

---

**(2011) 08 AHC CK 0045**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No"s. 62844, 66135 and 65588 of 2010

Krishna Kant Bindal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

---

**Date of Decision :** 20-08-2011

**Acts Referred:**

Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 — Section 2, 286A, 3, 4, 5

**Citation :** (2011) 10 ADJ 189

**Hon'ble Judges :** Ashok Srivastava, J; Amitava Lala, J

**Bench :** Division Bench

**Final Decision :** Dismissed

---

## **Judgement**

Hon"ble Amitava Lala, J.—Since all the aforesaid writ petitions are connected with each other, the same are being decided by this common judgment.

2. So far as first writ petition, being Civil Misc. Writ Petition No. 62844 of 2010, is concerned, it relates to Plot Nos. 872, 877, 878 and 879 situated in Pargana Baran, Tehsil and District Bulandshahar, whereas other two writ petitions, being Civil Misc. Writ Petition Nos. 66135 of 2010 and 65588 of 2010, are in respect of Plot Nos. 1017 and 1003 situated in Quasba and Pargana Baran, Tehsil and District Bulandshahar. Though the second and third writ petitions have been made by different set of petitioners but are arising out of selfsame properties and praying identical reliefs. Admittedly, due to pendency of the first writ petition both second and third writ petitions have been filed though, according to us, second and third writ petitions are relating to the plots, which are different than the plot numbers in the first writ petition.

3. According to the petitioners in all the writ petitions, all the plots are inherited by Sri Krishna Kant Bindal, petitioner No. 1 in the first writ petition, from one Seth Rajendra Lal, since deceased. So far as first writ petition is concerned, though the petitioner No. 1 entered into a registered agreement for sale in favour of the petitioner No. 2 and two others, namely, Sri Vijay Kumar Agarwal

and Sri Dharmendra Singh, but these two persons have not been made party herein excepting the petitioner No. 2.

4. In order to understand the factual aspect of the matters, we take the first writ petition i.e. Writ Petition No. 62844 of 2010 as leading one.

5. The facts of the case, according to the petitioners, are that Seth Rajendra Lal, since deceased, had established a Sugar Mill in the name of M/s. Panniji Sugar and General Mills Company at Bulandshahar (hereinafter in short called as the "sugar mill"). Seth Rajendra Lal was the sole proprietor of the sugar mill. He also purchased the land of Plot No. 877 measuring an area about 11860 square yards as well as appurtenant lands being Plot Nos. 872, 878 and 879 by means of sale-deed from one Sri Panni Lal. He construed a house over Plot No. 877 and was also residing in that house. The sugar mill established by Seth Rajendra Lal was running properly without any hindrance but on account of certain policies of the State Government, the sugar mill started running in losses. However, a proceeding for recovering arrears of land revenue was initiated under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and in the year 1971 u/s 286-A thereof a receiver was appointed. The receiver continued to manage the affairs of the sugar mill. According to the petitioners, the receiver never took possession of the house situated over Plot No. 877 as well as appurtenant Plot Nos. 872, 878 and 879 because such property was exclusive property of Seth Rajendra Lal, since deceased, and the possession of the same was with Seth Rajendra Lal and after his death with the petitioner No. 1. When the receiver was managing the affairs of the sugar mill, the State Government promulgated the Uttar Pradesh Sugar Undertakings (Acquisition) (Amendment) Act, 1985 (hereinafter in short called as the "Act, 1985") by amending the Uttar Pradesh Sugar Undertakings (Acquisitions) Act, 1971 (hereinafter in short called as the "Act, 1971"). By such Act of 1985, the sugar mill i.e. Panni Ji Sugar and General Mill was notified as acquired by the State Government. After acquisition, the sugar mill vested in the State of Uttar Pradesh and was managed by the Uttar Pradesh State Sugar Corporation Limited (hereinafter in short called as the "Sugar Corporation"). According to the petitioners, neither the State of Uttar Pradesh nor the Sugar Corporation ever took actual physical possession of the aforesaid plots as well as the house constructed by Seth Rajendra Lal, since deceased, for his residential purpose and the land was not part of the sugar mill. The writ petition filed on behalf of the sugar mill challenging the acquisition was dismissed when Civil Appeal No. 1292 of 1986 (Krishna Kant Bindal v. State of U.P and others) was filed. In such appeal, an application was also filed by the petitioner No. 1 regarding residential house by saying that he continued to be owner of the same and it did not vest in the State of Uttar Pradesh or Sugar Corporation. The Supreme Court by its order dated 7th November, 1988 was pleased to direct the District Judge, Bulandshahar to find out whether the residential house was vested in the State or not, and to report back to the Supreme Court. Pursuant to such order, a miscellaneous case, being Misc. Case No. 57 of 1988, was registered before the District Judge, Bulandshahar. After

recording evidences, it was held by the District Judge that the residential plot did not vest in the State of Uttar Pradesh or Sugar Corporation. However, since the Supreme Court was pleased to uphold the validity of the Act, 1971 in the case of Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, the appeal of the petitioner No. 1 was also dismissed as withdrawn. At the time of dismissal of the appeal the order of status quo granted by the Supreme Court regarding possession was discharged. However, it was further directed that whoever seeks any positive direction as regards possession of the bungalow, it would be open to the appropriate party to take such procedure as is available at law and for such purpose eight weeks" time was granted until then the status quo order was directed to continue and not further. According to the petitioners, as per the findings of the District Judge, the petitioner No. 1 was owner of the residential house and also in possession of the same till today, and in spite of eight weeks" time granted by the Supreme Court to take steps with regard to possession of bungalow having lapsed, no step has been taken by the State of Uttar Pradesh or Sugar Corporation for any direction or order to dispossess the petitioner No. 1 from the residential house. The petitioners further contended that with regard to the possession having been delivered to the petitioner No. 1 in pursuance of the order of the Supreme Court the petitioner No. 1 was holding a possession certificate, a perusal of which would show that by the high-handed action of the Collector the premises was locked. In further, when the petitioner No. 1 wanted to sell certain land of plot, on the representation of Managing Director of Sugar Corporation, the District Magistrate on 20th August, 2006 directed the appropriate authority not to register any document in connection with the such property and also directed for an enquiry to be conducted by the Additional District Magistrate (Administration) in this regard. Enquiry was conducted by the Additional District Magistrate. Thereafter, on 12th December, 2006 the District Magistrate passed an order that the disputed property was registered in the name of petitioner No. 1 and the Sugar Mill administration may take step for mutation in their name, therefore, the direction not to register the document was withdrawn. Prior to the aforesaid date i.e. on 13th October, 2005 the Sugar Corporation got its name mutated. On 17th September, 2010 the Principal Secretary, Government of Uttar Pradesh, sent a letter to the Managing Director of the Sugar Corporation directing that the sugar mills would be sold in view of the decision taken by the State Government and the sugar mill unit at Bulandshahar, namely, Panniji Sugar Mill would be sold for Rs. 29.75 crores. The petitioner No. 1 or the petitioners had no knowledge that the residential house and other plots were made part of the sugar mill. However, on enquiry, it was found that all the plots mentioned above, which are exclusive property of the petitioner No. 1, are also to be sold alongwith the sugar mill unit. Under such circumstances, the first writ petition has been filed by the petitioners before this Court.

6. So far as other two writ petitions, being Writ Petition Nos. 66135 of 2010 and 65588 of 2010, are concerned, they are also almost on the similar line but in

respect of different plots, as aforesaid, parts of which have allegedly been sold to the respective petitioners of these two writ petitions.

7. Mr. Vishnu Sahai, learned Counsel appearing for the petitioners, has categorically contended before this Court that the predecessor-in-interest of the petitioner No. 1 in the first writ petition was owner of the sugar mill as Proprietor, therefore, bungalow of such person, being Proprietor, cannot be construed as part and parcel of the sugar mill unlike the property of a Managing Director of the sugar company. All the properties of a sugar company, being scheduled undertaking, can be said to be properties of a company unlike individual. Since the predecessor of the petitioner No. 1 was Proprietor of the sugar mill, he has independent right of ownership in respect of his residential accommodation, unlike the residential accommodation of Directors of a company. Therefore, under no circumstances, the residential accommodation of the petitioner No. 1 inherited from his predecessor can be said to be property of a company, which can vest in the State or Sugar Corporation as "scheduled undertaking".

8. On the other hand, Mr. J.N. Mathur, learned Additional Advocate General for the State of U.P., has relied upon the meaning of "scheduled undertaking" as per Section 2(h) (vi) of the Act, 1971. Such part is quoted hereunder:

(vi) all lands (other than lands held or occupied for purposes of cultivation and grovelands) and buildings held or occupied for purposes of that factory (including buildings pertaining to any of the properties and assets hereinbefore specified, and guest houses and residences of directors, managerial personnel, staff and workmen or of any other person as lessee or licensee, and any store houses, molasses, tanks, roads, bridges, drains, culverts, tube-wells, water storage or distribution system and other civil engineering works) including any leasehold interest therein;

9. Section 3 of the Act, 1971 gives meaning of "vesting", which is also quoted hereunder:

3. Vesting.--On the appointed day, every schedule undertaking shall, by virtue of this Act, stand and be deemed to have stood transferred to and vest and be deemed to have vested in the Corporation free from any debt, mortgage, charge or other encumbrance or lien trust or similar obligation (excepting any lien or other obligation in respect of any advance on the security of any sugar stock or other stock-in-trade) attaching to the undertaking:

Provided that any such debt, mortgage, charge or other encumbrance or lien, trust or similar obligation shall attach to the compensation referred to in Section 7, in accordance with the provisions of that section, in substitution for the undertaking:

Provided further that a debt, mortgage, charge or other encumbrance or lien, trust or similar obligation created after the scheduled undertaking or any property or asset comprised therein had been attached or a receiver appointed

over it, in any proceedings for realisation of any tax or cess or other dues recoverable as arrears of revenue shall be void as against all claims for dues recoverable as arrears of revenue.

10. We have also gone through Section 4 of the Act, 1971, which deals with certain consequences of vesting, whereas Section 5 deals with duty to deliver possession. Both the sections are reproduced hereunder:

4. Certain consequences of vesting.--Notwithstanding anything contained in any other law for the time being in force, and save as otherwise provided in this Act, on and from the appointed day--

(a) every appointment of Receiver over any scheduled undertaking by any Court shall cease;

(b) every lease or other arrangements whereunder any scheduled undertaking or the management thereof has been transferred to any person shall cease to have effect;

(c) every attachment injunction or any other order of a Court restricting or restraining the use of any scheduled undertaking or prescribing a scheme of management in respect thereof howsoever described, shall cease to have effect.

5. Duty to deliver possession.--(1) Where any scheduled undertaking has vested in the Corporation u/s 3, every person in whose possession or custody or under whose control any property or asset, book of account, register or other document comprised in that undertaking may be, shall forthwith deliver the same to the Collector.

(2) The Collector may take all necessary steps for securing possession of any such property or asset, book of account, register or document, and in particular, may use or cause to be used such force as may be necessary.

(3) The Collector shall prepare an inventory of all properties, assets, book of account, registers and documents taken possession of under this section, so far as practicable in the presence of the occupier or his authorised representative.

(4) Delivery of possession to the Collector under this section shall amount to delivery of possession to the Corporation.

(5) Without prejudice to the provisions of foregoing sub-sections, any person referred to in sub-section (1) shall be liable to account to the Corporation for any such property or asset, book of account, register or document which he has failed to deliver to the Collector.

11. Mr. Mathur has also said that meaning of "owner" is given under the U.P. Industrial Area Development Act, 1976 and by virtue of legal fiction that meaning can be imported herein.

12. Admittedly, the scheduled undertaking was under the control and supervision of the receiver but the only issue raised by the petitioners herein is that the

receiver never took actual physical possession of the alleged residential house of the petitioner No. 1 of the first writ petition.

.13. Private respondent No. 4, being purchaser company of the entire property of Sugar Corporation at Bulandshahar, name of which has wrongly been given in the cause title, is a running industrial undertaking. Mr. Ravindra Kumar Raizada, learned Counsel appearing on its behalf, has contended that the Collector/ District Magistrate, Bulandshahar in exercise of powers u/s 5 of the Act, 1971 vide order dated 7th July, 1997 directed the Tehsildar concerned to take possession of the residential house, which was being used by the erstwhile owners, to deliver/ handover possession of the same to the Sugar Corporation. In compliance thereof, Tehsildar took over possession of the bungalow and handed over to the Sugar Corporation. Possession was taken as per the procedure under the law. Minutes of the proceedings dated 14th July, 1997 were duly signed by one Sri S.K. Goyal, representative of the petitioner No. 1.

14. On perusal of the Act, 1985 we find that the same was promulgated on 23rd August, 1985 and in the Second Schedule of the same as per Sections 2(h) and 7(5) of the principal Act i.e. Act, 1971 name of the sugar mill in question has been incorporated. Incidentally, Section 7 of the Act, 1971 deals with determination and mode of payment of compensation. Therefore, from the aforesaid position of fact and law, it is crystal clear that physical possession has been taken by the authority in accordance with law in the year 1997, which has not been challenged by the petitioner No. 1 of the first writ petition before the appropriate Court or forum from that period or even after vacating the order of status quo by the Supreme Court.

15. In support of his contentions, Mr. Sahai has cited certain judgments. He has cited a three Judges' Bench judgment of the Supreme Court in Pandit Ram Narain Vs. The State of Uttar Pradesh and Others, to establish that for the purpose of imposition of tax under the relevant Act (as therein), nexus is required to be established in between the residence and the carrying of trade or profession. A Constitution Bench judgment of the Supreme Court in Lilavati Bai Vs. The State of Bombay, has been cited to establish that it is well-settled that the observations made by a Court with reference to the construction of one statute cannot be applied with reference to the provisions of another statute, which is not in pari materia with the statute which forms the subject-matter of the previous decision. He has also relied upon the Supreme Court judgment in Management of Indian Bank and another v. G. Ramachandran and others, 2008 ACJ 1813 (SC) , to establish that for the purpose of interpreting a statute reference to another statute is not permissible. On a different topic he placed a judgment in Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, to show that meaning of "plant" cannot be extended but it should be proceeded on the basis of the meaning of the word given in the statute. Commissioner of Income Tax, Gujarat Vs. Vadilal Lallubhai, etc. etc., has been cited to give meaning of a "company". Reference has been made to the Supreme

Court judgment in Raghunath Rai Bareja and another v. Punjab National Bank and others, 2007 ACJ 776 (SC), to show about limitation for recovery of arrears or properties by the authority. Relying upon a Division Bench judgment of this Court in Life Insurance Corporation of India and others v. Executive Officer, Nagar Palika Parishad, Allahabad and others, 2005 ACJ 273, Mr. Sahai said that Corporation includes company but converse is not true. By citing a Division Bench judgment of the Supreme Court in U.P. State Sugar Corporation v. Burwal Sugar Mills Co. Ltd. and others, 2004 (4) AWC 3439 (SC), Mr. Sahai wanted to say that the registered office of the company is not the property of the scheduled undertaking, therefore, it cannot be said to be part and parcel of the scheduled property. We are of the view that such submission as made by Mr. Sahai is factually distinguishable in nature in view of the fact that the registered office of the company was being run at Kanpur, whereas the sugar factory was situated in District Barabanki of the State of Uttar Pradesh, but in the present case the residential house of the Proprietor is situated within the campus of the sugar mill.

16. On the other hand, by citing a three Judges' Bench judgment of the Supreme Court in U.P. State Sugar and Cane Development Ltd. Vs. Raza Buland Sugar Co. Ltd. and Others, Mr. J.N. Mathur has contended that building i.e. alleged residential house of the Proprietor was built up out of the corpus of the sugar mill. Clause (vi) of Section 2(h) of the Act, 1971 can be divided into two parts i.e. (i) land, and (ii) buildings. The burden of proof is upon the company to establish that the lands or any specified part of it were held or occupied for the purpose of cultivation or it was grove land, which is not part of the company. If the company fails to prove that aspect, the land will vest in the Corporation. So far as buildings are concerned, burden of proof is on the Corporation to establish that the buildings were held or occupied for the purpose of factory because of difference of language in respect of the land and buildings in Clause (vi) of Section 2(h) of the Act, 1971. In this regard the Supreme Court has categorically held that in one hand the burden of proof to establish that the buildings were held or occupied for the purpose of company is on the Corporation but, on the other hand, if any one wants exclusion, obviously burden lies on the person who claims so.

17. According to us, in the instant case, the possession was taken in accordance with law by saying that the property is part and parcel of the sugar mill and the Governmental authority has acted upon it long back in the year 1997. It has been handed over to a third party, whose interest has been created. Against this background, the onus is very much lying with the petitioner No. 1, who is claiming exclusion, and unless it is proved beyond doubt, it is very difficult to go against the possession of the possessor when admittedly receiver was appointed in accordance with law, status quo order passed by the Supreme Court was vacated giving liberty to the petitioner No. 1 to proceed in accordance with law but failed and the effect of taking appropriate physical possession was made in the year 1997 long thereafter. In National Textile Corpn. Ltd. Vs. Sitaram Mills Ltd. and Others, a three Judges' Bench of the Supreme Court has held that a

building which was constructed to locate the management offices of the mine (as in the case therein) but which is used to accommodate some other concern because of the availability of space does not on that account alone cease to be solely used for locating the management offices of the mine. In *Union of India (UOI) and Others Vs. United Collieries Ltd. and Others*, again a three Judges Bench of the Supreme Court held that "fixed assets" in general comprise those assets which are held for the purpose of conducting a business, in contradistinction to those assets which the proprietor holds for the purpose of converting into cash, and they include real estate, building, machinery etc. In the instant case, when it appears to us that the proprietor's house is within the campus of sugar mill, it cannot be said to be for the purpose of residence alone but for conducting business from there. In *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, when factually the land was situated within the mill compound, the Supreme Court was unable to accept the contention of the petitioners that the land is lying vacant since the taking over, it does not form part of the undertaking. Further, on the question whether the vacant land has been in use or not, the Supreme Court observed that it is difficult for the Court to accept the contention of the petitioners that the vacant land (as therein) is unrelated to and unconnected with the textile undertaking.

18. So far as meaning of "owner" or "ownership" is concerned, we find that as per Black's Law Dictionary, 8th Edition, meaning of "owner" is that one who has right to possess, use and convey something; a person in whom one or more interests are vested, when "ownership" means the bundle of rights allowing one to use, manage and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent and heritable. Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional powers of those who use it. Possession is the de facto exercise of a claim; ownership is the de jure recognition of one. Ownership is the guarantee of the law. Possession is the guarantee of the facts. It is well to have both forms, if possible, and indeed they normally coexist.

19. According to us, the bone of contentions of the petitioners of the first writ petition is not related to registered office of a company situated at a different place and not within the territory of sugar mill, so that it can attract the ratio of *Burwal Sugar Mills Co. Ltd. (supra)*. Here, his main contention is that the proprietor's residence, even if situates within the territory of the sugar mill, cannot be held to be the property of the sugar mill, unlike a company or a firm. We are not concerned whether the property is of a company or a firm or an individual as proprietor. We are only concerned whether the property can be said to be part and parcel of the scheduled undertaking as per the Act, 1971, or not. If the property situates within the area of scheduled undertaking then there is no question of disbelieving the statement of the State or Sugar Corporation that the

residential building has definitely been made by the proprietor to control and manage the affairs of the sugar mill. Import of Section 2(h)(vi) of the principal Act i.e. Act, 1971 specifies the "buildings" that "buildings" held or occupied for the purpose of "factory", meaning thereby the operation of the sugar mill was being controlled from such residence. There is no doubt or dispute with regard to existence of the building within the premises of the sugar mill, therefore, it is unbelievable that having such building of the proprietor, the proprietor did not control and manage the affairs of the sugar mill from such office as proprietor but from elsewhere. As soon as it establishes substantially, the burden of proof shifts to the petitioners, who claim exclusion. Additionally, actual physical possession of the building was taken long back i.e. in 1997 and no suit has been filed by the petitioner No. 1 to get a declaration about his or his predecessor's right, title and interest. The Supreme Court was pleased to pass an order in Civil Appeal No. 1292 of 1986 on 07th November, 1988 directing the District Judge, Bulandshahar to find out evidences whether the residential house vests in the State or not and report back within three months from that date. In Misc. Case No. 57 of 1988 registered pursuant to such order, the report was prepared and given to the Supreme Court by saying that the residential house in question was in the actual physical possession and control of the proprietor/s on the appointed day i.e. 29th September, 1984 or 24th October, 1984 when the undertaking was taken over by the State or the Sugar Corporation. Admittedly, such appeal of the petitioner No. 1 pending before the Supreme Court was dismissed as withdrawn and the order of status quo with regard to possession was discharged. However, the Supreme Court held that whoever seeks any positive direction as regards possession of the bungalow, it would be open to the appropriate party to take such procedure as is available in law. The Supreme Court was further pleased to give eight weeks" time from the date of such order to take such steps and only for this period the status quo order granted by the Supreme Court was directed to continue and not further. Such order was passed on 27th August, 1996. After expiry of such period as given by the Supreme Court, the concerned Collector/ District Magistrate, Bulandshahar in exercise of power u/s 5 of the Act, 1971 directed the Tehsildar to take possession of the residential house and deliver it to the Sugar Corporation. In compliance of such order, the Tehsildar took possession of the property on 14th July, 1997 when one Sri S.K. Goyal, the representative of the petitioner No. 1 and also in occupation of the property signed the same on 16th July, 1997.

20. Therefore, we have no other alternative but to go on the basis of the steps taken by the authority for the purpose of actual physical possession and at this belated stage when a third party interest has been created, we cannot proceed status quo anti.

21. So far as other two writ petitions are concerned, those are with regard to the landed property and there was no occasion earlier to tie- up the same with the first writ petition, which has got nothing to do with regard to residential accommodation of the proprietor, as discussed above. Both, the second and third

writ petitions are related to the land and the land will vest in the State alongwith taking over of the sugar mill excepting cultivable and grove land of the sugar mill. Burden of proof heavily rests upon the Proprietor to establish that the land or specified part of it were not part and parcel of the sugar mill and not the petitioners of these two writ petitions. Therefore, the position of both the writ petitions are much worse than the first writ petition and it appears that in spite of taking over of the entire sugar mill and handing over possession of the same to the Sugar Corporation and thereafter to the third party, the petitioners are interested for private purchase.

22. Thus, in totality, we do not find any merit in any of the writ petitions. Therefore, no relief can be granted either in favour of the petitioners of the first writ petition or the petitioners of other two writ petitions. Hence, all the writ petitions are dismissed.

23. However, no order is passed as to costs.

Hon"ble Ashok Srivastava, J.

24. I agree.