

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8085 OF 2013
(Arising out of S.L.P. (C) No.3306 of 2011)

State of U.P.

...Appellant

Versus

M/s Lakshmi Sugar & Oil Mills Ltd. and Ors.

...Respondents

With

CIVIL APPEAL NO. 8086 OF 2013
(Arising out of S.L.P. (C) No.3307 of 2011)

U.P. State Sugar Corporation

...Appellant

Versus

M/s Lakshmi Sugar & Oil Mills Ltd. and Ors.

...Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of a Judgment and Order dated 30th April, 2010 passed by the Lucknow Bench of the High Court of Judicature at Allahabad, whereby writ petition No.187 of 2007 filed by the respondent-company has been allowed with a direction to respondents 4 to 6 to delete the name of the appellant-U.P. State Sugar Corporation from the relevant revenue records and restore that of the respondent-Company. That direction followed a finding recorded by the High Court that the land in dispute being agricultural land had not vested in the appellant-Corporation under the provisions of The U.P. Sugar Undertakings (Acquisition) Act, 1971. The mandamus issued by the High Court includes a further direction for delivery of possession of the disputed parcel of land to the respondent-company within a period of one month from the date of presentation of a certified copy of the impugned judgment and order.

3. The respondent-Lakshmi Sugar and Oil Mills Limited established a sugar factory in District Hardoi of the State of Uttar Pradesh as early as in the year 1933. Several such sugar mills having gone sick in the State of Uttar Pradesh,

the State legislature enacted what is known as Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971. Twelve private sugar manufacturing units in the State of Uttar Pradesh were acquired by the State Government under the said Act and vested in the appellant-Corporation so as to revive such sick mills and, thereby, protect the interest of cane growers in the State. Section 3 of the Act, inter alia, provided that *"on the appointed day, every scheduled undertaking shall, by virtue of this Act, stand and be deemed to have stood transferred and vested in the Corporation free from any debt, mortgage charge or other encumbrance or lien, trust or similar obligation (excepting any, lien or other obligation in respect of any advance on the security of any sugar stock or other stock in trade) attaching to the undertaking."* The expression "scheduled undertaking" was defined in Section 2(h) of the Act, inter alia, to mean an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power in a factory specified in any of the Schedules to the Act and

comprising plants, machinery and other equipments and assets enumerated thereunder.

4. The respondent-sugar factory, it is common ground, figured at Item-7 of the Second Schedule to the Act and, therefore, stood vested in the appellant-Corporation with effect from 28th October, 1984, the date appointed for vesting of undertakings specified in the said schedule in terms of notification dated 27th October, 1984. Possession of the respondent-Sugar Mill was taken over by District Magistrate, Hardoi on 28th October, 1984 and handed over to the appellant-Corporation.

5. Consolidation proceedings appear to have started in Village Nanakganj Grunt, Pargana Gopamau, Tehsil and District Hardoi sometime in June, 1986 and a mutation in respect of land held by the respondent-Company and situated at Dheer Maholia passed by the SDO, Sadar, Hardoi on 14th February, 1987. A similar order of mutation was passed for another parcel of land situated at Nagheta by the SDO, Sadar, Hardoi on 19th February, 1987. In regard to the third parcel of land situate in village Nanakganj Trust, the

appellant-Corporation acting through its General Manager addressed a letter dated 26th August, 1992 to the Consolidation Officer, Hardoi requesting him to record the name of the appellant-Corporation in place of the respondent-Company. The letter pointed out that the said parcel of land had been acquired by the State Government and stood vested in the appellant-Corporation with effect from 28th October 1984 under the provisions of the U.P. Sugar Undertakings (Acquisition) Act, 1971 read with the Amendment Act of 1985.

6. The Consolidation Officer registered the request as Case No.9760 and initiated proceedings in which he issued notices to the respondent-M/s Lakshmi Sugar Mills at its registered office. The respondent-Company remained unrepresented even after the notice was pasted in public places and announcement by beat of drum regarding the proceedings. The Consolidation Officer eventually passed an order on 2nd September, 1992 directing that land measuring 122.4.0 Bighas in Khata No.132 in CH 23, shall be shown in the

ownership of the appellant-Corporation in place of the respondent-company.

7. Against the order passed by the Consolidation Officer the respondent-company appealed to the Settlement Officer, Consolidation, Hardoi who dismissed the same by his Order dated 24th January, 1997. The respondent-Company then preferred a revision before the District Consolidation Director/Collector, Hardoi who concurred with the view taken by the officers below and dismissed the Revision Petition on 6th December, 2006.

8. Aggrieved by the orders passed by the Consolidation authorities, the respondent-Company preferred Writ Petition No.187 (Consolidation) of 2007 before the Lucknow Bench of the High Court of Allahabad. By its order dated 30th April, 2010 impugned in these appeals, the High Court has allowed Writ Petition No.187 (Consolidation) of 2007 and quashed the orders passed by the Consolidation authorities with the directions to which we have made a reference in the beginning of this judgment.

9. On behalf of the appellant-Corporation, it was strenuously argued that the High Court had fallen in error, in interfering with the order passed by the Consolidation Officer and those passed in appeal and revision filed against the same, in all of which it had been concurrently held that the land in dispute was a part of the undertaking as defined in Section 2(h) of the Act as the same was not held or occupied by the company for agricultural purposes. The High Court had, it was contended, over-stepped its jurisdiction in reversing a finding of fact upon a reappraisal of the evidence as if it was sitting in appeal over the orders passed by the authorities below. There was, according to the learned counsel, overwhelming evidence to show that the land in question was at no point of time used for cultivation by the respondent-Company or held for any such purpose. The entire extent was, argued the learned counsel, used for industrial purpose and recorded as "Parti Kadim Tilla", which meant that it had not been cultivated for a very long time and hence was a part of the undertaking which upon acquisition vested in the appellant-Corporation.

10. Mr. Huzefa Ahmadi, learned senior counsel appearing for the respondent-Company argued that under the scheme of the Acquisition Act, it was necessary to establish a nexus between the asset sought to be acquired/taken over and the undertaking. It was only if such a nexus is established that the property under the said Act would vest in the State or the Corporation and not otherwise. Reliance in support of that submission was placed upon the Aims and Objectives of the Act, and the decision of this Court in ***U.P. State Sugar Corporation v. Burwal Sugar Mills Co. Ltd. and Ors. (2004) 4 SCC 98***. No such nexus, was according to the learned counsel, established in the case at hand, as according to the respondent-Company the land in question was not used or meant for the use of the undertaking, that was taken over by the State. The takeover of the undertaking did not, however, mean takeover of the company or such of its assets as had no nexus with the undertaking. The High Court had recorded a finding that no such nexus was established between the undertaking and the land in question which quite clearly proved the absence

of an essential requirement for the land to vest in the appellant-Corporation.

11. The Statement of Objects and Reasons for the enactment of the Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 referred to problems which certain sugar mills of the State had created for the cane-growers and labourers and thereby adversely impacted the general economy of the areas where such mills were situate. The legislation, therefore, provided for acquisition of such mills, payment of compensation for the same and for the replacement of the dues of cane-growers, labourers as also of the Government out of the amount of compensation so payable. The Preamble of the Act states as follows:

"An Act to provide, in the interest of the general public, for the acquisition and transfer of certain sugar undertakings, and for matters connected therewith or incidental thereto."

12. Section 3 of the Act deals with vesting of the schedule undertaking and is in the following terms:

"Section 3: Vesting: *On the appointed day, every schedule undertaking shall, by virtue of this Act, stand and be deemed to have stood transferred to*

and vest and be deemed to have vested in the Corporation free from any debt, mortgage, charge or other encumbrance or lien trust or similar obligation (excepting any lien or other obligation in respect of any advance on the security of any sugar stock or other stock-in-trade) attaching to the undertaking.

Provided that any such debt, mortgage, charge or other encumbrance or lien, trust or similar obligation shall attach to the compensation referred to in Section 7, in accordance with the provisions of that section, in substitution for the undertaking:

Provided further that a debt, mortgage, charge or other encumbrance or lien, trust or similar obligation created after the scheduled undertaking or any property or asset comprised therein had been attached or a receiver appointed over it, in any proceedings for realisation of any tax or cess or other dues recoverable as arrears of revenue shall be void as against all claims for dues recoverable as arrears of revenue."

13. We are in the present appeal concerned only with Section 2(h) (vi) of the Act which may be reproduced for ready reference:

"2(h) "scheduled undertaking" means an undertaking engaged in the manufacture or production of sugar by means of vacuum pans and with the aid of mechanical power in factory specified [in any of the schedules of this Act], and comprises

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xxx

xxx

xxx

(vi) all lands (other than lands held or occupied for purposes of cultivation and grovelands) and buildings held or occupied for purposes of that factory (including buildings pertaining to any of the

properties and assets hereinbefore specified, and guest houses and residences of directors, managerial personnel, staff and workmen or of any other person as lessee or licensee, and any store houses, molasses, tanks, roads, bridges, drains culverts, tubewells, water storage or distribution system and other civil engineering works) including any leasehold interest therein”

14. A plain reading of the above would show that all lands other than those held or occupied for purposes of cultivation and grovelands are treated as being part of the ‘scheduled undertaking’ which would upon acquisition vest in the appellant-Corporation, provided such lands and buildings are “held or occupied for purposes of the sugar factory”. What is important is that buildings pertaining to any of the property and assets specified in Section 2(h) (i) to (xii) including guest houses and residences of directors, managerial personnel, staff and workmen or of any other person as lessee or licensee including any store houses, molasses, tank, roads, bridges, drains, culverts, tubewells, water storage or distribution system and other civil engineering works including lease hold interest therein are also treated as part of the scheduled undertaking. The test, therefore, is whether the asset or any interest therein is held or occupied

‘for purpose of a sugar factory’. If the answer is in the affirmative, the same is treated to be a part of the scheduled undertaking that would vest in the appellant- Corporation upon acquisition.

15. In **Burwal Sugar Mills** case (supra) on which Mr. Ahmadi placed reliance the question that fell for consideration before this Court was whether the registered office of the company that had set up the sugar factory comprised the undertaking and could, therefore, be taken over by the State or the Corporation. A two-Judge Bench of this Court held that the intention of the legislature clearly was to take over only such land and buildings as are connected with or were in use for purposes of factory. The registered office of the company, observed this Court, was located at House No.54/14, Canal Range, Kanpur, and in the absence of any material to show that the premises in question was being used or occupied for the storage of sugar or as a guest house or for residence of any director of the factory as was alleged on behalf of the Corporation, there was no question of treating the building used as registered

office of the Company as a part of the undertaking. This Court noticed the difference between a company owning the undertaking and the sugar undertaking itself and held that while a company is a much wider entity, the undertaking is only one of the assets of the company. The legislature deliberately did not touch the company and provided for acquisition of only the undertaking. This Court on that reasoning held that handing over of the possession of the registered office of the company to the Corporation was illegal and contrary to the provisions of the Act.

16. It is evident not only from a plain reading of Section 2(h) (supra) but also the interpretation placed upon the same by this Court that grovelands and lands held for cultivation are excluded from the definition of undertaking. But all other lands and buildings if held or occupied for the purpose of the sugar factory would comprise the undertaking and would upon acquisition vest in the Corporation.

17. In the case at hand the respondent-company had claimed the lands in question to be exempted from acquisition and take over on the ground that the same were

held and occupied for cultivation. It was not the case of the respondent-company that the lands in question were groveland nor was it the case of the Company that the land even though not meant for cultivation was held for a purpose other than the sugar factory. Whether or not the respondent-company held or occupied the land in dispute for cultivation was, therefore, the only question that fell for consideration which question was essentially a question of fact answered against the company by all the three statutory authorities concurrently on the basis of material available with them. The authorities held that the land in question was never held or occupied by the respondent-Company for cultivation purposes. The exemption claimed by the respondent-company was on that basis declined and the land held to have vested in the Corporation as part of the undertaking. The following passage from the order passed by the Settlement Officer (Consolidation) Hardoi is relevant:

"Copies of U.P. Sugar Undertaking (Acquisition) Act 1971 (as amended) and CH Form 21 (A) relating to the disputed land has been filed wherein in Column 6 the name of Laxmi Sugar Mill is registered. In Column 8 the disputed land is shown outside consolidation and in column 24 the same is shown

as parti zadid on site, parti usar, rugged terrain and uneven hillocks. In this manner there is no evidence/ entry regarding any cultivation on this land or the disputed land to be an agriculture land. Accordingly, the disputed land is found not to be an agricultural land. The disputed land has been acquired in favour of U.P. Sugar Corporation Limited Unit Hardoi under aforesaid gazette. If the appellant had any objection in that regard then, as per law, he was to lodge proceedings against notification before the Hon'ble High Court, but in this regard there is no evidence available on records. Therefore the allegation that the disputed land is an agriculture land and therefore the same is to be registered in the name of Laxmi Sugar and Oil Mills Limited, Hardoi instead of U.P. Sugar Corporation Limited, is baseless and devoid of merits. The disputed land has been acquired in favour of U.P. State Sugar Corporation Limited. It is for this reason the learned consolidation officer has rightly registered the same in the name of U.P. Sugar Corporation Limited Unit Hardoi and the portion of the aforesaid land registered in Account No. 82, 49 of Village Dheear Maholia and Account No. 245 of Village Nagheta has already been registered in the name of U.P. Sugar Corporation Limited Unit Hardoi after deletion of the name of Laxmi Sugar & Oil Mills by the S.D.O. Hardoi vide his order dated 14.02.1987. Accordingly, the order of Learned Consolidation Officer is lawful and proper and does not warrant any interference. The appeal does not have any force and is devoid of merit."

(emphasis supplied)

18. The order passed by the District Consolidation Director/ Collector, Hardoi also concurred with the view taken by the Officers below and held that there was no evidence on record to show that the subject land was ever held or occupied for agricultural purposes or that any agricultural activity was

ever carried out on the same. These concurrent findings of fact, in our opinion, could not have been reversed by the High Court in its writ jurisdiction. The High Court obviously failed to appreciate that it was not sitting in appeal over the findings recorded by the authorities below. It could not reappraise the material and hold that the land was held or occupied for cultivation and substitute its own finding for that of the authorities. In as much as the High Court did so, it committed an error. It is noteworthy that the revenue record clearly belied the assertion of the respondent company and described the land as "Parti Kadim Tilla" which meant that the land has not been cultivated for a long time and is in the form of a hillock.

19. It was next argued by learned counsel for the appellant that the claim for exemption from acquisition was even otherwise unfounded keeping in view the fact that the land in question had been treated as exempted under Section 6(1) (a) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 on the ground that the same was held for industrial purposes being a part of the sugar factory. If the land in

question was indeed held for cultivation purposes as alleged by the company, it could not remain immune to the rigors of the Ceiling Act. It was excluded from the application of the said Act only because it was treated as industrially attached to the sugar factory. The respondent-company has not been able to effectively refute that contention of the appellant-Corporation. If the land had indeed been treated as industrial for purposes of the Ceiling Act we find it difficult to see how the same could be treated to be held or occupied for cultivation, for the purposes of U.P. Sugar Undertakings (Acquisition) Act, 1971.

20. As noticed earlier it is not the case of the respondent-company that although the land was non-agricultural and although the same was held and occupied for industrial purposes, the industrial purpose for which it was held by the company was un-related to the sugar factory. No such plea having been raised or urged at any stage, the subject land has been rightly taken as vested in the Corporation. The land in question is situate in the immediate vicinity of the sugar factory. The fact situation is thus completely different

from that of **Burwal Sugar Mills** case (supra) where the registered office of the company sought to be taken over was in Kanpur while the sugar factory was itself at Baragaon. Distance between the factory and the asset held by the company may not be a true test for determining whether the same is a part of the undertaking but in the absence of any evidence, showing cultivation, the close proximity of the land to the factory is a strong circumstance that cannot be ignored.

21. In the circumstance, therefore, we find it difficult to uphold the order passed by the High Court not only because the High Court acted as if it was sitting in appeal over the findings of fact recorded by the authorities below but also because the High Court failed to notice that the land was exempted from the Ceiling Act on the ground of being used for industrial purpose which in the context of the present case meant that it was used for the purpose of sugar factory. These appeals, accordingly, succeed and are hereby allowed, the judgment and order passed by the High Court is set aside and Writ Petition No.187 of 2007 filed by the

respondent-company dismissed but in the circumstances,
without any order as to costs.

.....J.
(T.S. THAKUR)

.....J.
(JAGDISH SINGH KHEHAR)

New Delhi
September 12, 2013.



JUDGMENT