

Noorulla Ghazanfarulla

Vs

Municipal Board of Aligarh, Aligarh and Others

Civil Appeal No. 3459 of 1982

(P. B. Sawant, N. Venkatachala JJ)

07.02.1995

JUDGEMENT

VENKATACHALA, J. :-

1. This appeal by special leave is directed against the judgement and order dated 26-4-1982 of the High Court of Allahabad by which Civil Misc. Writ Petition No. 12220 of 1975 : (reported in AIR 1982 All 469) filed by the petitioner therein, the appellant here, was dismissed.

2. The appellant was a registered partnership firm. On 10-10-1935 the Municipal Board of Aligarh, respondent-1 granted to the appellant, acting in accordance with the provisions of Section 224 and Section 224-A of the U. P. Municipalities Act, 1916 - "the Act", 'Aligarh water Supply Licence, 1935' - "the Licence" for providing water supply to certain areas of Aligarh by taking over the then existing water works of respondent-1, subject to the condition of paying to respondent-1 annual fee of Rs. 10,000/- and of fulfilling other conditions of the Licence, Condition 7 of those conditions which related to the period of licence, read thus :

"7. This licence shall remain in force for a period of 50 years from its commencement. On the expiry of the said period of 50 years the board may at its option either renew this licence for another period of 50 years and on the same terms and conditions, or if the board and the licensees agree, for a different term and on different conditions, or may take over the whole water works on payment of the fair value of the properties belonging to the licensees to be determined in the manner laid down in Section 224-C of the United Provinces Municipalities Act."

3. But , the appellant since found it difficult to provide water supply for areas of Aligarh as was required of it under the Licence even during the basic period of 50 years of the Licence, it requested respondent-1 to revoke the licence by having recourse to Section 224 -B (2) (a) of the Act, so as to enable the latter to purchase the water works as provided for under the succeeding Section 224-C of the Act.

4. The Administrator of respondent-1 responding to the said request of the appellant made an order on 1-4-1975, which indicated that respondent-1 had taken a decision to revoke the Licence of the appellant according to Section 224-B (2) (a) of the Act after it had obtained the previous sanction of the State Government (respondent-2) , as per wireless message dated 30-3-1975 received by it. The material part of that order read thus :

"(1) the licence dated 10-10-1935 granted to M/s. Noorullah Ghazanfarulla, Allahabad to supply water within Aligarh Municipal limits is revoked with effect from 1st April, 1975 and the management of the Aligarh Water Works will be taken over by Aligarh Municipal Board with effect from the same date.

(2) All property Tubewells, pumping sets, Machinery, tanks, pipelines, mains, equipments storage stores and other articles, accessories and fittings Hydrants and Stand posts and office and account records belonging to Aligarh Water Works shall vest in Aligarh Municipal Board and all powers and liabilities of the licensee under the license to supply water shall absolutely cease and determine with effect from 1st April, 1975.

(3) The valuation of the property belonging to the licensee shall be determined by the State Govt. in accordance with the provisions of the Municipalities Act, 1916."

5. Appellant which was served with the said order on the same date on which it was made, promptly gave its reply therefor, again on the very same date. How, the appellant had understood the said order and how it treated that order was made known to the administrator by stating in its reply thus:

"Although, the order sent by you is not actually a notice, but as the order also states clearly that the revocation will take effect from 1-4-75 presume the order is meant by you to serve the purpose of the notice as required under Section 224-c (a) of the U. P. Municipalities Act and take it as such. We further presume that this order is meant by you also to to serve the purpose of the notice required to be served on the Licensees under sub-section (b) of Section 224C requiring Licensees to sell their assets,.....

..... In view of the importance of continuance of water supply as essential necessity, in the city and in order to avoid any hardship to the citizens, we have decided to hand over the undertaking under protest and without prejudice to our rights under Section 224 C of U. P. Municipalities Act....

With the take -over of the water works all our responsibilities and liabilities under the Licence shall cease except for our rights to receive full compensation and our dues to be realised by the Municipal Board.....

Please acknowledge and let us have an early reply and oblige."

Early reply, as requested for as above by the appellant, does not appear to have been given by the Administrator of respondent-1, in that, no information in that regard was made available even though the same was required to be furnished by an order made by us on 14-1-1994.

6. However, before the sale of properties of the appellant in the water works envisaged under Section 224-C of the Act which was adverted to in the appellant's reply given in response to the Administrator's order dated 1-4-1975, that on 13-6-1975 Ordinance No. 16 of 1975 came to be issued by respondent-2 substituting new Section 224-B and new Section 224-C for existed Sections 224-B and 224-C of the Act. The said Ordinance declared that new Section 224-C shall be deemed to have come into force on 1-1-1975 while the other new sections shall be deemed to have come into force in the date of Ordinance (ibid Section 2 of the Ordinance).

7. Later, that on 8-9-1975 Act No. 45 of 1975, enacted by the State legislature of respondent-2,

replaced the said Ordinance, with exactly the same text.

8. In the said situation, that on 20-10-1975, the appellant filed Writ Petition, C. M. Writ No. 12220/75 under Article 226 of the Constitution before the High Court of Judicature at Allahabad, seeking from the High Court issuance of directions to respondents 1 to 3 to pay fair market value of the properties of the appellant in the water works, the licence of which had been revoked by respondent -1 on 1-4-1975, without invoking the provisions of the amended new Section 224-C of the Act to pay the amount to be computed there under , as the value of such properties . But, that writ petition was dismissed by the High Court.

9. The said dismissal of the writ petition by the High Court, made the appellant question the correctness of the order of such dismissal in this Court by filing a Special Leave to appeal against it. At the hearing of that Special Leave Petition, since it was contended that the High Court did not consider the challenge to the constitutional validity of Act 45 of 1975 even though the same had been raised before it, this Court granted leave sought for therein, accepted the contention and disposed of Civil Appeal No. 352/18 arising out of it by setting aside the order of the High Court under appeal and sending the matter to the High Court for its decision on all questions arising before it including the constitutional validity of Act 45 of 1975, by rehearing the writ petition.

10. The High Court which reheard the writ petition as had been ordered by this Court, again dismissed the writ petition by its judgement dated 26-4-1982 (reported in AIR 1982 All 469). That judgement shows that the submissions made on behalf of the petitioner therein (appellant here) were confined to constitutional validity of new Section 224-C of the Act which was substituted by Act 45 of 1975 for old Section 224-C of the Act. However, the High Court, as is seen from the judgement, although examined the challenge directed against the constitutional validity of new Section 224-C as that which was violative of Articles 19(1)(f) and 31 of the Constitution of India, found no substance in the challenge. Consequently, the said writ petition was dismissed by the judgement of the High Court dated 26-4-1982. The present appeal by special leave is filed by the petitioner therein-the appellant, against that judgement, as stated at the outset.

11. One important event, occurring between the date of filing of the appeal and its final hearing, the notice of which is required to be taken before advertng to the arguments in the appeal and dealing with them, is of the determination of the amount payable by respondent-1 to the appellant for its properties of Aligarh Water Works according to new Section 224-C of the Act as Rs. 5,39,755/- and the payment of that amount by respondent-1 to the appellant on 1-2-1989.

12. Contentions raised in support of this appeal by Shri Harish N. Salve, the learned counsel for the appellant, in his oral arguments and reiterated in his written submissions could, for purpose of easy understanding and proper consideration, be formulated thus :

1. When by his Order dated 1-4-1975 the Administrator of respondent-1 revoked the appellant's licence in respect of Aligarh Water Works with effect from 1-4-1975 by stating in that order, that all property belonging to Aligarh Water Works shall vest in Aligarh Municipal Board (respondent-1) and all powers and liabilities of the licensee (the appellant) under the licence to supply water shall absolutely cease and determine with effect from 1-4-1975 and that the value of the property belonging to the licensee shall be determined by the State Government in accordance with the provisions of the Municipalities Act, 1916, did such property of the appellant in Aligarh Water Works vest in respondent-1 on 1-4-1975 making it liable to pay its value to the

appellant and what remained with the appellant from 1-4-1975 was not its property in water works but merely the money value or compensation payable by respondent-1 to the appellant for such property, i.e., a chose-in-action.

2. When, by Act 45 of 1975 enacted by the State Legislature of respondent-2, property of the appellant in the Aligarh Water Works was acquired for respondent-1, making it liable to pay therefor an amount computed under its provisions was the property so acquired, a mere chose-in-action so as to make Act 45 of 1975 constitutionally invalid by it in that, acquisition of money or chose-in-action offended Articles 19(1)(f) and Article 31 of the Constitution.

3. Even if, it is assumed that new Section 224-C of the Act, which is substituted for the old Section 224-C of the Act by Act 45 of 1975 is constitutionally valid and that Rs. 5,39,755/- computed thereunder is the correct amount payable by respondent-1 to the appellant for the value of the property of the appellant in Aligarh Water Works vested in it under the new Section, and the same is paid to the appellant on 1-2-1989, is respondent-1 justified in denying to the appellant the interest payable on that amount from 1-4-1975 the deemed date of vesting of properties in respondent-1 till 1-2-1989( the date on which respondent-1 paid that amount to the appellant, particularly when the proviso to sub-section (2) of new Section 224-C of the Act required payment of such interest?

4. When a sum of Rs. 2,50,000/-, ordered by this Court on 3-12-1990 to be paid by respondent-1 to the appellant out of the total interest payable to it on the amount of compensation, is that sum of interest deposited by respondent-1 with the Registrar of the Allahabad High Court, not liable to be paid to the appellant

13. As the above contentions raised in support of the appeal were refuted by learned Counsel appearing for respondents, it would be convenient to consider the merit of each of the said contentions seriatim

Contention - 1 :

14. Since this contention is founded on a statement made by the Administrator of respondent-1, in his Order of revocation of the licence of Aligarh Water Works held by the appellant which creates an impression that the property of the appellant in Aligarh Water Works was ordered to vest in respondent-1 with effect from 1-4-1975, the question that calls for our consideration, to begin with, is whether the provision in Section 224-C of the Act, as it stood before it was substituted by Act 45 of 1975, with a new Section 224-C, empowered the Board (respondent-1) to order vesting of the property of the licensee (the appellant) in the Water Works from a date when such licensee's licence in respect of water supply through such Water Works, could be revoked in exercise of the power conferred under that provision and if that provision did not empower the Board, respondent-1 to order the vesting of the property of the appellant in the Water Works in itself, from the time it revoked its licence given in respect of such water works, whether a statement made by the Administrator of respondent-1 in his order of revocation that from the date of revocation of licence of the water works, the property of the licensee, the appellant vested in respondent-1, could have had the legal effect of vesting of such property in respondent-1.

15. Section 224-C of the Act, as it stood before its substitution by Act 45 of 1975 with a new

Section, read thus :

224-C. Where the licence of a licensee is revoked under the preceding section, the following provisions shall have effect, namely -

(a) The board shall serve a notice of the revocation upon the licensee and shall in the notice fix a date on which the revocation shall take effect; and on and with effect from such date all the powers and liabilities of the licensee under the licence shall absolutely cease and determine;

(b) Where a notice of the revocation of a licence has been served on the licensee the board may, within three months after the service of such notice and with the written consent of the Local Government, by notice in writing require the licensee to sell, and thereupon the licensee shall sell, to the board the whole of the water-works at such value as shall be mutually agreed upon, or in default of such agreement at such value as shall be determined by a valuer appointed by the board and the licensee and in case of their disagreement by the Local Governments the licensee shall however be responsible for the establishment employed by him for the undertaking and for any compensation or other payments it may be necessary to incur on their behalf :

Provided that the value of such water-works shall be deemed to be their fair market value at the time of purchase, due regard being had to the nature and condition for the time being of such water-works and to the state of repairs thereof, and to the circumstances that they are in such a position as to be ready for immediate working, and to the stability of the same for the purpose of the undertaking, but without any addition in respect of compulsory purchase or of good will or of any profits which may or might have been made from the undertaking, or of any similar consideration;

(c) Where any part of the water-works was transferred by the board to the licensee under Section 224(d), the board may by notice in writing require the licensee to retransfer the same to the board on payment by the board of any sum by which the market value of such part of the water works may have been enhanced by reason of any arrangement made by the licensee, such sum to be determined in the manner provided in clause (d) of this section.

(d) ....."

16. As seen from the Preamble of the above Section 224-C, where the licence is revoked under the preceding section by the Board (Section 224-B), the provisions to follow, i.e., clauses (a) to (d), shall have effect. First part of the provision in clause (a) requires service of notice of revocation upon the licensee fixing a date there under as to the date on which revocation, shall take effect, while its second part declares that on and with effect from such date of revocation, the powers and liabilities of the licensee under the licence shall absolutely cease and determine. First part of clause (b) of the provision which empowers the Board by notice of revocation served upon the licensee to require the licensee to sell the water works to the Board, by its second part requires the licensee to sell such water works only for such value as shall be mutually agreed upon between the licensee and the Board and if not, for the value determined by the valuer to be appointed by both of them. The proviso to the said provision then creates a legal fiction, when it declares that the value of the water works for which it would be sold shall be deemed to be fair market value on the date of its purchase

by the Board.

17. Therefore, the provision in clause (a) above makes it clear that revocation of licence relating to water works takes effect from the date fixed for the purpose by the Board in the notice or order putting an end to the licensee's from that date. Further, the provision in clause (b) and its proviso, makes it abundantly clear that water works becomes the water works of the Board only when the value payable by the Board to the licensee of such water works is determined as provided in the provision and the water works is actually sold by the licensee to the Board pursuant to its (Board's) notice issued to licensee to sell and not before.

18. Thus, the said provisions in Section 224-C of the Act as they stood before they were substituted by new Section under Act 45 of 1975, if had only empowered the Board (respondent-1) to revoke the licence of the licensee ( the appellant) of water works from a date to be specified by it and direct the licensee (the appellant) to sell the water works (Aligarh Water Works) after the value of such water works was determined either by mutual agreement or by the valuer to be appointed by both, there is no escape for us except holding that the Board had no power to appropriate such water works to itself before the taking of such sale by unilaterally stating that the properties of water works had vested in it on the date of revocation. Accordingly, we hold that the Board, respondent -1 was not empowered under Section 224-C of the Act, as it stood before its amendment by Act 45 of 1975, to get the ownership of the Aligarh Water Works or property therein transferred to itself from the appellant from the date specified for revocation of licence of the appellant in respect of Aligarh Water works, nor the statement made by the Administrator of respondent-1 in his Order ( Notice) of revocation to the effect that the properties of the water works had been vested in respondent-1 from the date of revocation of licence, i.e., 1-4-1975, did bring about that result.

19. Besides, when the provisions in Section 224-C of the Act, as they stood before they were amended by a new Section, substituted by Act 45 of 1975 empowered the Board to obtain sale of water works from the licensee only after the price or value of such water works had been agreed upon or fixed, transfer of ownership of water works, i.e., tangible immovable property in exchange for a price from the licensee to the Board could not have occurred before the taking place of such sale, inasmuch as transfer of ownership of tangible immovable property of the value of one hundred rupees and upwards could take place only by sale made under a registered instrument as required under Section 54 of the Transfer of Property Act, 1982. Therefore, unless a statute itself provides for vesting and transfer of immovable property from one person to another by acquisition or the like, the question of transfer of ownership of property in the water works from the licensee (the appellant) to the Board (respondent-1) could not have taken place, even if such water works had been forcibly taken over by respondent-1 or the possession of the same had been given to the Board (respondent-1), voluntarily by the licensee, the appellant.

20. Provisions of the Land Acquisition Act, 1894 - "the L. A. Act" in fact, illustrate the legal position for the possession of the land sought to be acquired under the L. A. Act whether its possession is voluntarily handed over to the Government by its owner or its possession is taken over by the Government as provided for under the said Act, vesting of such land in the Government takes place because of the provisions in Sections 16 and 17 of the Act, which declare that the land shall vest absolutely in the Government free from all encumbrances at a stated point of time. In other words but , for statutory vesting of land according to Sections 16 and 17 of the l. A. Act, the vesting of such land in the Government cannot take place, even if possession of it is taken by the Government in one way or the other.

21. Thus, when neither the Aligarh Water Works nor its property stood transferred to and vested in the board (respondent -1 ) so as to make it the owner thereof, the mere fact that on 1-4-1975, the Administrator of respondent-1, who made an order revoking the licence of the appellant in respect of the water works, stated in his order that from 1-4-1975, the date of revocation of the licence, the property therein vested in the Board(respondent-1), did not make the appellant lose the ownership of it and make respondent-1 get the ownership thereof.

22. Apart from what we have stated as to non-transfer and non-vesting of the property of the water works in respondent-1, the reply given on 1-4-1975 by the appellant to the order of the Administrator of respondent-1 made on the same date, revoking his licence from 1-4-1975, which is excerpted by us already, would clearly show that the appellant disputed the statement of transfer and vesting of water works in respondent-1 made in the order and required respondent-1 to purchase the property of the appellant as provided for in Section 224-C of the Act, as it stood then.

23. It is no doubt stated in the said reply that the appellant had decided to hand over the undertaking (water works) under protest, but it was unambiguously stated therein that even if the appellant is ready to hand over the water works, the order made by the Administrator of respondent-1 will have only the effect of requiring the appellant to sell its property in the water works, as provided for under clause (b) of Section 224-C, as it stood then, can mean only that the vesting of appellant's water works or its property in respondent-1 ,could take place only after the sale effected by them, as required by the provision therein.

24. From what we have stated above, it becomes obvious that the Aligarh Water Works or the property therein belonging to the appellant did not vest in respondent-1 according to the order of revocation made by the Administrator of respondent-1, with effect from the date of revocation of appellant's licence in water-works from 1-4-1975, so as to make respondent-1 liable to pay to the appellant only money value of the water-works, that is, a chose-in-action on and after 1-4-1975, as contended for by learned counsel for the appellant.

Contention-2 :

25. Among other provisions in the Act, Sections 224-B and 224-C were substituted by Ordinance 16 of 1975, which was replaced by Act as substituted by Section 2 of Act 45 of 1975, reads thus :

"224-B. Every licence granted under clause (c) of Section 224 shall, if not already revoked, stand revoked with effect from June 13, 1975."

26. Section 224-C of the Act, as substituted by Section 3 of Act 45 of 1975 in so far it becomes material for the purpose of this case, reads thus :

"224-C . (1) Where the licence of a licensee is revoked under Section 224-B as it stood immediately before the commencement of the U. P. Municipalities (Amendment) Act, 1975, or where such licence stands revoked by virtue of the new Section 224-B as substituted by the said Act, all the property pertaining to the water works (namely, all existing water supply services, including all plants, machinery, water works, pumping sets, filter beds, water mains and pipes laid down along, over or under any public street, and all buildings and other works, materials, stores and things appurtenant thereto) belonging to or vested in the licensee immediately before the date of revocation of the licence (hereinafter in this section referred to as ' the

said date') shall as from the said date vest in and stand transferred to the Board free from any debt, mortgage or similar obligation of the licensee attached to such property :

Provided that any such debt, mortgage or similar obligation shall attach to the amount referred to in sub-section (2) in substitutions for such property.

(2) Where any property belonging to the licensee vests in the Board under sub-section (1), not being water works of which only the management was transferred to him by the Board under clause (d) of Section 224, the Board shall pay to such licensee an amount determined as hereinafter provided in this section :

Provided that the licensee shall, in addition to the said amount, be paid interest thereon at the Reserve Bank rate ruling on the said date plus one percentum for the period from the said date to the date of payment of the said amount."

(3) The State Government shall appoint, by order in writing, a person having adequate knowledge and experience in matters relating to accounts, to be special officer to assess any amount payable under this section to the licensee after making the deductions mentioned in this section.

(4) (a) The Special Officer may call for the assistance of such officers and staff of the State Government in the Local Self-Government Engineering Department or of the Licensee as he may deem fit for assessing the net amount payable.

(b) The Special Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :-

(i) enforcing the attendance of any person and examining him on oath ;

(ii) compelling the production of documents; and

(iii) issuing commissions for the examination of witnesses.

The Special Officer shall also have such further powers as may be specified by the State Government by notification in the Gazette.

(5) The gross amount payable to such licensee shall be the aggregate value of the amounts specified below -

....."

27. Sub-section (2) of Section 1 of Act 45 of 1975, which refers to commencement of that Act reads, thus :

"(2) Section 3 shall be deemed to have come into force on January 1, 1975, and the remaining provisions of this Act shall be deemed to have come into force on June 13, 1975."

28. Under the said new Section 224-C of the Act where the licence of a licensee is revoked under Section 224-B, as it stood immediately before the commencement of Act 45 of 1975, all the property pertaining to water works vested in the licensee immediately before the date of revocation of the licence (to be referred to as the said date), vested in and stood transferred to the Board free from any debt, mortgage or similar obligations of the licensee attached to such property.

29. While dealing with Contention-1 above, we have held that the licence of the appellant in respect of Aligarh Water Works was revoked by respondent-1 with effect from 1-4-1975 under Section 224-B (2) (a) of the Act, as it stood before it was substituted by new Section 224-B by Act 45 of 1975, and that neither the water works nor the property of the appellant in Aligarh Water Works, the licence of which was revoked on 1-4-1975, vests in respondent-1 either on 1-4-1975 or subsequently, since the property in the Water Works was not sold by the appellant to respondent-1, as required under that Section. We have also held therein that the appellant itself did not agree for the sale of its property to be completed as provided under the said provision, so that the properties could vest in respondent-1. It is beyond dispute that no sale of the property of the appellant in Aligarh Water Works was made in favour of respondent-1 before Ordinance 16 of 1975 and Act 45 of 1975 came into force. If that be so, the property in Aligarh Water Works of the appellant continued to belong to him even when the said Ordinance and the said Act came into force. It is for that reason, it has to be held that the property of the appellant in Aligarh Water Works vested in respondent-1 on 31-3-1975, immediately before the date of revocation of the licence i. e. 1-4-1975, as envisaged under new Section 24-C(1) of the Act. If that be so, the value or the amount payable to the appellant for its property in Aligarh Water Works was the amount payable under new Section 224-C of the Act and not the value, which had to be paid under the old Section 224-C, as it stood before its amendment.

30. Thus, the question of the value of the property of the appellant in Aligarh Water Works becoming a chose-in-action on the date of revocation of the licence of the appellant of the water works, i.e., on 1-4-1975, under Section 224-C of the Act, as it stood before its amendment, did not arise. The present contention raised on behalf of the appellants that Act 45 of 1975 was constitutionally invalid as being violative of Articles 19 (1) (f) and 31, as is pointed out earlier, is founded on the premise that the acquisition sought to be made thereunder of the property of the appellant in Aligarh Water Works was money, i.e., a chose-in-action. But, as we have held, that was transferred from the appellant and vested in respondent-1 under new Section 224-C (1) of the Act which was substituted for old Section 224-c of the Act by Act 45 of 1975 is Aligarh Water Works, that is, tangible immovable property therein and its value, i.e., chose-in-action, the present contention does not survive for consideration.

Contention-3 :

31. This contention relates to the liability of respondent-1 to pay to the appellant interest on the amount of Rs. 5,39,755/- as required by the proviso to sub-section (2) of Section 224-C, as it stands substituted for old Section 224-C by Act 45 of 1975. That proviso, which is reproduced by us earlier, makes it clear that on the amount payable for the property in the water works of the licensee vested in the Board, the Board shall pay to such licensee in addition to the amount determined under the Section, interest therein at the Reserve Bank rate ruling on the said date plus one percentum for the period from the said date (the date immediately before the date of vesting of water works) to the date of payment of the said amount . Therefore, when the proviso requires payment by respondent-1 of the interest on the amount of Rs. 3,39,755/- from 31-3-1975 to 1-2-1989 to the appellant as above, respondent-1 is liable to pay the appellant interest on Rs. 5,39,755/- at the Reserve Bank rate

ruling on the said date, i.e., 9 percent per annum plus one percentum for the period from the said date, i.e., 31-3-1975 to the payment of the said amount, i.e., 1-2-1989, which works out to Rs. 7,45,828/-.

32. We, therefore, hold that respondent-1 is liable to pay to the appellant towards interest on the amount payable to it a sum of Rs. 7,45,828/- less the sum of Rs. 2,50,000/- deposited by it with the Registrar of Allahabad High Court pursuant to this Court's Order dated 3-12-1990.

Contention4 -:

33. A sum of Rs. 2,50,000/- is said to have been deposited with the Registrar, Allahabad High Court, towards part payment of interest on the amount payable by respondent-1 to the appellant towards water works, i.e., the property of the appellant in Aligarh Water Works. The amount so deposited, could be got by the appellant from the Registrar of the High Court, since we have given deduction of this amount out of the interest payable to the appellant while dealing with Contention-3

34. Subject to what we have said of the amount of interest liable to be paid by respondent-1 to the appellant, this appeal is dismissed, but without costs.

35. However, we direct respondent-1 to pay to the appellant, within three months from today, the balance of interest of Rs. 4,95,828/- liable to be paid by respondent-1 to the appellant, together with interest at the rate of 10 percent per annum from 1-2-1989 till the date of its payment.

Order accordingly.

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