

SUPREME COURT OF INDIA

Custodian of Textiles Undertaking, Bombay

Vs.

Hall & Anderson Ltd.

C.A.No.....of 2011

(P.Sathasivam and Dr. B.S.Chauhan,JJ.,)

17.01.2011

JUDGMENT

Dr.B.S.Chauhan,J.,

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 14.12.2007 in FMA No.761/05 and CAN No.7885/07 passed by the High Court of Calcutta affirming the judgment and order of the Learned Single Judge dated 6.1.2005 in CR No. 10289(W)/83 by which the Learned Single Judge has held that the appellant cannot take the management or possession of the suit premises, No.31, Chowringhee Road, Calcutta, in view of the provisions of the Textile Undertakings (Taking Over of Management) Act, 1983, (hereinafter called the 'Act 1983').

3. Facts and circumstances giving rise to this case are that Hall & Anderson Ltd. (hereinafter called 'Hall'), incorporated under the Indian Companies Act, 1913, came into existence on 8.11.1946 and started primarily a departmental store business on the premises at No.31, Chowringhee Road (hereinafter called the premises styled as Hall & Anderson). Hall purchased the textile mill situated at Globe Mills Passage (Lower Parel) from M/s. Madhusudan Mills Ltd. on 12.6.1950 and commenced business of manufacturing and selling of cotton. The name of the company M/s. Hall & Anderson Ltd. was changed to M/s Shree Madhusudan Mills Ltd., having its registered office at the premises on 21.7.1959. Amalgamation of Profit & Loss Account was prepared henceforth for M/s Shree Madhusudan Mills Ltd. from 1970.

4. In 1976, the business of departmental store was stopped due to economic loss and after winding up of the said business, the premises was let out on rent. In 1989, because of strike by workers of textiles mills, several mills suffered losses and it became difficult to run the business and therefore, the Government after having due deliberations with Reserve Bank of India and other authorities first came with the Ordinance and later on it was replaced by Act 1983.

5. The respondent No.1 herein filed Writ Petition No.10289/83 before the Calcutta High Court challenging the provisions of the Act 1983 and an injunction was granted by the High Court vide order dated 26.10.1983 restraining the present appellant from interfering with bank accounts relating to the property business as well as textile undertaking business. It was during pendency of the business that Textile Undertaking Nationalisation Act, 1995 came into existence and the mills stood acquired. M/s Shree Madhusudan Mills Ltd. was renamed as Hall on 11.2.1999. Learned Single Judge allowed the said writ petition vide judgment and order dated 6.1.2005 holding that the suit premises situated at Calcutta was by no means related to the textile undertakings and therefore, it could not be part and parcel of textile undertakings and not covered by the said Acts 1983 or 1995.

6. Being aggrieved, the present appellant preferred the FMA No.761/05 which has been dismissed by the Division Bench, and in concurrence with the learned Single Judge. Hence, the present appeal.

7. Shri G.E. Vahanvati, Learned Attorney General for India has submitted that the Division Bench, as well as the Learned Single Judge of the High Court of Calcutta, failed to appreciate the purpose of taking over the management of textile undertakings. Because of mismanagement and strike of workers, the textile undertakings became unworkable and the Government of India in public interest and taking recourse to the provisions of Articles 39B & 39C of the Constitution appointed a Committee to examine the issue and after considering its report with consultation and considering the guidance of the Reserve Bank of India, it took up a decision to take over the management of the same units of the textile undertakings. The present textile industry was in category III, and it was evident that the undertaking made viable after investment of a huge amount which could be raised by selling the extra land with the textile industries. In the instant case, the accounts of the textile undertakings and of the premises stood amalgamated in 1970. The courts below failed to appreciate the law laid down by this Court in various judgments and held that the premises was not related to textile industries by any means and was a separate and independent entity and the business of letting out the premises was totally separate business having no nexus to the textile undertakings. Thus, the appeal deserves to be allowed

8. On the contrary, S/Shri R.F. Nariman, L. Nageswar Rao, U.U. Lalit and Ranjit Kumar, learned senior counsel appearing for the respondents, have opposed the appeal contending that the judgments cited by the Learned Attorney General in the cases of *National Textile Corporation Ltd. & Ors etc. v. Sitaram Mills Ltd. & Ors. etc.*¹, and *M/s. Doypack Systems Pvt. Ltd. v. Union of India & Ors.*², have no bearing in this case for the reason that the facts therein are quite distinguishable. In the case of Sitaram Mills (supra) there had been the finding of fact recorded by this Court reversing the finding of the courts below that the real estate division of that company was not having separate and independent business and the income of real estate division came into existence from the funds of the company itself. Therefore, it was the assets of that company, namely, Sitaram Mills. In the instant case as the Calcutta High Court has held that the premises had totally separate entity having no nexus to the textile undertakings or its activities had not come into existence from the funds of textile

undertakings, it could not be the asset of the said company. More so, the premises had been mortgaged wherein the mortgagee had already sold this property because it could not be redeemed. In fact, the mortgage became the liability and under the Act 1995, it is the only assets which have been taken over and not the liabilities of the nationalised company. The appeal lacks merit and is liable to be dismissed.

9. We have considered the rival submissions made by learned counsel for the parties and perused the records.

10. The pleadings in the writ petition before the High Court revealed the factual matrix of the case and it is evident from the same that the respondent initially started the business of selling various goods and articles from the departmental store operating from the premises under the name and style of M/s Hall & Anderson. The Company purchased the textile mill in Bombay on 12.6.1950 and commenced the additional business of manufacturing and selling cotton textile. The departmental store continued its business upto 1976. Subsequent thereto, the building was developed as an income yielding asset and as such started the business of letting out various portions of the said building to different business organizations. The total area of the premises is about 4 acres and on an area of 345 sq. ft. the registered office of the company is situated. The business of textile mill remained completely separate from the premises business of letting out. They had not been interconnected and the premises business has no connection with running the textile undertakings. The accounts of the property business were separately and independently maintained. Staff engaged in the property business were also not connected. They had no concern with the working of the textile mill, except the Secretary of the Company, as he had to be the same person in view of the requirement of the provisions of Companies Act, 1961. No amount for the textile mill business had ever been borrowed from any financial institution or utilized for its running. Profit and Loss accounts of both the business have been prepared separately in spite of amalgamation since 1970. The books of account had been maintained for both the business separately. The premises had been mortgaged with the Central Bank of India, Bombay by deposit of title deeds with a view to secure advance granted by the Central Bank of India to the Company for the purpose of running the textile mill, but it stood only as a security. It has not become an integral part of the textile industries or had any nexus or relation with the working of textile mill. In the counter affidavit, reference has been made to the report of the Committee that disposal of immovable property of the Company, i.e., premises would provide substantial amount for making the undertaking viable within a few years provided, the said premises was sold. Further reference had been made to the observations made by the task force under the terms of reference that Company would be viable with the sale of land.

11. After considering the pleadings as well as the submissions made on behalf of the parties, a learned Single Judge as well as the Division Bench recorded the following findings:

“i) M/s Hall and Anderson premises at Calcutta deals with different business and cannot be treated as part and parcel of the textile undertaking at Bombay.

ii) The company was engaged in multifarious activities. iii) The textile undertaking at Bombay carries no other business other than the textile business.

iv) The bank accounts and balance-sheets of both the units are different.

v) The lump sum compensation to the tune of Rs.2,70,85,000/- has been fixed and paid under the Act 1995. 415 acres of land, building and the material acquired at Bombay leaving aside the premises at Calcutta.

vi)The textile mill at Bombay had been purchased as an asset of M/s Hall & Anderson as it had been purchased totally out of the resources of M/s Hall & Anderson. The premises at Calcutta by no means can be part and parcel having any nexus or related to the textile undertaking at Bombay.”

12. The judgment in *Sitaram Mills (supra)* was distinguishable as it had been argued in that case that the land appurtenant to the said mill was not a part of the textile undertaking. However, this Court came to the conclusion that as a result of modernization resulted in a formation of mill of a much smaller size, the land had become surplus. It was lying vacant. It was not in dispute that the surplus land was under the ownership of the textile undertaking. It was in fact the land on which the different division of the old mill had been functioning. Thus, this Court held that the land was an integral part of the textile undertaking. In the instant case, position is otherwise. The textile mill has been under the ownership of M/s Hall & Anderson at Calcutta.

13. In *M/s Doypack Systems Pvt. Ltd. v. Union of India & Ors. (Supra)* this Court while interpreting the provisions of Section 3 of the *Swadeshi Cotton Mills (Acquisition and Transfer of Undertaking) Act, 1986*, observed that the provisions of such a statute require broad and liberal interpretation in consonance and conformity with the principles enshrined in Articles 39B and 39C of the Constitution. In the said case, the issue was whether shares purchased using funds of the textile company could be held to be covered under the terms of said provision. The ratio of the said case has no application in the present case, as, admittedly, in that case the shares in question had been purchased from the funds of the textile company. In the instant case, the fact situation is the other way around. *M/s Shree Madhusudan Mills Ltd., Bombay*, had been purchased using funds generated from the premises at Calcutta.

14. We have gone through the provisions of the Act 1995. Section 8 thereof, provides for payment of amount to owners of textile undertaking:

"8. Payment of amount to owners of textile undertakings - The owner of every textile undertaking shall be given by the Central Government, in cash and in the manner specified in Chapter VI, for the transfer to, and vesting in, it, under sub-section (1) of section 3, of such textile undertaking and the right, title and interest of the owner in relation to such textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule."

However, the column (4) of the First Schedule, so far as the present textile industry is concerned, reads as under: Sl. Name of the textile owner (in rupees) (1) (2) (3) (4) Name of the Amount No. undertaking

11. Shree Madhusudan Mills, Shree Madhusudan Mills Ltd., 31, Bombay Chowringhee Road, Calcutta-16 2,70,85,000 Pandurang Budhkar Marg, From the above, it is evident that what has been acquired is the property at Bombay. Column 3 makes it clear that it was under the ownership of M/s Shree Madhusudan Mills Ltd., Calcutta, and after the property acquired at Bombay, a sum of Rs.2,70,85,000/- had been paid as compensation. No compensation has been paid for the premises at Calcutta.

15. The relevant part of the judgment in Sitaram Mills (supra) reads as under:

"The High Court completely ignored the fact that all the assets of the company were held in relation to the textile business. The company required all its real estate in the nineteenth century when it was formed for carrying on textile business and, admittedly, no new assets had been acquired by it thereafter. Even for determining the total compensation to be paid on nationalization, the Task Force takes values into account the total surplus lands of the company and does not exclude any land belonging to the so-called Real Estate Division." Therefore, it is evident that in the said case, the land appurtenant to the textile undertaking and belonging to it, was converted into real estate and even on nationalisation, for the purpose of determining the compensation, the said land had been included in the assets. In the instant case, a contrary picture emerges as explained hereinabove. More so, the chart quoted from the Act, does not show that for determining the compensation, premises property at Calcutta had also been included. As the premises in Calcutta does not form part of or has been appurtenant to the textile industry, the judgment in M/s Doypack Systems Pvt. Ltd. (supra) is also distinguishable.

16. This Court in *Minerva Mills Ltd. v. Union of India*⁴, dealt with judgment of this Court in Sitaram Mills (supra) and held as under:

"25. The learned Counsel for the petitioners has placed reliance upon an observation of this Court in *National Textile Corpn. Ltd. v. Sitaram Mills Ltd.* The question that was involved in that case was whether surplus land in the precinct of the taken-over undertaking was an asset in relation to the undertaking. It was observed: (SCC p. 133 bottom) "The test is whether it was held for the benefit of, and utilised for, the textile mill". Relying upon this observation, it is contended by the learned Counsel for the petitioners that as the vacant land, in the instant case, has not been utilised for the undertaking, it is not an asset of the undertaking. We do not think that in Sitaram Mills case this Court really meant to lay down a proposition that in order that a piece of land be considered as the asset of the textile undertaking, it must be held for the benefit of and utilised for the undertaking in question. Can it be said that a piece of land which is held for the benefit of but not utilised for the textile undertaking, as in the instant case, is not an asset of the undertaking? The answer must be in the

negative. In Sitaram Milks case that observation was made in the context of facts of that case, namely, that the surplus land was held for the benefit of and also utilised for the textile undertaking."

(Emphasis added)

17. In view of the above, we do not see any cogent reason not to concur with the view expressed by the High Court. The appeal lacks merit and is, accordingly, dismissed. In the facts and circumstances of the case, there will be no order as to costs.

Judgment Referred.

¹*AIR 1986 SC 1234*

²*AIR 1988 SC 0782*

³*AIR 1986 SC 2030*