

BOMBAY HIGH COURT

Shree Ambarnath Mills Corporation

Vs.

D.B. Godbole

A.F.O.D. No. 631 of 1956, C.S. No. 293 of 1956.

(Shah and Palnitkar, JJ.)

14.01.1957

JUDGMENT

Shah, J.

1. This is an appeal against the decree passed by Judge Tulzapurkar on 8th October, 1956, in Civil Suit No. 293 of 1956 on the file of the Bombay City Civil Court. Shree Ambarnath Mills Corporation are a partnership consisting of three partners; (1) Rai Bahadur Kunwar Raj Nath, (2) Shaligram Khanna and (3) Pesumal Atalrai Shahani. All the three partners of the firm are displaced persons who migrated to India as a result of the Partition in 1947. We will hereafter collectively refer to the three partners of Shree Ambarnath Mills Corporation as "the plaintiffs". The plaintiffs carry on business in Bombay. Prior to 1947 Messrs. Ahmed Abdul Karim Bros. Ltd., was carrying on business as manufacturers of textiles and bobbins. The properties of that Company consisted of three factories with bungalows and chawls at Ambarnath in the district of Thana, a Bobbin factory at Tardeo in Bombay and the goodwill and other benefits of the business. These properties were notified as evacuee property under a notification, dated 12th September, 1951, issued by the Assistant Custodian of Evacuee Property, and in consequence thereof the properties become vested in the Custodian of Evacuee Property. By an indenture, dated 30th August, 1952, the Custodian entered into a composite agreement with the plaintiffs relating to three distinct matters. There was first a demise under which the mills at Thana and the factory at Tardeo were leased to the plaintiffs for five years at an annual rental of Rs. 6,00,000/- payable by four quarterly installments of Rs. 1,50,000/- each, payable in advance on or before the 30th of each quarter. The plaintiffs also agreed to make a security deposit of Rs. 1,50,000/- for due performance of the covenant regarding payment of rent. Secondly there was a covenant under which the plaintiffs agreed to deposit Rs. 7,00,000/- as security for payment of the price of all stocks of raw materials, unsold finished goods, consumers' stores, spare parts, cars and trucks and other moveables which the plaintiffs agreed to purchase from the Custodian. The plaintiffs also agreed to take delivery of the stocks of raw materials, etc., which had been hypothecated to

certain banks after discharging the incumbrance. Thirdly there was a covenant of the Custodian to sell the mills and the factory to the plaintiffs subject to certain conditions.

2. Pursuant to this agreement the plaintiffs deposited with the Custodian a sum of Rs. 1,50,000/- on 31st August, 1952, as security for the due fulfillment and observance of the conditions as to regulate payment of installments of rent, but it appears that the plaintiffs did not pay the security deposit of Rs. 7,00,000/- for price of goods agreed to be purchased by them. It appears that the plaintiffs remained in possession of the properties, which were notified as evacuee properties, till February 1954. On 12th February, 1954, the Custodian served a notice upon the plaintiffs, purporting to do so in exercise of the powers vested in him by Section 12 of the Administration of Evacuee Property Act, 1950, calling upon the plaintiffs not to remove stocks of raw materials, finished goods and other properties from any of the three Ambarnath Mills or the Bobbin Factory at Tardeo or the godowns or offices at Bombay and also prohibiting the plaintiffs from raising any monies on the security of the stock of finished goods, goods in process, raw materials, etc., and further directing the plaintiffs to submit a daily report to the Custodian of all the transactions entered into by them including payments made and received, and further directing the plaintiffs to furnish in writing such information as may be required from time to time relating to the quality, quantity, nature, approximate value and the place of storage of raw materials, finished goods and goods in process. The notice was given because the plaintiffs had committed default in payment of rent and in giving the guarantee for Rs. 7,00,000/- and clause 5 of the agreement and for other defaults. On 15th February, 1954, the plaintiffs filed a petition on the original side of this Court for a Writ prohibiting the Custodian from holding an enquiry under Section 12 of the Administration of Evacuee Property Act and from enforcing certain directions given by that officer to the plaintiffs by notice, dated 12th February, 1954. That application was heard by my brother Mr. Justice Tendolkar, and he held by his order, dated 31st March, 1954, that the Custodian had no authority in exercise of powers under Section 12 of the Administration of Evacuee Property Act to cancel or terminate an agreement to which the Custodian was a party. Mr. Justice Tendolkar also held that the other directions given by the Custodian, which could not be split up as to make them applicable to evacuee property only, were also in excess of the jurisdiction of the Custodian. Accordingly Mr. Justice Tendolkar issued the Writ prayed for.

3. Against that order an appeal was preferred. The Court of Appeal held that the Custodian had under Section 12 of the Administration of Evacuee Property Act, 1950, power to cancel the lease granted by him. It was observed by the Court that there was no warrant for holding that the power of the Custodian under Section 12 of the Administration of Evacuee Property Act could be exercised only in respect of leases granted by the evacuee and that the power of the Custodian extended to all leases, the subject-matter of which was evacuee property. The Court, however, confirmed the decision of Mr. Justice Tendolkar in so far as it related to the other directions given by the Custodian by his order dated 12th February, 1954. The Court accordingly set aside the order prohibiting the Custodian from proceeding with the show cause notice under Section 12 of the Administration of Evacuee Property Act and confirmed the order to the extent to which the

notice of the Custodian sought to give directions to the plaintiffs.

4. Against that order the plaintiff preferred an appeal to the Supreme Court. Before the appeal was heard, the Legislature amended the Administration of Evacuee Property Act, 1950, by Act 42 of 1954 adding an Explanation to Section 12 which stated: "In this sub-section, 'lease' includes a lease granted by the Custodian and 'agreement' includes an agreement entered into by the Custodian". In view of the amendment, the question about the competence of the Custodian to cancel a lease or an agreement entered into by him became academic. Also the Government of India, in exercise of the powers conferred upon it by Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act 44 of 1954, issued a notification, dated 10th March, 1955, acquiring the evacuee properties of the evacuee Messrs. Ahmed Abdul Karim Bros. Ltd. The acquisition was notified to be made for a public purpose viz.. a purpose mention in Sub-Section (1) of Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act 1954. The Government of India also published a notice inviting tenders for the sale of these properties. The plaintiffs then impleaded the Union of India as a party-respondent in the appeal pending before the Supreme Court, and applied for an injunction restraining the Union of India from selling the properties notified till the final disposal of the appeal. At the hearing of the appeal it was contended on behalf of the Union of India that the properties in suit vested in them, by the operation of Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act 1954, free from all encumbrances and inasmuch as the properties formed a part of the compensation pool they had to be sold to carry out the object of that pool. Their Lordships of the Supreme Court by order, dated 10th November, 1955, dismissed the appeal filed by the plaintiffs. It was conceded by the plaintiffs at the hearing of the appeal that the amendment made by Act 42 of 1954, which included in the expression 'lease' a lease granted by the Custodian, was retrospective in operation. But it was contended that the Custodian had only power to override a bar which was imposed by law but not under a contract under which a lease was granted. It was urged that the non-obstante clause in Section 10 did not affect any contract between the parties. Their Lordships of the Supreme Court rejected that contention. It was also urged that even if the Custodian had the power under Section 12 to cancel the lease in favour of the plaintiffs, he had no power under that section to cancel the agreement to sell the mills and the factory, and to that extent the impugned order was without jurisdiction and the Custodian should be prohibited from cancelling that part of the order under the impugned notice. Their Lordships observed in dealing with that argument that the notice "in terms refers firstly to the lease which it is proposed to cancel, and secondly to the moveable's in respect of which certain directions were given" and that in the application for the issue of a Writ under Article 226 of the Constitution the validity of the notice in respect of only these two matters was challenged. Their Lordships further observed :

"The question of the rights of the appellants (plaintiffs) in so far as they related to the purchase by them of the mills and the factory was not raised in the petition, and no contentions were put forward in support thereof at any stage of the proceedings. It is for the first time in the argument before us that those rights are sought to be agitated. Under

the circumstances, we must decline to consider them. It will be sufficient if we observe that the rights of the appellants, if any, other than those arising out of the lease, are left open to the determination of the appropriate authorities, and that nothing in our decision should be taken as a pronouncement on those rights".

It is clear from these observations that Their Lordships did not deal with the question which was for the first time sought to be raised before them which related to the rights of the plaintiffs to purchase the mills and the factory under the covenants contained in the agreement, dated 30th August, 1952.

5. After the appeal was decided the plaintiffs filed Suit No. 293 of 1956 in the City Civil Court at Bombay against the Custodian of Evacuee Property and the Union of India for an injunction restraining the defendants from selling or agreeing or offering to sell the properties agreed to be purchased by them. It was averred in the plaint after setting out the history of the litigation that prior to the date of the agreement of sale, the plaintiffs being displaced persons had filed their claims under the Displaced Persons Claims Act, 1950, in respect of their properties left in Pakistan and the claims were awaiting verification and that since that date of the agreement the claims were verified and determined by the authorities under the Displaced Persons Claims Act at an aggregate sum of Rs. 20,00,000/-, but the respective amounts of compensation payable by the Government to the plaintiffs in accordance with the Rules framed under the Act had not been ascertained and, therefore, the time for performance of the agreement had not arrived and the plaintiffs were filing a suit for an injunction restraining the Union of India from selling or disposing of the suit properties. The plaintiffs also claimed that the evacuee properties having been acquired by the Union Government with notice, the agreement of sale was binding upon them and the plaintiffs were entitled to enforce specific performance of the agreement against the Union of India as well as against the Custodian, there being an implied negative covenant in the agreement of sale under which the Custodian and the Union of India were bound not to sell the properties to any person or persons other than the plaintiffs in breach of the said agreement. Contending that the right to claim specific performance of the agreement of sale could not be enforced immediately, because the compensation payable to the plaintiffs by the Government of India had not been ascertained, the plaintiffs sought to obtain an injunction restraining the defendants from selling or agreeing or offering to sell the properties which are the subject-matter of the suit.

6. The suit was resisted by the Custodian of Evacuee Property, who was the first defendant, on diverse grounds. It was contended inter alia that the written agreement, dated 30th August 1952, relied upon by the plaintiffs, was required by law to be registered and being unregistered was inadmissible in evidence, that it was not true that the written agreement recorded three distinct agreements, that in any event the plaintiffs' right to purchase or acquire proprietary rights in the demised properties was conditional and dependent upon the plaintiffs' continuing to be lessees at the time when they sought to enforce their rights to purchase the properties and that inasmuch as the right had ceased by order, dated 25th May, 1954, passed by the Custodian of Evacuee

Property validly cancelling and terminating the plaintiffs' agreement, the claim for injunction could not be maintained. It was also urged that the Central Government had not acquired the properties with notice of the plaintiffs' right under the agreement, dated 30th August, 1952, and that there was no implied covenant as alleged by the plaintiffs under which the Custodian was bound to sell the properties only to the plaintiffs and to no other person or persons. The custodian then contended that by notification issued on 10th March, 1955, by the Government of India under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the suit properties had vested in the Central Government free from all incumbrances and the plaintiffs' right to acquire full proprietary interests in the properties had become ineffective, that in any event the agreement of sale was invalid, inoperative and unenforceable in law in the absence of previous approval of the Custodian General as required by Section 10 (2) (o) of the Administration of Evacuee Property Act, that the suit was barred under Sections 15, 16 and 38 of the Displaced Persons (Compensation and Rehabilitation) Act 1954, and that the relief for permanent injunction claimed by the plaintiffs could not be granted in view of the gross delay in the institution of the suit. It was finally contended that it was open to the plaintiffs to submit their tender and become purchasers of the properties in virtue of the Rules framed under the Displaced Persons (Compensation and Rehabilitation) Act and that the granting of an injunction by the Court would seriously interfere with the public duties of the Rehabilitation Department of the Government of India and would entail great hardship in the administration of the Act and should hold up and impede payment of compensation to displaced persons and therefore also the Court's discretion in granting the injunction prayed for should not be exercised.

7. The Union of India, who are the second defendants, by their written statement adopted the contentions raised by the Custodian of Evacuee Property. In addition, they contended that under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Government of India had brought into existence a statutory compensation pool for just and fair distribution of the evacuee assets amongst the entire body of displaced persons, that the suit properties being the most valuable items of evacuee property it was the duty of the authorities to see that the properties in the compensation pool were duly liquidated in the manner provided by the Act and that any obstruction or hindrance therein was likely to result in considerable hardship to the displaced persons. It was submitted that the Authorities exercising powers under the Act were entitled and were bound to liquidate the assets in the compensation pool in a manner conducive to the greatest benefit to the entire community of displaced persons and the best way of achieving the result was to dispose of the properties in the compensation pool by auction or by inviting tenders where every citizen including the plaintiffs had an opportunity of bidding for the properties or of offering tender for the same. The Union of India also submitted that as the plaintiffs' suit was likely to interfere with the lawful exercise of the statutory powers, the Court should not exercise its discretion in favor of the plaintiffs in granting an injunction.

8. The learned trial Judge on a consideration of the diverse arguments advanced before him held that the agreement, dated 30th August, 1952, was by law required to be registered, but the fact

that the agreement was unregistered and therefore did not create leasehold rights in immovable property did not affect the right of the plaintiffs to claim specific performance of the agreement of sale incorporated in Clauses 17 to 21 thereof. He held that the document incorporated three distinct agreements : (1) an agreement relating to lease of the evacuee properties belonging to Messrs. Ahmed Abdul Karim Bros. Ltd., (2) an agreement of sale of certain moveable properties and (3) an agreement of sale of the evacuee properties which were the subject-matter of the lease : and in so far as the agreement provided for sale of the evacuee properties the absence of registration did not affect the maintainability of the suit or the admissibility of the agreement in evidence. He also held that the right to enforce specific performance of the agreement did not depend upon a subsisting lease in favor of the plaintiffs at the date when the claim was sought to be enforced, and on that view he held that the fact that the agreement of lease had been terminated did not prevent the plaintiffs from making a claim relying upon the rights granted to them under Clauses 17 to 20 of the agreement seeking to prohibit the defendants from disposing of the properties. He then held that sanction of the Custodian General was not required for entering into an agreement of sale of the properties and that in any event the properties having passed into the ownership of the Government of India under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the bar under Section 10 (2) (o) of the Administration of Evacuee Property Act did not apply. The learned Judge also expressed the view that the evidence on the record did not justify the Court in holding that in fact no sanction of the Custodian General was obtained. The learned Judge held that the Custodian, who was the only witness examined on behalf of the defendants, had no personal knowledge and there being a possibility of an oral assent of the Custodian General, who it was alleged was present at the time when the negotiations were proceeding for the agreement which ultimately was executed on 30-8-1952, it was reasonable to hold that the plea that there was no assent of the Custodian General was not proved. Holding that the benefit of a contract to purchase property, was property he was of the view that by the operation of the notification issued under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the right of the plaintiffs could not be enforced against the property, the property having vested absolutely in the Central Government free from all incumbrances. The learned Judge held that the Act was not ultra vires the Parliament of India. In his view, but for Clause (5) of Article 31 of the Constitution, the Act not having made provision for payment of compensation for extinction of the right of the plaintiffs, would have been regarded as ultra vires. He negatived the contention of the defendants that the suit was barred under Sections 17, 28 and 46 of the Administration of Evacuee Property Act or under Section 15 of the Displaced Persons (Compensation and Rehabilitation) Act. But in his view, the suit for injunction was barred under Section 36 of the Displaced Persons (Compensation and Rehabilitation) Act and the Court had no jurisdiction to grant the injunction prayed for against the defendants. The learned Judge, however, expressed the opinion that if the jurisdiction of the Civil Court was not barred under Section 36 and if the plaintiffs be regarded as having a subsisting right, the case was one in which the Court would have granted an injunction. He observed that the plaintiffs were always ready and willing to perform their part of the contract and there being a negative covenant implicit in the contract, the Court might have been justified

in issuing the injunction prayed for. He negated the argument of the defendants that the grant of the injunction prayed for by the plaintiffs may interfere with the public duties of the Rehabilitation Department and held that the fact that the compensation awardable to the plaintiffs under the Displaced Persons (Compensation and Rehabilitation) Rules, 1956, may be a small fraction of the value of the property, did not prevent the Court from granting the injunction claimed. Holding that the right of the plaintiffs to enforce specific performance was extinguished by issue of the notification under Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, and that the jurisdiction of the Civil Court to issue an injunction, in so far as it affected the properties which were taken in pursuance of the powers conferred by or under the Act, was excluded, the learned Judge dismissed the plaintiffs' suit. Against the decree dismissing their suit the plaintiffs have appealed to this Court.

9. On a perusal of the various covenants contained in the agreement, Exhibit A, dated 30th August, 1952, there is little doubt that it is an agreement of a composite character consisting of three distinct matters. Initially there is an agreement to grant a lease of the mills and the factory to the plaintiffs for a period of five years on the terms and conditions detailed therein. Thereafter there is an agreement to sell all the stock of raw materials, certain finished goods, spare parts, vehicles and other moveable's in the mills and the factory with provision for ascertainment of the price thereof. Finally there is an agreement to sell the mills and the factory to the plaintiffs subject to certain conditions. Even though these three agreements are incorporated in a single document, substantially there are three distinct agreements and the fact that the agreement, in so far as it relates to the demise of immovable property, may not be admissible in evidence and may not affect the immovable property referred to therein, does not prevent the Court from admitting the document in evidence in support of the agreement to sell the mills and the factory to the plaintiffs. The agreement to sell immovable property is not by law required to be registered, and the document in so far as it relates to an agreement of sale of immovable property is admissible in evidence. As an agreement containing the present demise of the mills and the factory for a period of five years, the agreement was by law required to be registered, but the agreement to demise land being severable from the agreement to sell the mills and the factory to the plaintiffs, the plaintiffs are entitled to maintain the suit for the injunction claimed by them, relying upon that agreement.

10. We may at this stage set out the relevant clauses of the agreement, Exhibit A.

"17. It is agreed between the Lessor and the Lessees that when the entire claims of the Lessees filed by them under the Displaced Persons Claims Act, 1950, for all their properties are determined and the compensation payable to them by the Government of India is ascertained, the market value of the entire demised premises shall be determined by an expert appointed in that behalf by the Government of India, Ministry of Rehabilitation, and such value as is determined shall be taken as price for acquisition by the Lessees of the full proprietary interest in the demised premises in the manner shown

in the next succeeding paragraph.

18. The Lessees, being all displaced persons from Pakistan and having left large properties in Pakistan, have all of them put in claims in respect of their properties and other assets left by them in Pakistan under the Displaced Persons Claims Act, 1950. When the claims under the said Act of the Lessees are verified and determined and compensation payable in respect thereof is ascertained, the total compensation payable to the Lessees shall be taken into consideration, and it has been agreed as a term of this Agreement between the parties hereto with the concurrence of the Government of India, Ministry of Rehabilitation, that on such total compensation being arrived at the Lessees shall be allotted proprietary rights in the demised premises, in the manner shown, viz., in case the value of the aggregate compensation payable to the Lessees is equivalent to the value of the demised premises as assessed, the Lessor shall convey the demised premises absolutely to them as full proprietors thereof, their interest in the demised premises being in proportion to the compensation payable to each of the Lessees and the respective shares in the proprietary interest shall be adjusted according to the amount of compensation payable to each as finally determined.

19. In case the aggregate amount of compensation payable by the Government of India to the Lessees exceeds the value of the demised premises as determined, the demised premises will be conveyed to the Lessees, their share inter se being in the proportion of the amount of compensation payable to each.

20. It is further agreed that in case the aggregate amount of compensation payable to the Lessees falls short of the value fixed for the demised premises, the Lessor shall be entitled to associate with the Lessees in the ownership of the proprietary interest to be allotted as aforesaid other displaced persons who have left industrial concerns in Pakistan, so that the total compensation payable to the Lessees and the others thus associated is equivalent to the total value of the demised premises, and the said demised premises shall then become the absolute property of the Lessees and others thus associated in proportion to the total compensation payable to each as finally determined.

21. The lease to be granted pursuant hereto shall be liable to determination earlier on the settlement of the claims of the Lessees and the allotment and transfer of the full proprietary interest in the demised premises as provided in Clauses 17 to 20 hereof; provided that if the value of the full proprietary interest in the demised premises exceeds the amount of compensation payable to the Lessees part of such proprietary interest is allotted to other persons as provided in Clause 20 hereof, the Lessees shall be at liberty to continue the lease for the unexpired residue of the terms on the terms and conditions and yearly rent prescribed hereunder, the yearly rent being adjusted proportionately to the extent of the proprietary interest allotted and transferred to the Lessees."

11. By Clause 17 it is agreed between the Custodian and the plaintiffs that the market value of the entire demised premises shall be determined by an expert appointed by the Government of India and that the value shall be taken as the price for acquisition by the plaintiffs of the full

proprietary interests. By Clause 18 it is provided that in the event of the compensation payable to the plaintiffs under the Displaced Persons Claims Act, 1950, being equal to the value of the demised premises as ascertained under Clause 17, the Custodian shall convey the demised premises absolutely to the plaintiffs as full proprietors. By Clause 19 it is provided that in the event of the aggregate compensation payable to the plaintiffs exceeding the value of the demised premises, the demised premises will be conveyed to the plaintiffs, their share being in proportion to the compensation payable to each of them individually. Clause 20 then provides that in the event of the compensation being less than the value of the demised premises, the Custodian shall be entitled to associate with the plaintiffs in the ownership of the property to be conveyed to the plaintiffs other displaced persons who might have left industrial concerns in Pakistan, so that the total compensation payable to the plaintiffs and others associated with the plaintiffs will be equivalent to the total value of the demised premises. By Clause 21 it is provided that in the event of allotment and transfer of the full proprietary interests to the plaintiffs in the demised premises before the expiry of the period of the lease, the lease shall be liable to be terminated but in the event of the value of the full proprietary interests exceeding the amount of compensation payable to them, the plaintiffs will be at liberty to continue the lease for the residue of the term and the rental being adjusted proportionately to the extent of the proprietary interest allotted to the plaintiffs.

12. The first question which falls to be determined is whether there is an enforceable agreement of sale under the agreement Exhibit A. Even on a bare perusal of the agreement it is evident that the price for which the properties are agreed by Clause 18 to be conveyed to the plaintiffs is indefinite. The price has to be determined by an expert appointed in this behalf by the Government of India, Ministry of Rehabilitation. The Government of India is not a party to this agreement and is under no obligation to appoint any person to determine the market value of the properties. The determination of the market value must, therefore, depend upon the volition of a person other than the parties to the agreement. The agreement also does not contain any indication whether the person designated in this behalf is to be accepted by the parties as an expert in ascertaining the market value. Again, the quantum of property to be conveyed to the plaintiffs is indefinite. If the market value determined by the expert under Clause 17 is equal to or exceeds the amount of compensation payable to the plaintiffs under the Displaced Persons Claims Act, 1950, no difficulty may arise. But if the compensation is less, the plaintiffs cannot claim ownership of the proprietary interests in the entire properties agreed to be sold. Whether that interest is to be fractional or is to be limited to certain items out of the properties, has not been indicated. The period when the agreement is to become enforceable is also indefinite; it depends upon the determination of the compensation payable to the plaintiffs under the Displaced Persons Claims Act, 1950. Even the persons who are to purchase the property are indefinite. In the event of it being found that the compensation payable to the plaintiffs under the Displaced Persons Claims Act, 1950, is less than the total market value of the properties agreed to be sold, other displaced persons are to be associated with the plaintiffs in purchasing the properties. The agreement does not set out as to what is to happen if the persons associated with

the plaintiffs do not accept the market value assessed under Clause 17 or show unwillingness to be associated with the plaintiffs. It also appears from Clause 21 that if under Clause 20 certain other persons are to be associated with the plaintiffs in the allotment of the properties, the plaintiffs are entitled to have the benefit of the outstanding period of the lease and it is assumed that the persons associated with the plaintiffs will agree to such a lease remaining outstanding in favor of the plaintiffs for the unexpired period. It is clear, therefore, that the agreement is indefinite in the matter of the price, the period after which the agreement is to become enforceable, the properties in respect of which it is to operate in favor of the plaintiffs and the persons to whom the properties are to be sold. It is difficult to hold that such an agreement can be specifically enforced under orders of a Court. What appears to have been contemplated by the parties, as is evident from the covenants contained in Clauses 18 and 20, is an understanding between the Custodian and the plaintiffs that the properties or a part thereof would be allotted by the Government of India to the plaintiffs in satisfaction of their claim to receive compensation under the Displaced Persons Claims Act, 1950.

13. The learned Judge in the Court below has assumed that the agreement of sale contains a negative covenant, and relying upon that assumption he has taken the view that the negative covenant can be enforced by an injunction by the Court, even though specific performance may not or cannot, at the date when the claim for injunction is made, be enforced. Mr. G. N. Joshi says that it was the contention of the defendants that there was no implied negative covenant in the agreement of sale relying on which an injunction of the nature claimed in this suit can be granted in favor of the plaintiffs. It is true that a Civil Court may grant a perpetual injunction to prevent the breach of an obligation existing in favor of the plaintiffs expressly or by implication; but in considering whether an injunction should be granted where the obligation arises from a contract, the Court is guided by the rules and provisions contained in Chap. II of the Specific Relief Act. Section 56 of the Specific Relief Act provides inter alia that an injunction cannot be granted "to prevent the breach of a contract the performance of which would not be specifically enforced." As we have already observed, the agreement relied upon by the plaintiffs is such that the Civil Court would not grant specific performance thereof, and an injunction to prevent the breach of that agreement can evidently not be granted.

14. Strong reliance was, however, sought to be placed by Mr. K. T. Desai upon Section 57 of the Specific Relief Act, which provides inter alia:

"Notwithstanding Section 56, Clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement"

It is true that the liability (disability) of the Court to compel specific performance of an affirmative covenant does not preclude the Court from enforcing a negative covenant contained

in the agreement. The negative covenant need not be express : it may be implied from the tenure of the agreement. But the covenant to be negative must be one by which a party to the agreement undertakes either expressly or by necessary implication not to act in a particular manner. Whether an agreement is affirmative or negative is a matter of substance and not of mere form, and the negative stipulation, whether it is express or implied must be distinct; and an affirmative agreement does not by itself imply a negative agreement not to do something inconsistent therewith. Otherwise, of every affirmative agreement a breach would be restrained by an injunction even if the Court is unable to compel specific performance of that affirmative covenant. An agreement to sell property to a certain person does not necessarily imply a negative agreement that it will not be sold to another person. If breach of an agreement to sell property is to be restrained by an injunction, reliance cannot be placed upon the negative implication of the affirmative covenant to sell the property. There must be something in the agreement, apart from the affirmative agreement, which shows that the promisor has expressly or by necessary implication agreed not to sell the property to any person other than the purchaser. There is no such covenant in this case and we do not think that the agreement to sell or allot the properties to the plaintiffs implies an agreement that the properties will not be sold to other persons. We are, therefore, unable to hold that the plaintiffs can sustain their right to obtain an injunction relying upon the agreement for sale of the properties in their favor.

15. It may be noted that the properties were, at the date of the suit, not in the possession of the plaintiffs. On 30th June, 1954, the Custodian took possession of the properties in enforcement of the notice served by him under Section 12 of the Administration of Evacuee Property Act. The plaintiffs were, therefore, at the date of the suit, merely entitled to a personal claim against the Custodian or persons claiming under him to obtain specific performance of the agreement. If specific performance be granted by the Court, the right may crystallize into one for obtaining title to the immovable property and possession thereof, but so long as specific performance is not granted the right is merely a personal right against the owner.

16. It is true that the right to enforce specific performance is not dependent under the terms of the agreement, upon the subsistence of the relation of landlord and tenant at the date when the claim for specific performance is made or even the claim for injunction is made. As we have already pointed out, the agreement relating to the grant of a lease of the properties and the agreements relating to sale of moveable and immovable properties are distinct agreements and even though in Clauses 17 to 21 the expressions 'lessor' and 'lessees' have been used, they have been used for the sake of brevity to express respectively the Custodian and the plaintiffs. The circumstance that the lease or grant in favor of the plaintiffs is determined by the notice served by the Custodian does not affect the right of the plaintiffs if they have any, to make a claim for specific performance or injunction. But, in our view, an injunction cannot be granted to restrain sale of the properties in suit by the Union of India to protect the right of the plaintiff under the personal covenant entered into by the Custodian to sell the properties, especially when that covenant cannot be specifically enforced, having regard to its character, against the Custodian or against

the Union of India.

17. It is unnecessary for us, on the view we take, to consider whether the sanction of the Custodian General under Section 10 (2) (o) of the Administration of Evacuee Property Act has been obtained. Assuming that it was not established by the defendants, as held by the learned Judge, that such sanction was not obtained, and assuming further that having regard to what has transpired since the date of the agreement. Exhibit A, that absence of such a sanction does not by itself affect the plaintiffs' right to claim an injunction, we are still of the view that the plaintiffs' suit must fail, because the properties in suit have vested in the Central Government absolutely and free from all incumbrances. As we have already observed, on 10th March, 1955, the Central Government issued a notification under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. That notification Exhibit B-6, in so far as it is material, states :

"Whereas the Central Government is of opinion that it is necessary to acquire certain evacuee properties in the State of Bombay for the public purpose, 'being a purpose mentioned in sub-section (i) of section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (XLV of 1954); Now therefore, in exercise of the powers conferred by the said sub-section, it is notified that the Central Government has decided to acquire and hereby acquires the evacuee properties specified in the schedule hereto': and in the schedule thereto are described the three mills at Ambarnath, a vacant piece of land out of Development Scheme No. 15 at Ambarnath and the factory at Tardeo. Section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, by its first sub-section, enables the central Government to acquire evacuee property for a public purpose, if it is of opinion that it is necessary so to do. Sub-section (2) of section 12 provides :

"On the publication of a notification under sub-section (1), the right, title and interest of any evacuee in the evacuee property specified in the notification shall, on and from the beginning of the date on which the notification is so published, be extinguished and the evacuee property shall vest absolutely in the Central Government free from all encumbrances".

Section 13 provides for payment of compensation to an evacuee in respect of property acquired under section 12 in accordance with the principles and in the manner agreed upon between the Government of India and Pakistan. Section 14 contemplates the creation of a compensation pool for payment of compensation and rehabilitation grants to displaced persons and the compensation pool is to consist inter alia of "all evacuee property acquired under section 12, including the sale proceeds of any such property and all profits and income accruing from such property.'

Section 20 authorizes the managing officer of the compensation pool to sell any property out of the compensation pool to a displaced person or any association of displaced persons or to any other person. Evidently by section 12 power is conferred upon the Central Government to notify for acquisition evacuee property on payment of compensation. On acquisition the property

becomes part of the compensation pool and may be disposed of under section 20 by the managing officer of the compensation pool.

18. On the publication of the intention of the Central Government under section 12 (1) three consequences ensue : (i) the right, title and interest of the evacuee in the property specified in the notification are extinguished; (2) the evacuee property passes absolutely to the Central Government and (3) the property vests in the Central Government free from all encumbrances. What vests in the Central Government is, however, the evacuee property and nothing else : and the right of the evacuee alone is extinguished. The property included in the compensation pool is liable to be disposed of for purposes of the Act and in the manner provided therein. Evidently on 10th March 1955, a notification was issued by the Central Government under sub-section (1) of section 12 and the title of the evacuees in the properties has, therefore, been extinguished. They are entitled to compensation under section 13 but what compensation they are entitled to is a matter in which only the evacuees are interested and the plaintiffs have no concern therein. The suit properties being evacuee properties have, by virtue of the notification, vested absolutely in the Central Government free from all encumbrances. The expression "encumbrances" has not been defined in the Act, but in the context and according to its etymological meaning it means anything that prevents or impedes action. The right vested in the plaintiffs to claim specific performance of the agreement may be regarded as an encumbrance and by the operation of sub-section (2) of section 12 the properties must be deemed to have been vested in the Central Government free from that right.

19. It was urged by Mr. K. T. Desai on behalf of the plaintiffs that the rights of the plaintiffs in the properties were not notified for acquisition and, therefore, those rights still subsist and are enforceable notwithstanding the notification against the defendants. There is no dispute that the rights of the plaintiffs are not evacuee property. They relate merely to evacuee property or may be enforceable against evacuee property. The plaintiffs are not evacuees and the rights vested in them are also not evacuee property.

Only the right, title and interest of the evacuees, viz., Messrs. Ahmed Abdul Karim Bros. Ltd. were notified for acquisition and those rights only have vested in the Central Government absolutely. But it is not because the right to purchase the properties is evacuee property that the plaintiffs are unable to enforce it : it is because the Central Government takes the property free from all encumbrances the plaintiffs are unable to enforce their rights against the property.

20. Mr. K.T. Desai also contends that the provision of section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, in so far as it operates to vest in the Central Government evacuee property free from all encumbrances without obligation to pay compensation to the persons entitled to the benefit of the encumbrances thereon is inconsistent with Article 31 (2) of the Constitution and, therefore, void. Now, the Act, as we have already stated, contemplates vesting in the Central Government of the interest of the evacuee and of no one else, and there is a provision made for payment of compensation and to the extent to which it contemplates acquisition of the interest of the evacuee, it cannot be regarded as inconsistent with Article 31 (2)

of the Constitution.

It was urged, however, that the law which vests the properties free from encumbrances in favor of the plaintiffs, i.e., free from liability of the agreement under which the properties were agreed to be sold to the plaintiffs, extinguishes a substantial right to which the plaintiffs were entitled, and as there is no provision for payment of compensation for extinction of that encumbrance the law is inconsistent with Article 31 (2) of the Constitution. We may, for the purpose of this argument, assume that the benefit of a contract, which a person has to purchase property from its owner, is a right to property: but the benefit of that contract has not been acquired or taken possession of within the meaning of Article 31 (2) of the Constitution before it was amended by the Constitution (4th Amendment) Act 1955. The contract between the plaintiffs and the Custodian is not even extinguished expressly or by implication. Undoubtedly by virtue of the notification, dated 10th March 1955, the Central Government have acquired the properties of the evacuee free from the encumbrance in favor of the plaintiffs. But the notification has not the effect of extinguishing the contract. The contract remains outstanding, but it cannot be enforced against the property vested in the Central Government by the operation of the notification. It is, therefore, unnecessary, in our view, to decide whether the provision made in section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, which vests the property in the Central Government free from the encumbrance in favour of the plaintiffs without providing for payment of compensation, is inconsistent with Article 31 (2) of the Constitution because, in our view, the plaintiffs are not deprived of any of their properties, nor has any property of the plaintiff been acquired or taken possession of compulsorily. Section 12 merely imposes a restriction upon the right of the plaintiffs to get the property in enforcement of the agreement by specific performance against the Union of India. The right of the plaintiffs to claim damages for breach of the agreement is not affected by Section 12 of the Act.

21. Even assuming that there has been deprivation of property of the plaintiffs by the Act in our view, it is saved by clause 5 (b) (iii) of Article 31 of the Constitution. By that clause it is provided that nothing in clause (2), i.e., relating to taking possession of or acquiring of property for a public purpose, "shall affect the provisions of any law which the State may hereafter make" with respect to property declared by law to be evacuee property. Evidently the Displaced Persons (Compensation and Rehabilitation) Act is legislation with respect to evacuee property.

22. It was urged by Mr. Desai that clause (5) did not apply, because the Administration of Evacuee Property Act did not declare any property to be evacuee property, but it merely prescribed the procedure for declaring property to be evacuee property. Mr. Desai submitted that legislation which was saved by clause (5) from the operation of clause (2) was legislation with respect to evacuee property where evacuee property was so declared 'by law' and not 'under law'. Mr. Desai invited our attention to several Articles in the Constitution in which, he said, a distinction was made between "declared by law" and "declared under the law", and he referred us to Articles 5, 7A, 7B, 33, 49, 76, 84, 102(a) and (e), 124 and 125 and other Articles as illustrative of that distinction. We are, however, concerned in this case to decide whether the Displaced

Persons (Compensation and Rehabilitation) Act is a law with respect to property which is declared by law to be evacuee property. The property, which is the subject-matter of the suit, is declared by virtue of authority of law to be evacuee property. It is true that under the Administration of Evacuee Property Act the Custodian is given the power to issue a notification that certain property is evacuee property, but once that notification is issued the property becomes by operation of law evacuee property and in our judgment, it must be regarded as declared by law to be evacuee property. The expression 'law' used in clause (5) does not mean merely the direct expression of the will of the Legislature; in its context the expression 'law' must include the lawful expression of the will of some authority to whom power is delegated by the Legislature. The expression property declared by law to be evacuee property", in our judgment includes property which is declared by notification issued by the Custodian under the Administration of Evacuee Property Act to be evacuee property.

23. Mr. Desai also contended that only that property which was or could be declared to be evacuee property at the date when the Constitution was passed is covered by clause (5) and property which became evacuee property since the date of the Constitution was not covered by clause (5), and in support of that contention Mr. Desai urged that originally property of a limited company could not be declared evacuee property but it was only by the amendment of Administration of Evacuee Property Act made in 1950 that property of a limited company could also be declared evacuee property in certain contingencies.

It was urged that the expression 'evacuee property' not having been defined in the Constitution, if it was open to a subordinate legislature to amend the definition of the expression 'evacuee property', so as to include in that expression property which was not at the date of the commencement of the Constitution according to the definition in force evacuee property, it would in substance enable a subordinate legislature, without following the procedure prescribed for amendment of the Constitution, to amend the Constitution. Mr. Desai says that, only that class of evacuee property, which could in law be declared to be evacuee property at the date when the Constitution was passed, must be regarded as evacuee property for the purpose of clause (5) and if the legislation related to that class of property, then only it is saved by clause (5) of Article 31 of the Constitution and not otherwise. The expression "evacuee property" has, however, not been defined in the Constitution. If by law validly enacted certain property is declared to be evacuee property and legislation is enacted with respect to that property, it must, in our judgment, fall within the exception contained in clause (5) of Article 31. We are not impressed by the circumstances that by altering the definition of "evacuee property" in an Act in force at the date of the Constitution a subordinate legislature will in effect amend the Constitution. The provision of any law which the State may after the date of the Constitution make with respect to property declared by law to be evacuee property is saved from the operation of clause 2 of Article 31, and it is not postulated that the property to which the law relates must be one which could according to some law in force at the date of the Constitution be declared evacuee property. If property is declared by law to be evacuee property any legislation relating to that property is saved from the operation of Clause 2 of Article 31, but the Constitution nowhere

sets out what property is or can be declared by law evacuee property. We are unable, therefore, to agree with the contention raised by Mr. Desai that in the absence of a provision made for payment of compensation the law which vests the evacuee property in the Central Government free from all incumbrances is void as being inconsistent with the Constitution.

24. We may also observe that section 36 of the Displaced Persons (Compensation and Rehabilitation) Act prevents the Civil Court from entertaining a suit for injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. As we have already pointed out, under section 20 power is reserved to the managing officer or managing corporation to sell property which is part of the compensation pool. The Central Government and the authority appointed by it are empowered under the Act to determine the time and occasion on which the suit property was to be sold, and no injunction can be granted by the Civil Court prohibiting the sale thereof. We, therefore, agree with the view of the learned Judge that the suit is barred under section 36 of the Displaced Persons (Compensation and Rehabilitation) Act.

25. Mr. Desai urged that in the trial Court the plaintiffs applied for leave to amend the plaint by pleading that the Displaced Persons (Compensation and Rehabilitation) Act was void under Article 14 of the Constitution and that the learned trial Judge was in error in rejecting that application. Mr. Desai says that he should be permitted to argue that the plaintiffs had been deprived of equality before the law or the guarantee of equal protection of the laws. Even assuming that the learned trial Judge was in error in not granting leave to amend the plaint, it is difficult to appreciate how the plaintiffs can press into service in this case the equal protection clause of the Constitution. As has often been said, the Constitution does not contemplate equality of all laws or application of laws equally to every person. Classification is permitted a classification based on a rational principle between persons or objects, the equal protection clause is not violated. The Legislature in this case for certain reasons appears to have thought it necessary to provide that evacuee property may be acquired by the Central Government and on acquisition the property shall vest absolutely in that Government free from all encumbrances. The legislation deals with evacuee property and the acquisition thereof and the consequent destination of that property. The evacuee property notified under section 12 (1) vests in the Central Government free from all encumbrances, and it is difficult to appreciate how the State has by issuing the notification deprived the plaintiffs of equality of law or equal protection of the laws. In our view, there is no substance in the contention that the equal protection clause of the Constitution has been violated.

26. We have carefully considered all the arguments which have been advanced by the learned Counsel for the plaintiffs in support of the appeal, and we are of the view that the decree passed by the trial Court must, for reasons set out by us, be sustained.

27. The appeal fails and is dismissed with costs.

Appeal dismissed.