

PETITIONER:
NATIONAL TEXTILE CORPORATION AND ANOTHER

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND OTHERS

DATE OF JUDGMENT 12/04/1977

BENCH:
GUPTA, A.C.
BENCH:
GUPTA, A.C.
KAILASAM, P.S.

CITATION:
1977 AIR 1566 1977 SCR (3) 525
1977 SCC (3) 4

ACT:
Sick Textile Undertakings (Nationalisation) Act,
1974--Incumbrance-Meaning of--Notification issued under Land
Acquisition Act--If an incumbrance.

HEADNOTE:

The state Government issued two notifications under ss. 4 and 6 of the Land Acquisition Act seeking to acquire certain land belonging to a textile mill. When the Letters Patent Appeal of the 'Textile' mill was pending before the High Court the mill was taken over by the Central Government and later the appellant was substituted for the original appellant.

By virtue of s. 3 of the Sick Textile Undertakings (Nationalisation) Act, 1974 the management of every sick textile mill vested absolutely in the Central Government and later in the appellant. Section 4(2) of the Act provides that all property which vested in the Central Government shall, by force of such vesting, be freed and discharged from trust, obligation, mortgage, charge, lien and all other incumbrances affecting it and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn. The appellants' contention that by reason of ss.4(2) the two notifications must be held to have become ineffective because the section provides that all property vested in the Central Government shall be free from all incumbrances affecting it was rejected by the High Court. Dismissing the appeal to this Court,

HELD : The High Court was right in its view that the notifications issued under ss 4 and 6 of the Land Acquisition Act were not incumbrances and could not be held to have become inoperative on the land vesting in the Central Government. [528 B]

1. The term "incumbrance" has not been defined in the Act, The dictionary meaning given to incumbrance is a claim, lien or liability attached to property. An incumbrance in this sense has to be a liability "attached to property". a burden or liability that runs with the land. The notifications issued under the Land Acquisition Act are not a burden or liability attached to the property. [528 B]

2. "Incumbrance" in the context of s. 4(2) means some

burden or liability attached to the property, like mortgage, charge, lien etc. That this is so would appear from the words 'all other incumbrances affecting it'. Having said that the vesting will be free from trust etc., sub-s. (2) goes on to add that "any attachment, injunction or decree shall be deemed to be withdrawn" upon vesting. If "incumbrance" meant any kind of fetter, any attachment, injunction or decree or order restricting use of the property would be included in "all other incumbrances" and it would have been quite unnecessary to mention them separately. This means that fetters on the property like attachment, injunction or decree or order of any court restricting the use of the property which are deemed to have been withdrawn upon the property vesting in the Central Government are not really incumbrances within the meaning of the word as used in s.4(2) [528 E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 309 of 1976.

Appeal by Special Leave from the Judgment and Order dated the 22nd January, 1975 of the Bombay High Court in Appeal No. 106 of 1969 in Misc. Petition No. 320 of 1964. 7-502 SCI/77 526

I. N. Shroff and H.S. Parihar for the Appellants.

M.N. Shroff for Respondents 1 and 2.

V.P. Ram an, Addl. Sol. Genl, K.J. John and Shri Narain for Respondent No. 3.

The Judgment of the Court was delivered by

GUPTA, J. Ahmedabad Jupiter Spinning Weaving and Manufacturing Company Limited was the owner of 5900 Sq. yds of land forming part of its mill premises at Lower Parel in Bombay which was sought to be acquired by the Maharashtra Government for a municipal school. Notifications under sections 4 and 6 were issued on June 19, 1961 and May 29, 1964 respectively. The company filed a petition in the Bombay High Court challenging the validity of the notifications on several grounds. A single Judge of the High Court having dismissed the writ petition on August 11, 1969 the company preferred a letters patent appeal. During the pendency of the appeal, the management of the company was taken over by the Central Government on October 8, 1972 under the Industries (Development and Regulation) Act, 1951. On September 21, 1974 an ordinance called the Sick Textile Undertakings (Nationalisation) Ordinance, 1974 was promulgated by virtue of which the textile undertaking of the company the 'management of which had been taken over by the Central Government, vested absolutely in the Central Government with effect from the "appointed day", which was April 1, 1974, and immediately thereafter stood transferred and vested in the National Textile Corporation. The Ordinance was later replaced by the Sick Textile Undertakings (Nationalisation) Act, 1974 (hereinafter referred to as Sick Textile Act). Sections 3 and 4 of the Act are as follows:

Acquisition of rights of owners in respect of sick textile undertakings.

"3. (1) On the appointed day every sick textile taking and the right title and interest of the owner in relation to every such sick textile undertakings shall stand transferred to, and shall vest absolutely in, the Central Government.

(2) Every sick textile undertaking which stands vested in the Central Government by virtue of sub-Section (1) shall, immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.

General effect of vesting

4. (1) The sick textile undertaking referred to in section 2 shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed

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day in the ownership, possession, power or control of the owner of the sick textile undertaking, whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

(2) All property as aforesaid which have vested in the Central Government under sub-section (1) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn."

The other sub-sections of section 4 are not relevant for the present purpose.

The National Textile Corporation applied to the High Court for being substituted in place of the original appellant in the letters patent appeal which was pending and the application was allowed. The main contention on behalf of the substituted appellant in the High Court was that the two notifications under sections 4 and 6 of the Land Acquisition Act must be held to have become ineffective in view of section 4(2) of the Sick Textile Act which provides that all property which vests in the Central Government under section 3(1) does so free from all "incumbrances affecting it." The High Court dismissed the appeal holding that the notifications under the Land Acquisition Act were not incumbrances within the meaning of section 4(2) of the Sick Textile Act. In the appeal before us filed with special leave obtained from this Court, the National Textile Corporation questions the correctness of the view taken by the High Court.

Thus the only question for determination in the appeal is whether the notifications issued under the Land Acquisition Act are incumbrances within the meaning of the word as used in section 4(2) of the Sick Textile Act. Section 3 and the first two sub-sections of section 4 of the Sick Textile Act are the only provisions relevant in this context. Section 3 provides that on the appointed day every sick textile undertaking shall vest absolutely in the Central Government, and then in the National Textile Corporation.

Subsection (1) of section 4 states that the undertakings vesting in the Central Government under section 3 shall be deemed to include all assets, rights and interests in the ownership, possession or control of the owners of such undertakings immediately before the appointed day. Subsection (2) of section 4 provides that all property vesting in the Central Government under section 3 shall, "by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn".

Counsel for the appellant argues that sub-section (2) of section 4 is intended to vest the sick textile undertakings in the Central Govern-

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ment free from all fetters, and the notifications issued under the Land Acquisition Act which had the effect of freezing the price of the land were fetters falling in the category of "other incumbrances" mentioned in section 4(2) of the Sick Textile Act. The term 'incumbrance' has not been defined in the Act. In Wharton's Law lexicon incumbrance is described as being a claim, lien or liability, attached to property. This is the sense in which the term is ordinarily used. An incumbrance in this sense' has to be a liability "attached to property", it must be a burden or liability that runs with the land, as the High Court has held. But a notification issued by the Government under the Land Acquisition Act is not a burden Or liability that is attached to the property. The sovereign right of the State to take proceedings for the acquisition of any land for public purpose is similar to its right to impose a tax on the land which is paramount to the ownership over the land and outside it". [see The Collector of Bombay v. Nusserwanji Rattanji Mistri & others [1955] 1 SCR 1311 (at 1323). Under sub-section (2) of section 4 of the Sick Textile Act all property which have vested in the Central Government under section 3 (1) shall be freed and discharged from any trust, obligation, mortgage, charge, lien and all other incumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property shall be deemed to have been withdrawn. Counsel for the respondent. State of Maharashtra, submits that the term incumbrance should take colour from the different kinds of burden on the land specified in section 4(2) preceding the words all other incumbrances"it is argued that incumbrance in the context means' Some burden or liability that is attached to the property ,like mortgage, charge, lien That this is so would also appear from what follows the words "all other incumbrances affecting it". Having said that the vesting will be free from trust, obligation, mortgage, charge, lien and all other incumbrances affecting it. sub-section (2) goes on to add that "any attachment. injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn" upon vesting. If the appellant's construction of the provision were correct, and incumbrance meant any kind of fetter, any attachment, injunction or decree or order restricting the use of the property would be included in "all other incumbrances" and it would have been quite unnecessary to mention them separately. This makes it clear that fetters on the property like attachment, injunction or decree or order of any court restricting the use of the property which are deemed

to have been withdrawn upon the property vesting in the Central Government are not really incumbrances within the meaning of the word as used in sub-section (2) of section 4. We therefore agree with the High Court that the notifications issued under sections 4 and 6 of the Land Acquisition Act are not incumbrances and cannot be held to have become inoperative on the land in question vesting in the Central Government.

The appeal is dismissed but in the circumstances of the case without any order as to cost.

P. B.R.

Appeal dismissed.

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JUDIS