6. The Judgment of the Court was delivered by

SINHA J.-The main question for determination in this appeal from the concurrent decisions of the courts below is whether the Delhi and Ajmer Rent Control Act, XXXVIII of 1952 (which hereinafter will be referred to as the Control Act) is applicable to the premises in question. The courts below have come to the conclusion that in view of the provisions section 3(a) of the Control Act the market called the New Fruit and Vegetable Market, Subzimandi, under the administration the respondent, the Delhi Improvement Trust, (which hereinafter will be referred to as the Trust) is Government property to which the provisions of the Act are not attracted. This appeal has been brought to this Court on a certificate granted by the High Court of Judicature of the State of Punjab that the case involved a substantial question of law as to the legal status of the respondent vis a vis the Government.

The sequence of events leading up to the institution of the suit by the appellant "The Fruit and Vegetable Merchants Union, Su bzimandi" a registered body under the Indian Trade Unions Act, giving rise to this appeal may shortly be stated as follows:

By an agreement dated, March 31, 1937, (Exhibit D-5) between the Secretary of State for India in Council and the Delhi Improvement Trust, which will have to be set out in detail hereinafter and the construction of

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which is the main point in controversy between the parties, a certain area of the land admittedly belonging to Government was placed at the disposal of the Trust for the "orderly expansion of Delhi under the supervision of a single authority." The said property was compendiously called "the Nazul Estate." By a letter dated May 1/2, 1939 (not exhibited but filed in the High Court at the appellate stage) the Chairman of the Trust forwarded a copy of the resolution No. 551 dated April 24, 1939, (Exhibit D-15) to the Chief Commissioner of Delhi. The resolution sets out the scheme for the construction of the new Subzimandi Fruit Market on a gross area of 10.87 acres including certain lands which till then did not vest in the Trust. The Chairman asked for administrative sanction of the Government of India to place the additional area at the disposal of the Trust on the same terms as those applicable to the Nazul Estate aforesaid held under the agreement, Ex. D-5. The resolution aforesaid sets out the object and history of the scheme. It contains the categorical statement that "Government is the owner of all the land included in the scheme. The position according to the revenue records is given in the statement on the next page." The scheme then

sets out in great detail the several structures to be constructed and the, profit and loss figures. Under the heading " Computation of revenue surplus " occur the following significant statements very much relied upon by the appellant:-

"The revenue surplus of Rs. 4,530/- is made up as follows; and is based on the recommendation that the Trust shall own and maintain the market.

Under the heading " Future Jurisdiction " the following significant passage occurs:-

At this stage, if the suggestion is accepted that the, Trust should own and run the market at least until it is firmly established, and in view of the fact that Government are -the sole owners of the land, no difficulty is anticipated due to divided territorial jurisdiction of the two local authorities and no change is proposed.

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The letter enclosing the resolution of the Trust as aforesaid contains a summary of the scheme, a portion of which is as follows:

" An estimated capital expenditure of Rs. 4.73 lakhs is involved. On this capital expenditure there will be a capital deficit of Rs. 4.20 lakhs and a recurring revenue surplus of Rs. 4,530. This financial result assumes ownership and management of the market by the Trust, and takes into account all charges on maintenance and day-to-day management which would otherwise fall to a local body. The scheme involves no acquisition of land, but assumes transfer free of charge of an area of 10.87 acres of Government land, all of which except for 1,510 square yards, falls within the limits of the Civil Lines Notified Area Committee." (Underlined by us).

In answer to this communication from the Trust, the Chief Commissioner sent the letter (Ex. D-8) dated May 13, 1939, sanctioning under s. 22-A of the Trust Law the scheme of the " New Fruit and Vegetable Market " as proposed in the resolution aforesaid at a cost not exceeding Rs. 4,73,186. The sanction is in terms made subject to the remarks (1) that "the whole of the land required for the construction of the new market is the property of the Government ", and (2) that "the trust will administer the new market on its completion." It will thus appear that it was clearly understood that the land on which the market was to be constructed would continue to be the property of the Government in modification of the proposal made by the Trust as aforesaid, the Trust only being vested with the power to administer the new market.

On receipt of the letter aforesaid of the Chief Commissioner, the Chairman of the Trust requested the former to obtain the orders of the Government of India to place the additional land required for the market at the disposal of the Trust under s. 54-A of the United Provinces Town Improvement Act, VIII of 1919, (which will hereinafter be referred to as the Improvement Act) as extended to the Province of Delhi, "on the same terms applicable to other Nazul Estate held under the agreement between the Trust and the Government of India" (Ex. D-7). By his letter dated

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August 10, 1939, (Ex..D-6) the Chief Commissioner forwarded the orders dated June 21, 1939, of the Government of India agreeing to the proposal aforesaid of the, Trust placing the additional area at the disposal of the Trust on the original terms aforesaid. This is the genesis of the New Fruit and Vegetable Market, Subzimandi, which hereinafter will be referred to as the Market, for a period of six years with

effect from May 25, 1942, at an annual rent- of Rs. 35,000 rising every year by Rs. 2,000 to Rs. 45,000 in respect of the sixth year of the lease. In anticipation of the termination of the lease period aforesaid the Trust advertised the auction of the market for a fresh settlement. That occasioned the suit for an injunction by the plaintiff against the Trust in the Court of the Senior Subordinate Judge of Delhi, instituted on March 18, 1948. The Court granted the plaintiff an interim injunction restraining the defendant from putting the market to auction. The said ex parte order of injunction was contested by the Trust with the result that the trial Court dissolved that injunction. The plaintiff carried an appeal to the High Court of Punjab at Simla. During the pendency of the appeal a settlement was arrived at between the parties and the plaintiff's offer of Rs. 1,50,000 as annual rent of the market on the expiry of the lease was accepted by the Trust. This settlement is evidenced by the resolution of the Trust dated February 24, 1949 (Ex. D-13). In pursuance of that settlement a fresh lease was executed. By the indenture(Ex.D-4)dated April 22, 1949, the plaintiff was granted a fresh lease for the period May 25, 1948, to March 31, 1950, at an annual rent of Rs. 1,50,000. One of the terms of the' lease, which is a registered document, was-

" That the lessee shall on expiry of the lease or on its determination by the lessor, vacate the premises and deliver its peaceful possession to the lessor. If the lessee fails to do so, he shall be liable to pay double the rent as liquidated damages for the unauthorised period of occupation till such time as he vacates it or he is ejected by process of law."

Paragraph 22 of the indenture aforesaid contains the following important admission:-

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that both the lessor and lessee agree that the premises in dispute are owned by the Government and the provisions of the Delhi Ajmer Merwara Rent. Control Act (1947) do not apply to the same."

The effect of this admission is also one of the controversies between the parties and shall have to be adverted to later.

It appears that during the pendency of the second lease aforesaid, negotiations had started between the parties for extension of the period of the lease. The plaintiff made an offer of a fresh lease for a further period of five years at an annual rent of rupees two lakhs. But the Trust by its resolution dated May 25, 1950, (Ex. D-12) agreed only to extend the period by two years " on the existing conditions, subject to enhancement of rent to Rs. 2 lakhs per year." The plaintiff's case in the plaint is that these onerous terms successively enhancing the rent to Rs. 2 lakhs per year were agreed to by it as it had no other alternative in view of the plaintiff's need. The plaintiff has been paying the enhanced rent of Rs. 2 lakhs per year in view of the resolution aforesaid of the Trust but has all the same started proceedings under s. 8. of the Control Act, for fixation of standard rent in respect of the market. The Trust got an advertisement inserted in the Hindustan Times, New Delhi, dated March 5, 1953, inviting tenders for the lease of the market for a period of three years from April 1, 1953. The plaintiff's case in the plaint is that the tenancy in favour of the plaintiff still subsisted and had not been terminated in accordance with law. That was the cause of action for the plaintiff to institute the present suit on March 9, 1953. The plaintiff's prayer in the plaint

is that a decree for a permanent injunction may be passed in favour of the plaintiff restraining the defendant from evicting the plaintiff from the market.

The suit was contested by the Trust on the allegations that the market had been constructed on Nazul land under the authority of the Delhi State Government with Government funds, that the market was Government property and was only being managed by the defendant on behalf of the Government, that the

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Control Act by virtue of s. 3 (a) thereof was not applicable to the premises in question and that therefore the plaintiff was liable to be ejected as the term of its lease had expired. Reliance was also placed on behalf of the defendant on the provisions of the Government Premises (Eviction) Act, XXVII of 1950, read with the Requisitioning and Acquisition of Immovable Property Act, XXX of 1952.

On those pleadings a number of issues were joined between the parties of which the most important is issue No. 1-

" Whether the property in dispute belongs to the Government within the meaning of s. 3 (a) of the Rent Control Act, 1952 ?"

Both the courts below have answered that issue in the affirmative, that is to say, in favour of the defendant. The plaintiff prayed for and obtained the necessary certificate from the High Court that the case involved substantial questions of law as to the interpretation of the relevant statute and the agreement (Ex. D-5) between the Government of India and the Delhi Improvement Trust. Hence this appeal.

It has been contended on behalf of the appellant that on a true construction of the provisions, particularly s. 54A of the Improvement Act as applied to the Province of Delhi and the agreement (Ex. D-5) between the Government of India and the Trust, as also of the correspondence that passed between the Chief Commissioner of Delhi and the Trust, the land on which the market was constructed and the structure itself belonged to the Trust and that therefore the provisions of the Control Act were applicable to the tenancy created by the Trust in favour of the plaintiff; and that being so, the plaintiff could not be ejected by the defendant on the expiry of the term or the extended term of the lease. On the other hand, it has been argued on behalf of the defendant-respondent that the Trust is the statutory agent of the Government and has to function in accordance with the provisions of the statute aforesaid, namely, the Improvement Act. The agency was created under the provisions of s. 54A (1)

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of the Improvement Act, the terms of the agreement being incorporated in the indenture, Ex. D-5, dated March 31 1937. The argument further is that in accordance with the scheme as embodied in the agreement the Government was to hand over to its agent, the Trust, Government property which vests in possession of the agent who has to manage and develop the property with funds made available to it by Government. Proper accounts have to be kept by the Trust of the monies thus advanced by Government in a separate account. The Trust has also to pay a certain fixed sum by way of revenue on the property placed at its disposal. The income from the property in the hands of the Trust has to be applied to payment of interest on money advanced by Government at a specified rate, as also to expenses for the management and improvement of the property and any surplus left over out of the income of the property in the hands of

the Trust after meeting all the outgoing has to be placed at the disposal of Government to be spent according to its directions. Thus the case of the respondent is that no legal title was created in favour of the Trust and the land, as also the structures constructed by the Trust with the monies thus advanced by Government are the property of the Government. The Trust as the statutory agent has only to manage and develop the property in accordance with schemes sanctioned by Government. Consequently, it was argued that the market in question belongs to Government and is not governed by the Control Act.

The question as to in whom the title to the market in question vests may be discussed in two parts, (1) title to the land on which the market is situate, and (2) title to the buildings admittedly constructed by the Trust. Adverting first to the question of title in respect of the land, it is common ground that before it was placed at the disposal of the Trust it was Government property. The question, therefore, naturally arises whether either by the provisions of section 54A relied upon by both the parties in this connection, or by virtue of the terms of the indenture aforesaid or by the combined operation of the two, title to the land has become vested in

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the Trust. The appellant contends it is so vested. The respondent contests this proposition and contends that there are no words in the statute or in the agreement which either separately or together can be said to have transferred the pre-existing title of the Government to the Trust. It is pointed out on behalf of the respondent that section 54A only authorises Government to place the land in question "at the disposal of the Trust" which has to hold it in accordance with the terms agreed upon between them, as evidenced by the indenture Ex. D-5. Let us examine those terms. The agreement provides, inter alia, that with a view to the orderly expansion of Delhi under the supervision of a single authority the Government agreed to place at its disposal "the Nazul Estate" (described in Schedule 1), with effect from April 1, 1937. One of the conditions stipulated was that the "Trust shall hold and manage the said Nazul Estate on behalf of the Government." These words cannot be construed as transferring title to the Nazul Estate from Government to the Trust. They amount to constituting the Trust as an agent of the Government to hold possession of the property and to manage the same for the purpose for which the Trust had been created. The Trust is enjoined to use its best endeavours for the improvement and -development of the said Nazul Estate in accordance with the provisions of the Improvement Act, "provided that no expenditure shall be incurred upon the purchase of land to be added to the said Nazul Estate unless the proposal to make the purchase has been specifically included in an Improvement Scheme sanctioned under section 42 of the said Act." Particular reliance was placed on behalf of the appellant on the following terms in the indenture to show that the title to the Nazul Estate vested in the Trust:

"The Trust may sell or lease any land included in the said Nazul Estate in pursuance of the provisions of an Improvement Scheme sanctioned under section 42 of the said Act.

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The Trust may, otherwise than in pursuance of an Improvement Scheme sanctioned under section 42 of the said Act, sell any land included in the said Nazul Estate."

In order to appreciate the true legal position it is necessary here to examine some of the provisions of the Improvement Act bearing on this aspect of the case. Section 22-A occurring in Chap 111-A vests the Trust with the power to undertake any works and incur any expenditure for the improvement or development of the area to which the Act may have been extended. Section 23 in Chap. IV sets out in detail what is meant by "An improvement Scheme." It lays down that the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme, the construction or reconstruction of buildings. the sale, letting or exchange of any property comprised in the scheme and doing of all incidental acts necessary for the execution of the scheme may be undertaken by the Trust. Section 24 sets out the different types of improvement schemes including a general improvement scheme, a re-building scheme, a re-housing scheme, a development scheme etc., and the sections following s. 24 lay down in detail the scope of the different types of improvement schemes enumerated in s. 24. Section 42 requires the Chief Commissioner to announce an improvement scheme sanctioned by him by notification and thereupon the Trust embarks upon the execution of the scheme. Then comes Chap. V dealing with the powers and duties of the Trust when a scheme has been sanctioned. In this chapter occur ss. 45 to 48 which provide for the vesting of certain properties in the Trust. Section 45 lays down the conditions and the procedure according to which any building, street, square or other land vested in the Municipality or Notified Area Committee may become vested in a Trust. Similarly, s. 46 deals with the vesting in the Trust of properties like a street or a square as are not vested in a Municipality or Notified Area Committee. These sections, as also ss. 47 and 48 make provision for compensation and for empowering the Trust to deal with such property

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vested in it. The vesting of such property is only for the purpose of executing any improvement scheme which it has undertaken and riot with a view to clothing it with complete title. As will presently appear, the term "vesting" has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership, or only possession for a particular-purpose, or clothing the authority with power to deal with the property as the agent of another person or authority.

Coming back to the terms of the indenture with reference to the power of the Trust to sell or lease any land included in the Nazul Estate, certain conditions are laid down for the exercise of the aforesaid power to transfer. The Trust is empowered to sell any land included in the Nazul Estate on its own authority only in cases where the sale is for full market value and which does not exceed Rs. 25,000/-.. -In other cases the transaction has to be sanctioned either by the Chief Commissioner or by Government and in every case the forms of conveyances and leases by the Trust have to be approved by Government. It would thus appear that the power to transfer by way of sale, lease or otherwise, vested in the Trust is not an unlimited or an unqualified power but a power circumscribed by such conditions as the Government or the Chief Commissioner, as the case may be, thought fit to impose. The imposition of those conditions is not consistent with the title to the property vesting absolutely in the Trust. On the other hand, the imposition of those conditions is more consistent with the proposition contended for by the learned Attorney-General on behalf of the res-

pondent that the Trust was only constituted a statutory agent on behalf of the Government in accordance with the provisions of the Improvement Act and the terms of the indenture, Ex. D-5. It is noteworthy that there are no provisions either in the Improvement Act or in the indenture, Ex. D-5, to the effect that the title to the Nazul Estate vested in the Trust. It must, therefore, be held that no grounds have been made out for holding that title to the land on which the market stands was conveyed by Government to the Trust.

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We turn now to the question whether apart from title to the land, title to the building standing upon the land is vested in the Trust. In order to examine the contentions raised on behalf of the appellant-it is necessary to set out the remaining portion of the terms of the indenture aforesaid. The Trust was to assume full liability for all expenditure to be incurred upon works of improvement and to arrange for the completion of those works to the satisfaction of Government. The Trust is also enjoined to maintain in accordance with the statutory rules separate accounts of all revenue realised from, and all expenditure incurred upon, the said Nazul Estate and to pay to Government the sum of Rs. 2 lakhs being the equivalent of the net annual revenue in respect thereof subject to certain conditions, not material to this case. Then follows the most important clause in these terms:--

Any surplus funds in the Nazul Development Account remaining at the end of each financial year when the said sum has been paid shall be put at the disposal of Government and shall be applied until further orders of Government to the further improvement and development of the said Nazul Estate and/or to the repayment of loans made to the Trust as Government may direct."

Government on its part undertook to finance either in part or in whole such schemes as may be agreed between the parties and also to advance loans at interest equal to Government rates for the time being for loans to Local Authorities. It was in pursuance of the terms aforesaid that the scheme of the building of the market in question was put through at an estimate cost of a little less than five lakhs of rupees.

It is clear upon the terms of the agreement shortly set out above that the market was constructed by the Trust on Government land with Government funds advanced by way of loan at interest. On those facts what is the legal position of the Trust vis-a-vis the Government in respect of the ownership of the property? It is important, therefore, to determine the true nature of the initial relationship between the Government and the Trust. The learned counsel for

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the appellant conceded that relationship could not be described in terms of ordinary legal import, that is to say, in, terms of mortgagor and mortgagee, or lessor and lessee, or licensor and licensee. He contended that it was a peculiar relationship which could not be defined in exact legal phraseology, but all the same, that the Trust was the owner of the market, especially in view of the fact that, as admitted by the defendants counsel at the trial, the Trust had repaid the entire amount of five lakhs odd advanced by Government for the construction of the market. This result, it was further contended, follows from the terms of s. 54A of the Improvement Act. The Attorney-General appearing on behalf of the respondent also strongly relied upon the terms

of that section for his contention that the relationship between the Trust and the Government was that of agent and principal. It is therefore necessary to examine closely the provisions of that section which is in these terms:-

" (1) The Government may, upon such terms as may be agreed upon between the Government and the Trust, place at the disposal of the Trust any properties, or any funds or dues, of the Government and thereupon the Trust shall hold or realise such properties, funds and dues in accordance with such terms.

(2) If any immovable property, held by the Trust under sub-s. (1) is required by the Government for administrative purposes, the Trust shall transfer the same to the Chief Commissioner upon payment of all costs incurred by the Trust in acquiring, reclaiming or developing the same, together with interest thereon at such rate as may be fixed by the Chief Commissioner calculated from the day on which this Act comes into force or from the date on which such costs were incurred, whichever is the later.

The transfer of any such immovable property shall be notified in the gazette and such property shall thereupon vest in the Chief Commissioner from the date of the notification."

The section quoted above finds place in Chap. VA, headed " Government Property Held by Trust." It is

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manifest upon a reading of the entire section that there are no express words of conveyance whereby title is transferred by Government to the Trust either absolutely or upon certain conditions. As applied to the present case, sub-s. (1) only provides that the Government would place the property in question at the disposal of the Trust which shall hold the same in accordance with the terms as may be agreed between them, that is to say, in accordance with the terms of the agreement aforesaid, (Ex. D-5). Placing the property " at the disposal of the Trust " does not signify that Government had divested itself of its title to the property and transferred the same to the Trust. Clause 12 of the agreement (Ex. D-5) to the effect that "Government may at any time on giving six months' notice terminate this agreement " clearly indicates that the Government had created this agency not on a permanent basis. but as a convenient mode of having its schemes of improvement implemented by a single agency with wide powers of management and expenditure of funds placed at its disposal, either by way of income from the property or by way of advance from Government funds. Sub-s. (1). therefore, does not in express terms or by necessary implication confer any title on the Trust in respect of the market. The Trust only holds the market and realizes the income therefrom which is disbursed in accordance with the terms of the agreement and the rules framed by the Chief Commissioner in exercise of the powers conferred on him by cl. (e) of sub-s. (1) of s. 72. Our attention was called to some of those statutory rules, particularly rules, 21, 36, 38 and 156 read along with the forms and the Appendix. It is not necessary to discuss those rules in detail because on a consideration of those rules we are satisfied that they are more consistent with the Trust being a statutory agent of the Government, which has to maintain separate accounts in respect of nazul property. Any reappropriation from nazul to non-nazul or vice-versa could not be made by the Trust without the prior sanction of the Chief Commissioner. The method of keeping accounts in respect of the nazul estate would show that the Trust had to function as

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the statutory agent of the Government in the matter of the administration of the Trust funds with particular reference to the nazul estate with which we are immediately concerned. But it has been argued on behalf of the appellant that sub-s. (2) of s. 54A quoted above postulates that the Trust is the owner of the property' otherwise the sub-section would not speak of the Trust having to transfer immovable property held by it to the Chief Commissioner in certain contingencies, upon payment of all costs incurred by the Trust in acquiring, reclaiming or developing that property together with interest calculated in the way set out in that sub-section. It should be noted in this connection that what the Government was required to pay was not the market value of the property but only the cost incurred by the Trust. That provision apparently was made for the purpose of accounting between the different branches of the Trust activities. If title really vested in the Trust, it would be entitled to receive from Government the price of the property and not merely required to be reimbursed in respect of the actual expenditure on the scheme. Particular reliance was placed upon the words "and such property shall thereupon vest in the Chief Commissioner." It was argued that unless the property previously vested in the Trust it could not upon the transfer contemplated by sub-s. (2) vest in the Chief Commissioner. This argument assumes that the word "vest" necessarily signifies that title to the property resides in the Trust. But the word "vest" has several meanings with reference to the context in which it is used. In this connection reference may be made to the following observations of Lord Cranworth in *Richardson v. Robertson* (1) :

"...The word 'vest' is a word, at least of ambiguous import. Prima facie 'vesting' in possession is the more natural meaning. The expressions 'investiture' -'clothing'-and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But (1) (1862) 6 L.T. 75, at P. 78.

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I am willing to accede to the argument that was pressed at the bar, that by long usage 'vesting' ordinarily means the having obtained an absolute and indefeasible right, as contra-distinguished from the not having so obtained it. But it cannot be disputed that the word 'vesting' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession."

Similarly with reference to the provisions of a local Act (5 Geo. 4, c. Ixiv), it was held that the word "vest" did not convey a freehold title but only a right in the nature of an easement. The following words of Willes, J. in *Hinde v. Charlton*(1) are relevant:-

words, which in terms vested -the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out the objects of the Act without giving them the freehold ' "

In the case of *Coverdale v. Charlton* (2), the Court of Appeal on a consideration of the provisions of the Public Health Act, 1875 (38 and 39 Vict. c. 55) with particular reference to s. 149, has made the following observations at p. 116:-

What then is the meaning of the word 'vest' in this section ? The legislature might have used the expression

transferred' or 'conveyed', but they have used the word 'vest'. The meaning I should like to put upon it is, that the street vests in the local board qua street; not that any soil or any right to the soil or surface vests, but that it vests qua street."

Referring to the provisions of s. 134 of the Lunacy Act, 1890 (53 & 54 Vict. c. 5) in the case of *In re Brown* (a lunatic)(3) it has been laid down by Lindley, L. J., that the word "vested" in that section included the right to obtain and deal with; without being actual owner of the lunatic's personal estate.

(1) (1866-67) C.P. Cases 104 at 116.

(2) (1878-79) 4 Q.B.D. 104.

(3) (1895) 2 Ch. 666.

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In the case of *Finchley Electric Light Company v. Finchley Urban District Council*(1), adverting to the provisions of s. 149 of the Public Health Act, 1875, (supra) *Romer, L.J.*, has made the following observations at pp. 443 and 444:-

"Now, that section has received by this time an authoritative interpretation by a long series of cases. It was not by that section intended to vest in the urban authority what I may call the full rights in fee over the street, as if that street was owned by an ordinary owner in fee having the fullest rights both as to the soil below and as to the air above. It is settled that the section in question was only intended to vest in the urban authority so much of the actual soil of the street as might be necessary for the control, protection, and maintenance of the street as a highway for public use. For that proposition it is sufficient to refer to what was said by Lord Halsbury, L. C., and by Lord Herschell in *Tunbridge Wells Corporation v. Baird*(2) I..... That section has nothing to do with title; it is not considering a question of title. No matter what the title is of the person who owns the street, the section is only considering how much of the street shall vest in the urban authority.....

That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, s. 56 of the Provincial Insolvency Act (V of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in the receiver." The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, ss. 16 and 17 of the Land Acquisition Act. (Act I of 1894), provide that the property so acquired, upon the happening of

(1)[1903] 1 Ch. 437.

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(2) [1896] A.C. 434.

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certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by ss. 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the autho-

rity in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly ss. 45 to 49 and 54 and 54A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them.

The question of the ownership of the structure built upon Government land by the Trust may be looked at from another point of view. We have already held that the Trust was in the position of a statutory agent of Government and had erected the structure with money belonging to Government but advanced at interest to the Trust. In such a situation the structure also would be the property of Government, though for the time being it may be at the disposal of the Trust for the purpose of managing it efficiently as a statutory body. Simply because the Trust erected the structure in question and later on paid up the amount advanced by Government for the purpose would not necessarily lead to the legal inference that the structure was the property of the Trust. In this connection reference may be made to the decision of this Court in Bhatia Co-operative Housing Society Ltd. v. D. C. Patel⁽¹⁾. The case is not on all fours with the facts of the present case. But the following observations of Das J. (as he then was) at p. 195 of the report are pertinent:-

" It is true that the lessee erected the building at his own cost but he did so for the lessor and on the

(1) [1953] S.C.R. 185.

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lessor's land on agreed terms. The fact that the lessee incurred expenses in putting up the building is precisely the consideration for the lessor granting him a lease, for 999 years not only of the building but of the land as well at what may, for all we know, be a cheap rent which the lessor may not have otherwise agreed to do. By the agreement the building became the property of the lessor and the lessor demised the land and the building which, in the circumstances, in law and in fact belonged to the lessor. The law of fixtures under s. 108 of the Transfer of Property Act may be different from the English law, but s. 108 is subject to any agreement that the parties may choose to make. Here, by the agreement the building became part of the land and the property of the lessor and the lessee took a lease on that footing."

In our opinion, therefore, it cannot be said that either under the provisions of the Improvement Act or in accordance with the terms of the agreement (Ex. D-5) or the two taken together, the market became the property of the Trust. We have already noticed the relevant portions of the correspondence that passed between Government and the Trust to show that though at the initial stages the Trust proposed that the ownership of the market should vest in the Trust, the final terms agreed between the parties in accordance with the provisions of s. 54A left the ownership with Government. We have come to this conclusion without reference to the admission of the plaintiff contained in para. 22 of the indenture (Ex. D-4) quoted above. It is therefore not necessary for us to consider the question raised by the learned Attorney-General that the plaintiff was bound by that admission or whether that admission is vitiated by any pressure of circumstances or duress as pleaded by the plaintiff. Certainly that admission is a

piece of evidence which could be considered on its merits even apart from the question of estopped which had not been specifically pleaded or formed the subject matter of a separate issue.

In view of our finding that the market, as also the land on which it stands, is the property of Government, the conclusion follows that the operative provisions of

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the Control Act do not apply to the premises in question. That being so, it must be held that there is no merit in this appeal. It is accordingly dismissed with costs. Appeal dismissed.

JUDIS