

**(2007) 12 CAL CK 0041**

**In the Calcutta High Court**

**Case No : F.M.A. No. 761 of 2005 and C.A.N. No. 7885 of 2007**

Custodian of Textile Undertaking

APPELLANT

Vs

Hall and Anderson Ltd. and Another

RESPONDENT

**Date of Decision : 14-12-2007**

**Acts Referred:**

Companies Act, 1913 — Section 149(2)

Constitution of India, 1950 — Article 226

Textile Undertakings (Taking Over of Management) Act, 1983 — Section 2, 3, 3(1), 3(2), 3(4)

**Citation : (2008) 3 CALLT 530 : (2008) 4 CHN 243**

**Hon'ble Judges : Surinder Singh Nijjar, C.J.; Tapen Sen, J**

**Bench : Division Bench**

**Advocate : Indranath Sarkar and D.K. Bhattacharyya, Ranjan Deb, Ashis Chakraborty, Ravi Kapoor and Surendra Debe, for the Appellant; Arijit Chaudhury, Sudhansu Sil and Amitesh Banerjee, for the Respondent**

**Final Decision : Dismissed**

## Judgement

Surinder Singh Nijjar, C.J.—This Letters Patent appeal has been filed by the Union of India against the order passed by Hon'ble Justice Amitava Lala dated 6th of January, 2005 in C.R. No. 10289(W) of 1983.

2. We may briefly notice the relevant facts. The respondent No. 1, Hall & Anderson Ltd. a Company registered under the Companies Act and having its registered office at 33A, Chowringhee Road, Calcutta-16. claims to be the absolute owner of the land and building known as Hall & Anderson building situate at the aforesaid address. The site area is approximately 5 bighas, 11 cottahs, 5 chittaks and 14 sq. ft. The property is situated in the heart of the sophisticated commercial place in the city of Calcutta (Kolkata). The respondent No. 1 was incorporated as a Company under the Companies Act, 1913 on 8th of November, 1946. The Company carried on multifarious business activities. Some of the objects of the Company, as set out in the Memorandum of Association and which have been set out in para-2 of the paper book are quoted as under:

(1) To carry on in India and elsewhere the business of drapers and furnishing the general warehousemen in all its branches.

(2) To carry on all or any of the business of silk, mailers, silk weavers, cotton spinners, cloth manufacturers furriers, haberdashersy, hosiers, manufacturers, soap and article required for ornament, Aecreation, or amusement gold and silver swiths book solders, dealers in musical instruments, manufacturers of and dealers in bicycles, tricycles, and motor carriages and also refreshment contractors, restaurant keepers, hotel, boarding and loading house keepers, letters of furnished or unfurnished houses, flats or appurtenants, with or without servants, or other accessories or conveniences, licensed victuallers, wine and spirit merchants, tobacconists, and dealersimmineral, serated and other liqueurs, framers, dairymen, market gardeners, nurseryman and florists.

(3) To purchase take on lease or tenancy or in exchange, hire take options over or otherwise acquire for any estate or interest whatsoever, and to hold, develop, work cultivate, deal with and turn to account concessions, grants, decrees licences, privileges, claims, options, leagues, property, real or personal or right or power of any kind which may appear to be necessary or convenient for any business of the company and to purchase, charter, hire, build or otherwise acquire vehicles of any or every sort of description for use on or under land or water or in the air and to employ the same in the carriage of merchandise of all kinds or passengers and to, carry on the business of owner's of trucks. Trams, lorries, motor cars and ship-owners and lighter men and owners of air craft in all or any of their respective branches.

(4) To sell, exchange, mortgage, let on lease royalty or tribute, grant licences, easements options and other rights over and in any other manner deal with or dispose of the undertaking, property assets, rights and effects of the company or any part thereof for such consideration as may be thought fit and in particular for stocks, shares whether fully or partly paid up or securities of any other company.

(Quoted verbatim as they appear in Para-2 of the paper book)

3. Ever since its inception, respondent No. 1 claims to be carrying on business of selling various goods and/or articles from a departmental store operating in the said building under the name and style of "Hall & Anderson". By a Deed of Conveyance dated 12th June, 1950 respondent No. 1 purchased textile mills situated at Globe Mills Passage, Delisle Road, renamed as Shankarrao Narman Path, Pandurang Budhkar Marg, Lower Paral in Bombay from another Company known as "Madhusudan Mills Ltd. (hereinafter referred to as the said mills). After acquiring the aforesaid mills, respondent No. 1 commenced the additional business of manufacturing and selling cotton textiles. The nomenclature of the Company was changed to Shree Madhusudan Mills Ltd. with effect from 21st July, 1959 instead of Hall & Anderson Ltd. However, the business of respondent No. 1 Company other than the textile business-was never stopped. The registered office of the textile mills was situated in a very small area of 345 sq. ft. in the

Hall and Anderson building. It is clearly stated in the petition that departmental stores business of respondent No. 1 continued in substance till 1976. However, there was a progressive deduction in the extent of the said business over the years. In view of the progressive deduction of the departmental stores business and having regard to the relevant business considerations prevailing, respondent No. 1 decided to develop the said building as an income yielding asset. The Company, therefore, started business of leasing out various portions of the Hall and Anderson building to different business organizations. The business was referred to as the property business. Details of the existing occupants of the said building and the capacity in which the said occupants are occupying therein different portions have been given in a schedule marked "annexure C". It is made clear in the petition that the property business and the textile mills business are completely separate business activities. The running of the property business is not connected with the textile business in any manner. The accounts of the property business are maintained separately and independently of the textile mills business. The staff engaged in the property business is not connected with the working of the textile mills. It is also stated in the petition that for the purpose of carrying on the said property business respondent No. 1 maintains and operates separate bank accounts. Details of the Bank Accounts are also given. It is also the case of the respondent No. 1 that up to the year 1970, the Profit and Loss Accounts of the two businesses were prepared and published separately. Although amalgamated Profit and Loss Accounts are being prepared and published after the year 1970, yet even in such Profit and Loss Accounts income from the Calcutta property is shown separately. Respondent No. 1 maintains Electricity Register, Rent Register, Municipal Taxes Register and Register of Fixtures and Furniture at the office of respondent No. 1 at 31 Chowringhee Road, Calcutta, all of which relate exclusively to the property business of respondent No. 1. For the purpose of preparation of the amalgamated Profit and Loss Account detailed statements of Accounts relating to the mills are sent from the mills of respondent No. 1 to Calcutta. It may be noticed here that the Company was renamed as M/s. Hall and Anderson from M/s. Madhusudan Mills Ltd. from 11.02.1999. The Textile Undertakings (Taking Over of Management) Ordinance, 1983 came into force on and from 18th of October, 1983. The Ordinance was converted into the Textile Undertakings (Taking Over of Management) Act, 1983. Subsequently, the Nationalisation Act of Textile Undertaking came into force known as the Textile Undertakings (Nationalisation) Act, 1995 which came into effect from 1st of April, 1994.

4. The 1983 Act had been promulgated in view of the steep fall in the volume of production of textile undertakings. This fall in production was, inter alia, due to a prolonged strike by the workers in the textile industry. The units to be taken over was categorized as follows:

Category I: Units which were viable before the strike and continue to be as such;

Category II: Units which were viable before the strike but whose viability might

have been marginally affected by it.

Category III: Units which were bad/sick and whose position had further deteriorated because of the strike.

Thirteen mills were placed under category III. It is not in dispute that the Madhusudan Mills fall within category III. Madhusudan Mills is mentioned at Serial No. 11 of the list of textile undertakings, the management of which shall be taken over by the Government pending nationalisation of such undertakings.

5. We may also notice here that the building known as Hall and Anderson had been mortgaged by respondent No. 1 with the Central Bank of India, Mahatma Gandhi Road, Bombay by deposit of title deed with a view to secure the advances granted by the Central Bank of India to respondent No. 1 for the purpose of running of the textile mills of respondent No. 1.

6. Apprehending that the Hall and Anderson building at Calcutta would be included in the assets of Madhusudan Mills, respondent No. 1 filed the present writ petition seeking two fold reliefs, viz.:

(1) Declaration to the effect that the management of the land of the building situate at premises No. 31 Chowranghee Road, Calcutta and other businesses of respondent No. 1 except the textile mills business and/or textile undertaking are covered and have not vested In the Central Government by and under the Textile Undertakings (Taking over of Management) Ordinance, 1983 and the Textile Undertakings (Taking Over of Management) Act, 1983.

(2) If it is contended that the management of the aforesaid property is covered under the 1983 Ordinance or Act, the same be declared ultra vires and void.

7. By order dated 26th of October, 1983, an interim order was passed by the High Court in terms of prayers (f), (g) and (h) of the writ petition as regards the business of the petitioner Company at Calcutta. This interim order of injunction was with regard to the non-interference with the operation of the Company affairs at Calcutta, especially with regard to the property business. The aforesaid interim order has continued throughout the proceedings, for over 20 years. The aforesaid prayers (f), (g) and (h) as contained in C.R. No. 10289(W) of 1983 were as under:

(f) The operation of the Textile undertakings (Taking over of Management Ordinance, 1983. "The Textile undertakings (Taking over of Management) Act, 1983", be stayed in so far as the said property of your petitioner No. 1 situate at premises No. 31, Chowringhee Road, Calcutta and more fully mentioned in the schedule annexed herein to and marked "A" and the said property business and other business of your petitioner No. 1 save and except the said textile undertaking are concerned;

(g) An injunction to issue restraining the respondents and each one of them and/or their servants and/or agents and/or nominees and/or assigns from enforcing

the provisions of the Textile undertakings (Taking over of Management) Ordinance, 1983, "The Textile Undertakings" (Taking over of Management) Act, 1983" in so far as the said property of your petitioner No. 1 situated at premises No. 31, Chowringhee Road, Calcutta and more fully mentioned in the scheduled annexed hereto and marked. "A" as well as the said property business or your petitioner No. 1 and other business save and except the said textile undertaking are concerned in any manner whatsoever until further orders of this Hon"ble Court;

(h) An injunction do issue restraining the respondents from interfering with operation of the Bank accounts referred in paragraph 19 hereinabove and/or from taking over the books of accounts and/or other records which pertain exclusively to the said property business of your petitioner No. 1 as well as from taking over and/or calling upon your petitioners to hand over the register of members, minute books of Board Meetings, register of Directors, register of Investments, register of debenture holders and register of member common seal and all other common records of your petitioner No. 1 pertaining to the said Textile undertakings of your petitioners No. 1 as well as the said property business of your petitioner No. 1.

8. On consideration of the entire pleadings of the parties and after hearing the learned Counsel for the parties at length, the learned single Judge allowed the writ petition. Hence the Letters Patent appeal.

9. We have heard the learned Counsel for the parties at length.

10. It has been noticed by the learned single Judge that the second prayer is no longer subsistent in view of the declaration of the Supreme Court that the Ordinance is intra vires. Therefore, no discussion is required on the second prayer.

11. The learned Counsel for the Union of India submits that the business of Hall & Anderson continued till 12th of July, 1959. Thereafter, the Company changed its name to Madhusudan Mills. According to the learned Counsel, the business of the departmental stores had come to a standstill and no other business was carried on by Hall & Anderson. Learned counsel submits that the learned single Judge has wrongly come to a conclusion that "however, the business of the petitioner No. 1. Company other than the textile business was never stopped". This according to the learned Counsel, is contrary to the pleaded case of the petitioner in paragraph 10 of the writ petition. We are unable to accept the aforesaid submission of the learned Counsel. In paragraph 10 of the writ petition the petitioner has pleaded as follows:

The departmental stores business of your petitioner No. 1 continued in substance till 1976. In fact there was a progressive deduction in the extent of the said business over the years.

12. These pleadings would clearly indicate that although there was progressive

deduction in the extent of the business of the departmental store, but the same was continued till 1976. Therefore, it cannot be said that the finding recorded by the learned single Judge is against the pleading of the petitioner. learned Counsel, thereafter, submitted that the finding of the learned single Judge with regard to the mortgage amount being wholly and exclusively utilized for the textile mills is erroneous. A perusal of the pleadings would however show that even this finding cannot be said to be against the pleadings of the parties. The petitioner has clearly stated in paragraph 25 of the petition that the property had been mortgaged by respondent No. 1 by deposit of title deeds with Central Bank of India, Mahatma Gandhi Road, Bombay with a view to secure the advances granted by the Central Bank of India to respondent No. 1 for the purpose of running of the textile mills of respondent No. 1. learned Counsel then submitted that although it has been pleaded that Hall & Anderson has been maintaining separate accounts, none were produced in the Court. It is, therefore, submitted by the learned Counsel that the plea with regard to setting up of a new business known as the property business cannot be accepted. This, according to the learned Counsel, is even evident from the fact that no particulars of starting a new business were intimated to the Registrar of the Companies u/s 149(2)(a) of the Companies Act. It is further submitted that non-production of the record would raise an adverse inference against respondent No. 1. Since there was no other business apart from textile business, the building held by Hall & Anderson at Calcutta was clearly a part of the textile undertaking. In support of the submission, learned Counsel has relied on a judgment of the Supreme Court in the case of National Textile Corpn. Ltd. Vs. Sitaram Mills Ltd. and Others, . Relying on the provisions of Sections 2(d) and 3(2) of the 1983 Act, learned Counsel submitted that Madhusudan Mills clearly falls within the definition of the Textile undertaking. Since "Hall and Anderson" had become a part of Madhusudan Mills it would be covered by the Act. u/s 3(2) of the Act the textile undertaking is deemed to include all assets which were immediately before the appointed day in the ownership, possession, power or control of the textile Company. Therefore, respondent No. 1 cannot claim to be independent from Madhusudan Mills. Lastly, it is submitted by the learned Counsel that the writ petition should have been dismissed as it involves disputed question of facts. learned Counsel relied on the judgment of the Supreme Court in the case of New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, . In reply to the aforesaid submission, the learned Counsel for the respondent No. 1 has submitted that it is not correct to say that the findings recorded by the learned single Judge are contrary to pleadings. In fact, in the affidavit filed by the Union of India the facts pleaded by the petitioners have not been disputed.

13. We have considered the aforesaid submissions. A perusal of paragraph 6 of the affidavit would show that the statements made in paragraph 6, 7, 8, 9 and 10 of the petition are not denied. The affidavit further goes on to say that upon the purchase of the textile mills, the name of Hall & Anderson Ltd. was changed to Shree Madhusudan Mills Ltd. and the textile business became the principal

business of the Company. Even this averment would only show that even according to the Union of India the textile business was the principal business of the Company. It would not lead to the conclusion that the property business of the respondent No. 1 was not in existence. learned Counsel for respondent No. 1 then submitted that Hall & Anderson, as a Company, was not taken over, only the management of the textile undertaking at Bombay had been taken over. The property business of Hall & Anderson at 31 Chowranghee Road, Calcutta was separate and independent of the textile undertaking as understood from Section 2(d) of the Act. Section 3 makes it further clear that the assets of the undertaking have to be integrally related to the undertaking. Excepting the fact that the title deeds of the Hall &, Anderson building had been deposited with the Bank to secure the mortgage, there is no other connection between the property business and the textile undertakings. In support of the submission that the property business was wholly independent of the textile business, learned Counsel has relied on certain facts which have been duly pleaded. He has submitted that the business of Hall & Anderson was established way back on 8th of November, 1946. This Company out of its own resources purchased Madhusudan Mills in 1950. The business of Hall & Anderson continued as a departmental store till 1970s. Thereafter, there was a progressive deduction in the extent of the business over the years. Consequently, the Hall & Anderson building was leased out to numerous Companies details of which have been attached with the petition. It cannot, therefore according to the learned Counsel, be said that Hall &, Anderson was a part of Madhusudan Mills. It was rather that the textile mills were part of Hall & Anderson. Under the Act, only the textile undertakings had been taken over and not the property business of Hall & Anderson. learned Counsel further submitted that the judgment relied on by Union of India is distinguishable on the basis of the aforesaid facts. learned Counsel further submitted that the writ petition was maintainable as it did not involve any substantial disputed questions of facts. In fact, the Supreme Court in Sitaram Mills (supra) case was also dealing with the factual as well as legal situation.

14. We have considered the submissions of the learned Counsel. We are of the opinion that the finding recorded by the learned single Judge do not call for any interference. In our opinion, the learned single Judge has correctly come to the conclusion that the scope and ambit of both the 1983 Act and 1995 Act were to take over the management of the textile undertakings. A perusal of the various provisions of the Act would show that it is confined to take over the management of the textile undertakings of the Companies which are specified in the first schedule of the 1983 act pending nationalization of such, undertaking. u/s 2(c) textile undertaking means an undertaking specified in the second column of the first schedule, whereas a textile Company means a Company which is defined in the 3rd column of the first schedule as owning the undertaking specified in the corresponding entry in the second column of that schedule. This would clearly indicate that the Company cannot be equated with the textile undertaking. The

Company itself may have many different undertakings which may or may not be connected with each other at all. In the present case, Hall & Anderson was initially a departmental store, merchandising and selling a huge variety of goods. Since 1976, the buildings has been leased out to different tenants as set out in the Statement "annexure C" showing the occupancy of the Hall & Anderson building by different tenants as on 19th October, 1983. On the basis of the above the respondent No. 1 has rightly claimed that Hall and Anderson is a property business whereas the business of Madhusudan Mills is wholly confined to textiles within the city of Bombay. Section 3 clearly provides that the management of certain textile undertakings shall vest in the Central Bank of India. Even Sub-section (2) provides that the textile undertaking shall be deemed to include all assets, rights, leaseholds, powers, authorities and privileges of the textile Company in relation to the said textile undertaking and all property movable and immovable including land, building, workshop project, stores, instruments, machinery equipment, automobiles and other vehicles and goods under production or in transit, cash balances, reserve fund investments and all other rights and interests in or arising out of such property as were immediately before the appointed day, in the ownership, possession, power of control of the textile company. (Emphasis supplied). Sub-section (4) only talks of all persons in charge of the management of the textile Company in relation to the textile undertaking immediately before the appointed day, shall be deemed to have vacated their offices as such on the appointed day. We are of the considered opinion that these provisions would make it abundantly clear that the Act is made applicable to the textile undertaking and taking over of management thereof. Learned single Judge has correctly held that it cannot extend the jurisdiction beyond the scope of textile activities of an undertaking under the Company. We also agree with the finding of the learned single Judge that "It can safely be construed that a Company with multifarious activities cannot be held up absolutely for the purpose of failure of one segment and taking over by the management of such segment." We also do not find any infirmities in the finding of the learned single Judge that "the Act is categorical in respect of the textile undertaking alone there is no necessity for the Court to interpret the same by saving that taking over the management of the undertaking means taking over the Company as a whole irrespective of the various businesses even unconnected with the textile undertaking."

15. We are also of the opinion that the judgment of the Supreme Court in the case of Sitaram Mills (*supra*) case would not be applicable in the facts and circumstances of this case. In our opinion, the learned single Judge has correctly distinguished the aforesaid judgment. The Supreme Court in paragraph 2 of the judgment has noticed the facts in that case. It is observed that the mills in question were established in 1875 on a very large tract of land located in the heart of the metropolitan city of greater Bombay. The only real estate that it acquired in the late 19th century comprised of 1,05,008 sq. yards which undoubtedly was an asset of the textile undertaking, although the actual mill



precincts were spread over 50,749 sq. yards. Early in the 20th century it changed hands a few times and ultimately it was taken over by Tantias of Calcutta in 1955 as a grey unit. The Tantias had apparently undertaken a scheme of modernization resulting in the development of the mill into a highly export-oriented unit. However, over the years the financial condition of the mills deteriorated. Therefore, the management of the mills was taken over under the 1983 Act. To challenge the take over, a writ petition under Article 226 of the Constitution of India was filed. It was argued that the land which was appurtenant to the mills was not a part of the textile undertaking. Dealing, with the aforesaid submission it was observed as follows:

32. The fundamental question is: Whether the land is an asset in relation to the textile undertakings which must necessarily turn on the interpretation of Sub-section (2) of Section 3 of the Act. The test is whether it was held for the benefit of, and utilized for, the textile mills. It is quite clear that there was as such no such separate business carried on by the Company in real estate. All the assets including the surplus lands appurtenant to the mill were assets on the Company held for the benefit of the textile undertaking. At no point of time was there a segregation of the assets of the Company to form the Real Estate Division. The surplus land which was an asset belonging to the Company's textile mill was never bifurcated to form a Real Estate Division. There was no transfer of title to the lands and the so-called Real Estate Division had no capital assets on its own. The Company was indebted to the tune of Rs. 6.80 crores and the liabilities were being met by sale and development of lands, construction of industrial galas and the diversion of plot No. 5 from the Industrial zone to the Residential zone. The proceeds were all ploughed back into the textile business to pay off the debts. There was no separate account of the Real Estate Division and there is really nothing on record to show that any separate business in real estate was started. The petitioners have laid no real foundation on the pleadings to sustain the finding reached by the High Court that the business of real estate was separate and distinct from the textile business. There is no clarity in the pleadings as to the precise point of time when such a business was ever started. The question is : when, did the Real Estate Division come into existence ? The petitioners aver in para 2 that w.e.f. The year 1973-74 the Company also established what is described as a Real Estate Division". It is averred:

In the said Division, the 1st Petitioner carried on and carries on the business of developing various plots, putting up buildings thereon and selling the same or portions thereof. The said activity is totally segregated from the textile undertaking and is a separate and independent business of Petitioner No. 1 and it has nothing to do with the Textile Undertaking.

While in paragraph 27 it is averred:

Apart from the 1st Petitioner's textile undertaking and the business of manufacturing yarn and textile, the 1st Petitioner from 1970 also carried on the business of real estate.

33. The balance-sheets of the Company throughout furnish data for the textile undertaking as a whole and the fact shows that the so-called real estate business was not separate from the textile undertaking. Even the schedule of fixed assets does not indicate that the alleged Real Estate Division comprising of the surplus lands apart from 40,456 square yards which now form part of the mill precincts have been separated. There is nothing to show that the said lands were not appurtenant to the textile undertaking or their integrality was broken. The balance-sheets do not disclose that the Company had shown. Real Estate Division or the industrial galas separately in the schedule of fixed assets. This falsifies the petitioners' plea that real estate business was separate and distinct from the textile undertaking. It is quite clear that the business of the Company under the Real Estate Division was a business belonging or related to the textile undertaking. This is borne out by the fact that before the taking over of the management by the Central Government under Sub-section (1) of Section 3 of the act, the petitioners' Company as a condition of getting loans from financial institutions to rehabilitate the textile mill mortgage the lands and also for making it financially viable brought in additional funds by sale of the excess lands. Sales of the surplus lands or of industrial galas constructed thereon did not constitute an adventure in the nature of trade but were in substance and essence utilisation of the capital assets of the Company for the purpose of running the textile undertaking.

16. From the above-narrated facts it becomes apparent that the Supreme Court was considering a case on the basis of facts peculiar to that case. In that case, Sitaram Mills established in 1875, the only real estate that it acquired in the late 19th century comprised the land on which the actual mill precincts were located. It was the only asset of the textile undertaking. As a result of modernisation resulting in the formation of a mill of a much smaller size a large area of the land had become surplus. It was lying vacant. It was never disputed that the surplus land was the ownership of the textile undertaking. It was the land on which different divisions of the old mill had been functioning. Therefore, it was held that the land was an integral part of the textile undertaking. In paragraph 20 of the judgment it is stated as follows:

The original establishment was brought about in the late 18th and early 19th century when wages were low and the textile industry was not modernized. There was total lack of scientific or proper planning. After the present management had taken over in 1955 the Tantias implemented a modernisation scheme by bringing the departments together which promoted convenience in handling and reducing transportation costs, wastage and pilferage. As a result of these measures a large area of land and built up space became available to the Company for the purpose of utilizing the same in its real estate business. Consequently in the year 1970 the Company applied to the Bombay Municipal Corporation for subdivision of its lands in order to enable it to utilize the same for the purpose of its real estate business.

17. From the above it becomes apparent that the property business consisted only of the surplus land of the textile undertaking which had become available as a direct consequence of the modernisation of the mills. The property business was, in fact, only a division of the textile mills known as the property division. Taking into consideration these facts, the Supreme Court came to the conclusion that there was in reality no such business much less any real estate business. The money that was realized from the sale of the real estate was immediately utilized to improve the liquidity of the Textile Undertaking. As a cumulative effect of all these factors, it was held by the Supreme Court that the surplus land had been held for the benefit of and utilized for the textile mills. It was held that the petitioners had laid no real foundation in the pleadings to sustain the finding reached by the High Court that the business of real estate was separate and distinct from the textile business. It was, therefore, held as under:

33. ...It is quite clear that the business of the Company under the Real Estate Division was a business belonging or related to the textile undertaking. This is borne out by the fact that before the taking over of the management by the Central Government under Sub-section (1) of Section 3 of the act, the petitioners' Company as a condition of getting loans from financial institutions to rehabilitate the textile mill mortgage the lands and also for making it financially viable brought in additional funds by sale of the excess lands. Sales of the surplus lands or of industrial galas constructed thereon did not constitute an adventure in the nature of trade but were in substance and essence utilisation of the capital assets of the Company for the purpose of running the textile undertaking.

18. Such is not the position in the present case. It is clearly pleaded in the writ petition that the petitioner Company was incorporated on 8th of November, 1956. Out of its own resources Hall & Anderson had purchased the textile undertaking, viz., Madhusudan Mills. It was Hall & Anderson that was the absolute owner of the land and building at 31 Chowringhee Road, Calcutta, The business of manufacturing and selling cotton textile was additional to the business of the departmental store. The departmental store business continued in substance till 1976. Thereafter, there was a progressive decline in the extent of the business over the years. But, nevertheless the business continued. However, ultimately Hall & Anderson building was developed as an income yielding asset by leasing out various portions of the building to different organizations. This was known as the property business. Textile undertaking which is located in Bombay had its registered office in the building belonging to Hall & Anderson at Calcutta. The business of Hall & Anderson, is wholly independent from the business of Madhusudan Mills. Separate Books of Accounts are maintained by the two concerns. Both maintained separate Bank Accounts. There was no intermingling of the Bank Accounts of the textile undertaking with Hall &, Anderson. Even, in the amalgamated profit and Loss Accounts the profit and loss from the Calcutta property is Known separately. In view of the aforesaid facts, we are of the considered opinion that the learned single Judge had

correctly come to the conclusion that the building known as Hall & Anderson cannot be said to be an asset belonging to the textile undertaking. In fact, in our opinion, the facts are rather indicative that the textile mill was an asset of Hall & Anderson. It had been purchased totally out of the resources of Hall & Anderson. The learned single Judge has correctly come to the conclusion that there is not even an iota of evidence to show that the textile undertaking was carrying on any business other than textiles. Learned single Judge also correctly held that "Nothing is established to show that the Calcutta property is part and parcel of the textile undertaking."

19. It is a settled proposition of law that in interpreting a judgment the factual backdrop cannot be ignored. The proposition has been clearly laid down by the Supreme Court in the case of *State of Orissa and Others Vs. Md. Illiyas*, as follows:

12. When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the case connected and there cannot be any straitjacket formula. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that prerequisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) Judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See *State of Orissa v. Sudhansu Sekhar Misra and Union of India v. Dhanwanti Devi*). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leathern* the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

20. A perusal of the aforesaid judgment would show that a decision contains findings of material facts direct or inferential, statement of and principle of law applicable to the legal problems disclosed by the facts; judgment based on the combined effect of both the facts and the law applicable thereto. Clearly, therefore, the aforesaid Judgment is based on the combined effect of the facts and the law. It has also been clearly held that a decision is an authority only for what it actually decides. It is not permissible for the Court to extend the ratio to a proposition that may seem to flow logically from it. The aforesaid Judgment of the Supreme Court has been reiterated and followed in the case of Uttaranchal Road Transport Corpn. and Others Vs. Mansaram Nainwal, . Applying the aforesaid principles of law. we hold that there is no parity of facts between the judgment of the Supreme Court in the case of Sitaram Mills Ltd. (supra) relied upon by the learned Counsel for the appellant and the facts of the present case.

21. We are also not impressed by the submission of the learned Counsel for the appellant that the writ petition ought to have been dismissed on the ground that it involves disputed questions of facts. In our opinion, the reliance of the learned Counsel for the appellant on the judgment of the Supreme Court in the case of New Satgram Engineering Works Ltd. (supra) is wholly misplaced. Paragraph 17 of the aforesaid A judgment is as follows:

17. It was contended that the High Court should have gone into the question of title of the parties with respect to the properties in dispute particularly when sufficient documentary evidence was placed on record, as reflected in the judgment. We are afraid the matter is not as simple as is suggested. The documents on record merely tend to show that the engineering unit though adjacent to, was situate on a different plot and there was an attempt to show that it was not a workshop in, or adjacent to a mine. We are of the view that this hardly matters. Merely because the land on which a workshop of a coal mine is located bears a different plot number, or even if there is a compound wall between the main office of the coal mine and the workshop, it would not cease to be part of the mine. The question in such cases will always be whether the workshop is "located in, or adjacent to a mine" and was "used substantially for the purposes of the mine under the same management. These are but essentially questions of fact to be determined according to the facts and circumstances of each particular case. When the facts themselves are seriously controverted the High Court was justified in observing that the dispute relating to the properties in question raised a "serious question of title" and the parties must get their rights adjudicated upon in a civil Court.

22. These observations would clearly show that High Court declined to go into the question of title of the parties with regard to the property in dispute. The facts in the case were seriously controverted. Therefore, it was observed that when the facts themselves are seriously controverted, the High Court was justified in observing that the dispute relating to the properties in question raised a serious question of title and the parties must get their rights adjudicated upon

in a civil Court. In the present case, there is hardly any denial of the facts pleaded by the respondent No. 1 in the writ petition. In any event it is a settled position of law that the High Court is not precluded from entertaining a petition under Article 226 of the Constitution of India merely because in considering the writ petitioner's right or relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. The only caveat on this power is that it being discretionary, must be exercised with due care and caution. We find support for this view from the judgment of the Supreme Court in the case of Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, . In the aforesaid case it has been clearly held as follows:

10. ...The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasized is essentially , different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of facts, which may for their determination required oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see *Gunwant Kaur v. Bhatinda Municipality*). If, however, on consideration of the nature of the controversy, the High Court decides, as In the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and inconformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.

We may also notice here that the Learned single Judge has correctly observed that even in *Sitaram Mills* (supra) case relied upon by the appellants, the Supreme Court had considered the factual backdrop of that case in coming to the conclusion that the land which was appurtenant to the Mill was an integral part of the textile undertaking. We, therefore, do not find any merit in the submission of the learned Counsel for the appellant that the writ petition ought to have been dismissed as it Involves disputed questions of facts.

23. In our opinion, the learned single Judge has rightly concluded that "the building known as Hall & Anderson was not an integral part of the Madhusudan Textile Undertaking that was taken over under the Textile Undertakings (Taking Over of Management) Ordinance, 1983 which came into force on and from 18th October, 1983 and was converted into the Textile Undertakings (Taking Over of Management) Act, 1983.

No other point has been urged before us.

The appeal is, therefore, dismissed.

There shall be no order as to costs.

Tapen Sen J.

I agree.