

(2000) 09 AHC CK 0137

In the Allahabad High Court

Case No : First Appeal No's. 265 of 1989 and 949 of 1988

U. P. State Sugar Corporation Ltd. and others

APPELLANT

Vs

Raza Buland Sugar Co. Ltd. and others

RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 2, 4(1)
Industries (Development and Regulation) Act, 1951 — Section 4(1)
Specific Relief Act, 1963 — Section 34
Textile Undertakings (Taking Over of Management) Act, 1983 — Section 3, 3(2)
Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 — Section 2, 3
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 109, 143, 144, 3(14)

Citation : AIR 2001 All 100 : (2000) 4 AWC 3403

Hon'ble Judges : Sudhir Narain, J; Krishna Kumar, J

Bench : Division Bench

Advocate : Vinod Swarup and Ravi Kant, for the Appellant; B. D. Mandhyan, S. C. Mandhyan, Satish Mandhyan, U. N. Sharma and J. Nagar, for the Respondent

Final Decision : Partly Allowed

Judgement

Sudhir Narain, J.—These two cross-appeals have been filed against the judgment and decree passed by the trial court dated 18.8.1988 partly decreeing the suit in respect of certain properties involved in the suit and dismissed the suit in relation to other properties.

2. The defendants, U. P. State Sugar Corporation Limited, has filed First Appeal No. 265 of 1989 against the part of the decree whereby the suit has been decreed and First Appeal No. 949 of 1988 has been filed by the plaintiff-appellant against part of the decree whereby the plaintiff's suit has been dismissed.

3. The factual backdrop of the case is that prior to 1946, there were two independent companies, viz., Raza Sugar Company and Buland Sugar Company. M/s. Govan were its Managing Agents. In the year 1946, the Dalmias purchased it from M/s. Oovan Brothers. The Dalmias got both the companies amalgamated

in the year 1957 and it formed one company in the name and style of "Raza Buland Sugar Company Limited". In the year 1968. Jhunjhunwalas purchased the company from Dalmias.

4. On coming Into force of U. P. Sugar Undertakings Acquisition Ordinance (Ordinance No. 13 of 1971). later on having become Act No. 23 of 1971 (hereinafter referred to as the Act), the plaintiff company filed Writ Petition No. 4130 of 1971 challenging the validity of the Ordinance. The High Court stayed the operation of the Ordinance on 5.7.1971 and also directed for restpratlou of status quo ante as on 2nd July 1971. In the year 1978. Sugar Undertakings (Taking over of Management) Act, 1978. came into force. It provided for appointment of authorised controller to manage the sugar factories. The possession of the undertaking was taken over by the authorised controller on October 30. 1979. The Central Government rescinded the aforesaid order with effect from 1.11.1979. The authorised controller delivered the possession to the Collector, Rampur on 2.11.1979. The High Court dismissed the writ petition filed by the plaintiff on 3.5.1979. The plaintiff company filed Suit No. 28 of 1979 against the defendants (Corporation and others) for permanent Injunction against the defendants restraining them from Interfering in any manner in the possession and management of affairs and business and assets of the registered office of the company as detailed in paragraph 10 of the plaint and further sought declaration that the properties mentioned in paragraph 10 of the plaint are outside the purview of Ordinance No. 13 of 1971 and U. P. Act No. 23 of 1971 and the defendants Nos. 2 and 5 were not entitled to the possession of those properties.

5. The plaintiffs, during the pendency of the suit, got amended the plaint by adding the relief that if the Court comes to the conclusion that the defendants were in possession of all or any of the items mentioned in paragraph 10 of the plaint, a decree for possession be passed in favour of the plaintiffs. The suit was based on the allegations that the properties mentioned in paragraph 10 of the plaint are not covered by the definition of "scheduled undertaking" as defined in clause (h) of Section 2 of the Act. It was alleged that the plaintiffs were entitled to take possession of such property which is not covered by the expression "scheduled undertaking".

6. The contention of the defendants in the written statement was that all properties mentioned in paragraph 10 of the plaint are covered by the expression "scheduled undertaking." it took further plea that the suit was barred by res judicata as the writ petition filed by the plaintiffs was dismissed by the High Court and further the suit was barred by Section 34 of Specific Relief Act as the plaintiffs have not sought for other consequential relief in the suit. The trial court framed various issues. It held that the properties mentioned at item Nos. 3 and 6 in paragraph 10 of the plaint are not covered by the expression "scheduled undertaking" and therefore passed the decree for possession of such properties against the defendants. It further held that the suit was not barred by res

judicata or Section 34 of the Specific Relief Act. The suit was accordingly decreed partly. The defendants have filed First Appeal No. 265 of 1989 and the plaintiffs have filed First Appeal No. 949 of 1988 against the Judgment of the trial court. As both these appeals involve common questions of law and fact, they are being decided together.

7. The pertinent question is as to whether the properties in dispute as specified in paragraph 10 of the plaint stand vested in the U. P. State Sugar Corporation, defendant No. 1, in accordance with Section 3 read with Section 2 (h) of the Sugar Undertakings (Acquisition) Act, 1971." it is necessary, in this context, to refer to Section 2 (h) and Section 3 of the Act which read as under :

"2 (h), "scheduled undertaking" means an undertaking engaged in the manufacture or production of sugar by means of vacuum pan and with the aid of mechanical power in factory specified in the Schedule I or Schedule II, and comprises-

(i) all plant, machinery and other equipment (including milling plant, boiling house equipment, other sugar machinery, cane unloading equipment and power plant), weighbridges, cranes, chimneys, turbines and boilers (Including the foundations, superstructure and roofing thereof) pertaining to that factory ;

(ii) any engineering workshop. Including machinery and equipment thereof ;

(iii) any chemical laboratory including any apparatus and equipment thereof;

(iv) any motor or other vehicle or locomotive, or railway sidings pertaining to that factory ;

(v) and dispensary or hospital or community or welfare centre exclusively for the benefit of workmen and other persons employed in that factory ;

(vi) all lands (other than lands held or occupied for purposes of cultivation and grove lands) 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 workers 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 ;

(vii) all limestone quarries, pertaining to that factory. Including any mining lease relating thereto ;

(viii) All electrical installations including any plant or equipment for the generation or transmission of energy. telephone equipment, furniture and fixtures pertaining to that factory or to any property or asset hereinbefore Specified ;

(ix) all tools, spare parts and Stores pertaining to that factory ;

- (x) all firearms for the use of watch and ward staff employed in that factory :
- (xi) all maps, plans, sections, drawing and designs pertaining to that factory ;
- (xii) all sugarcane, sugar in the process of manufacture for production and stocks of sugar and molasses and all bagasse and pressed :
- (xiii) all books of account, registers and other documents pertaining to the factory or to any property or asset hereinbefore specified, but does not include cash in-hand, cash at bank, advances towards any income or other tax, investments and book debts, or rights, liabilities and obligations respecting any other contract :

3. Vesting.--On the appointed day, every scheduled 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."

8. On reading of Section 2 (h) of the Act. It clearly emerges that the Act assiduously keeps intact the identity of the company. It is only the scheduled undertaking, as defined u/s 2 (h) of the Act, which vests in the Corporation u/s 3 of the Act. The real controversy is in regard to interpretation of clause (vi) of Section 2 (h) of the Act which relates to the land and buildings of a company which has been acquired under the Act. Clause (vi) can be divided in two parts, i.e., (1) lands and (2) buildings as follows :

(1) all lands other than the lands held or occupied for the purpose of cultivation and grove lands.

(2) Buildings--held or occupied for the 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 workers 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. The definition in respect of "land" contemplates that every kind of land shall stand vested u/s 3 of the Act except such lands which are held or occupied for the purposes of cultivation and grove land of the company whose land has been acquired. The burden of proof is upon the company to establish that the lands or any specified part of it was held or occupied for the purposes of cultivation or it was grove land because it is the company which has the knowledge about the nature of user of the land which was in its occupation. It can establish by evidence whether the land was held or occupied for the purposes of cultivation and grove land. In case it fails to prove that the land was held or occupied for the purposes of cultivation or grove, such land will vest in the Corporation u/s 3 of the Act and be deemed to have been transferred in the Corporation.

10. In respect of buildings, the burden of proof, however, will be on the Corporation to establish that the buildings were held and occupied for the purposes of factory. The description of buildings under clause (vi) of Section 2 of the Act is not in the same language as in respect of lands. While defining lands, the words used are "other than" but in respect of buildings such words are missing and, therefore, the Corporation has to lead evidence to prove that the buildings held or occupied by the Company were used for the purposes of factory. In *New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others*, the Supreme Court interpreted the definition of the word "Mine" as contained u/s 2(h) of Coal Mines Nationalisation Act (26 of 1973). The Supreme Court noted the difference in the language used in Section 2(vii) and (xi) of the Act. Sub-clause (vii) uses the words "any or adjacent to a mine" and used substantially "for the purpose of the mine or a number of mines under same management in relation to workshop". The Court held that the difference in the language between the two expressions "used substantially" and "solely used" was obvious. The lands and buildings appurtenant to a coal mine if not exclusively used for the purpose of colliery business will not come within the definition of mines in Section 2(h), i.e., it would depend upon the nature of user and the crucial date is the date of vesting. The Court further emphasised that the user must be seen on the date of vesting. It was, however, made clear that a workshop or building constructed initially for the purpose of coalmine cannot by itself being diverted to other purpose ceased to belong to the mines. It was observed :

"What is of the essence is whether the workshop or the building originally formed a part and parcel of the coal mine. The subsequent user may not. In our opinion, be very material. To illustrate, a workshop which has come into but which also comes to be used for purposes other than of the mine does not on that account alone cease to be a workshop used substantially for the purposes of the mine. Again a building which is constructed to locate the management offices of the mine 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."

11. The decision in New Satgram's case (supra) was distinguished in Union of India (UOI) and Others Vs. United Collieries Ltd. and Others, , wherein the Court Interpreting clause (xii) of Section 2 of the Coal Mines (Nationalisation) Act, 1973, held that staff car of the Technical Advisor to the Company which was nationalised under the Act shall stand transferred to and vest in the Central Government and it was not necessary to prove the nature of its user as under the definition in clause (xii) of Section 2 of the Act it is fixed asset of the mine.

12. In Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , the Supreme Court considering the provision of Section 4 of Industries (Development and Regulation) Act (65 of 1951) held that the vacant land forms part of the undertaking and it was not necessary that such land should have been under the use of the company prior to the date of vesting as the definition u/s 4 of the Nationalisation Act does not put such a restriction before the vesting of such land in the National Textile Corporation. The Supreme Court was interpreting sub-section (2) of Section 3 of the Textile Undertakings (Taking over of Management) Act (40 of 1983) where the words used were "assets in relation to textile undertaking" and it was held that if the company held the land and at no point of time there was a segregation of assets in the company to form the real asset, the entire land shall vest in the Corporation. The Court repelled the contention that a part of the land of the company was for the purpose of business in real asset but it was not accepted as it failed to prove that any part of the land of the company was segregated and that was part for that purpose.

13. In Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, , the Supreme Court explained the meaning of phrases "pertaining to", "in relation to" and "arising out of. It was clarified that these expressions used in the deeming provisions are used in the expansive sense. It was observed :

"The words "pertaining to" and "in relation to" have the same wide meaning and have been used. Interchangeably for among other reasons, which may include avoidance of repetition of the same phrase in the same clause or sentence, a method followed in good drafting. The word "pertain" is synonymous with the word "relate". The expression "in relation to" (so also "pertaining to") is a very broad expression which presupposes another subject-matter."

14. The learned counsel for the plaintiff-appellant submitted that the burden of proof is on the defendant in respect of user either in respect of land or in respect of buildings. He has placed reliance upon the decision in National Textile Corporation (SM) Ltd. Vs. Associated Building Co. Ltd. and Others, . In this case, the premises were occupied by Tata Mills Limited. Its assets were acquired u/s 3 of the Textile Undertaking (Taking over of Management) Act (40 of 1983). The Associated Building Co. Ltd. and others pleaded that Tata Mills was given possession of a portion of the disputed premises known as Bombay House gratuitously. The plea of the petitioners was accepted and it was held that it was

for the Central Government to establish that Tata Mills had any right, and title to occupy the said building. This case has no application to the facts of the present case.

15. The learned counsel for the plaintiffs has relied upon another decision National Textile Corporation Ltd. v. Swadeshi Cotton Mills Co. Ltd. 2000 (1) ARC 189. wherein the Court considering the Doypack's case held that question of burden of proof has to be decided with reference to the fact that under a Parliamentary legislation the property shall vest in the Central Government and for that purpose, the letter of law only has to be seen since it is a case of vesting by operation of law, ordinary principles and law of burden of proof cannot be applied. The principles laid down in these cases has to be examined in relation to the definition u/s 2(h) of 1971 Act.

16. As discussed above, according to our opinion, the burden of proof in respect of land will be upon the company to establish that the land was held or occupied for the purpose of cultivation or grove. If it wants that the land is to be excluded from vesting in the Corporation, but as regards buildings, the burden of proof is upon the Corporation to establish that they were held or occupied for the purpose of the factory. In Writ Petition No. 2292 of 1983, Burnwal Sugar Mills Company, Kanpur v. U. P. State Sugar Corporation, where house was sought to be taken possession in view of the acquisition under the U. P. Sugar Undertakings Acquisition Act. It was held that the burden of proof was upon the Corporation to establish that it was for the purpose of the factory.

17. Now we have to examine, in seriatim, each of the items of the properties mentioned in paragraph 10 of the plaint, which are sought to be excluded from the acquisition by the Corporation.

1. Jai Bhawan and land appurtenant thereto.--Sri P. C. Jhunjhunwala, plaintiff No. 2. who was Director Raza Buland Sugar Co. Ltd. himself appeared as P.W. 1. He stated that Jal Bhawan was occupied by the Director of Raza Buland Sugar Company. A residence of a Director of the company is covered by the definition of scheduled undertaking u/s 2(h)(vi) of the Act 1971. This property will vest with the U. P. State Sugar Corporation u/s 3 of the Act.

2. Hari Bhawan.--P.W. 1, Plaintiff No. 2, himself stated that Hari Bhawan was being used for stay of the Directors. He denied that it was a guest house of the company. Sri Kailash Bahadur Saxena. who was an employee of Rampur Sugar Mills since 1959 stated that Hari Bhawan was being used as a VIP guest house. The map of the Commissioner Indicates that Jal Bhawan and Hari Bhawan were adjacent to each other. P.W. 1 though denied that it was used as guest house but he admitted that the said house was being used for stay of the Directors. Considering the statements of these two witnesses it can be taken that Hari Bhawan was being used as guest house. A guest house of a company is covered by the definition of scheduled undertaking u/s 2 (h) (vi) of the Act. The contention of the learned counsel for the plaintiff-appellant is that Hari Bhawan

was being used as registered office of the company. He has placed reliance upon the minutes of meeting of the Board of Directors of Raza Buland Sugar Co. Ltd. held on June 30, 1997 at New Delhi. In the minutes of the meeting it is stated that in order to keep the registered office's records etc. safe from the factory's taking over action of the Government, it was necessary to shift the registered office from Raza Buland Office in the Raza Factory compound to Hari Bhawan in Rampur. This resolution indicates that Hari Bhawan was not registered office of the Raza Buland Sugar Co. Ltd. prior to the year 1971. The company itself was acquired in the year 1971. P. C. Jhunjhunwala, P.W. 1, the Director of the Company, in his statement never deposed that Hari Bhawan was the registered office of the company. The learned counsel for the appellant invited our attention to the statement of Sri S. K. Kaul given in Suit No. 22 of 1981 wherein he stated that the registered office of the company is in Hari Bhawan since the year 1971. Firstly, this statement cannot be relied upon as he did not appear in the witness box nor there is any evidence that he was not available for deposition of his statement in the Court. Secondly, he stated that Hari Bhawan was being used as registered office since 1971 when the factory was acquired in the year 1971. From the evidence on the record it is clear that Hari Bhawan was being used as guest house of the company. A guest house is covered by sub-clause (v) of Section 2 (h) of the Act 1971.

3. Maize Colony including quarters and land appurtenant thereto.--The properties mentioned at item No. 3 of paragraph 10 of the plaint are residential quarters known as "Maize Colony" which consists of certain residential quarters. The Commissioner submitted report that some of the quarters are occupied by the tenants who pay rent to the plaintiffs and therefore the plaintiffs were in constructive possession of the Maize Colony. The Court below has held that these quarters were not used for the purpose of sugar factory as they were occupied by the tenants. The defendant in its appeal has challenged this finding. The report of the Commissioner was subject to the oral and documentary evidence which may be produced by the parties. It was the duty of the plaintiffs to establish that these quarters were constructed only for the purpose of letting and not for the purpose of residence of the workers of the factory. If certain quarters have been constructed within the factory area, unless there is evidence to the contrary. It cannot be held that the quarters were constructed for the purpose of letting. P.W. 1 in his statement stated that the tenants, who were occupying the Maize Colony, were paying rent to him. In his examination-in-chief, he stated that the factory was closed since 1966 and after closure of Maize Factory and Buland Factory the godowns and quarters have been let out to others since the year 1971. The factory of the company was acquired in the year 1971 when U. P. Ordinance for acquiring twelve sugar mills was promulgated on July 3, 1971. The letting out of the quarters in the Maize Colony by the plaintiffs will not change the character of the quarters when such quarters were constructed with the purpose of providing accommodation to the workers of the factory. The quarters in the Maize Colony are adjoining to the Maize Factory as visible from the site

plan prepared by the Commissioner. The plaintiffs continued to occupy the quarters till the year 1979 when the stay orders was vacated by the High Court in the writ petition. The finding of the Court below, that as the quarters were let out by the plaintiffs, the quarters were not for the purpose of sugar factory, is erroneous. Clause (vi) of Section 2 (h) of the Act covers the guest houses and residences of Directors. Managerial personnel, staff and workers or any other person as lessee or licensee is covered by the definition of scheduled undertaking. The quarters in the Maize Colony and the land appurtenant to it shall vest in the defendants and the plaintiffs are not entitled for decree of possession of such property.

4. Shops at Nainital Road along with land and playgrounds.--The shops situate at Nainttal Road are not used for the purpose of factory. The trial court has taken the view that these shops were constructed out of the funds of Raza Buland Co. Ltd. and, therefore, the shops at Nalnital Road should be taken as covered within the definition of scheduled undertaking, without recording any finding that such shops were constructed for the purpose of the factory. The Commissioner in its report stated that these shops were constructed by Raza Buland Sugar Co. Ltd. In the year 1982. Sri Katlash Bahadur Saxena, D.W. 2, in his statement did not specify that these shops were constructed for the purpose of the factory. In absence of any evidence that these shops were held and occupied for the purpose of factory, these shops and the land appurtenant to it cannot be taken as scheduled undertaking. The finding of the trial court to the contrary is erroneous.

5. Buland Factory buildings including Godowns, residential accommodations and Carbide buildings, land appurtenant thereto. --B uland Factory buildings etc. belong to the Sugar Factory before both Raza and Buland Sugar Companies had amalgamated in the year 1955. Sri Kailash Bahadur Saxena. D.W. 2, stated that there are three godowns in Buland Factory and there is one building known as Carbide Building. This is adjoining to sugar factory towards west. The storehouses are covered under the definition of schedule undertaking under clause (vi) or Section 2 (h) of the Act. The contention of the learned counsel for the plaintiff-appellant that some godowns have been let out by the defendants and therefore cannot be taken that these godowns are held and occupied for the purpose of the factory. The court has to examine whether these godowns were for the purpose of the factory on the date of vesting. The godowns and the buildings are adjoining to the factory and from the report of the Commissioner it appears that they were for the purpose of the factory. The godowns. etc. attached to it shall be covered under the definition of "scheduled undertaking".

6. Nursery land. Equipment and Livestock, etc.--The land which is held or occupied for the purpose of cultivation and grove land is not covered by the definition of Section 2 (h) (vi) of the Act. The land shown as nursery land is recorded in the revenue records. The defendants themselves filed Khatauni Ext. 42A to Ext. 48A before the Court below. These documents have also been filed in

the supplementary paper book. In the remarks column of the khatauni it is not shown as abadi land. Section 3 (14) of U. P. Zamindari Abolition and Land Reforms Act. 1950, defines the land as under :

"Land" (except in Sections 109, 143 and 144 and Chapter VII) means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming."

It continues as agricultural land till the competent authority passes an order changing the user of the land u/s 143. If a tenure holder does not use the land for agricultural purposes, he may obtain declaration to this effect u/s 143 of the said Act. There is nothing to show that the land was declared for non-agricultural purposes by any competent authority.

The learned counsel for the defendant has urged that the land of the company was sought to be declared as surplus land under the provisions of U. P. imposition of Ceiling on Land Holding Act. The plaintiff urged that the land was not being used for agricultural purposes but was being used for industrial purpose and, therefore, the land should be excluded from being taken into consideration for the purpose of determining the surplus area. He has referred to the judgment in Ceiling Appeal No. 198 of 1973 decided by the District Judge, Rampur. The judgment indicates that the total area of Raza Buland was 476.81 acres out of which 228.33 acres were exempt. The evidence adduced by the plaintiffs does not show as to which of the area of the company was excluded from the ceiling purposes. Secondly, it has not been shown that as regards nursery land in question, any specific adjudication was made by the ceiling authorities. Thirdly, the defendants were not parties in this ceiling appeal and the civil court was competent to go into the question to decide as to whether it comes within the definition of scheduled undertaking u/s 2 (h) of the Act. The Commissioner has, in his report, indicated that on some portion the sugar cane was sown. He prepared a map indicating the area of such nursery land. The witness of the defendants, Sri Kallash Bahadur Saxena, stated that some land was used by the company for the purpose of growing fodder. From the evidence the Court below rightly held that the nursery land was held and occupied for the agricultural purposes.

The learned counsel for the defendant submitted that the land was taken by the company on lease and in the lease deeds. It has been shown that the land was being taken for the purpose of factory. It may be that the land was taken for the purpose of factory but the company was not prohibited from using the land for agricultural purposes. The company was manufacturing sugar and it could have used the land for growing sugarcane and other crops.

It is next contended that the plaintiffs did not file balance-sheet indicating the income from the agricultural crops. The company was for the purpose of manufacturing sugar and in the balance-sheet, it was required to give the income of the company in respect of manufacturing of its products. Secondly, it cannot

be assumed that the company obtained Income out of agricultural products and no adverse inference can be drawn that in the balance-sheet the company has not shown any Income from the agricultural products. On this nursery land. It is pointed out that certain quarters are existing. The defendants have not produced any evidence that these quarters are for the purpose of the factory. The trial court on consideration of the evidence rightly held that the nursery land, equipment, livestock etc. connected with the farm is to be excluded. It will not be covered within the meaning of "scheduled undertaking" u/s 2 (h) (vi) of the Act.

7. Electrical Installations. Typewriters, Furnitures, Fittings and other things belonging to the registered office of the company.-- Sri Kailash Bahadur Saxena. D.W. 2, stated that the electrical installations, typewriters, furniture etc. are used for the purpose of factory. These Hens are covered under clause (i) of Section 2 (h) of the Act and shall be taken as scheduled undertaking.

8. The managerial set up of plaintiff No. 1 and its subsidiary company including its Secretary's residence Bungalow No. 2 and administrative Manager's residence RA-4 situate near the Cenfrac Office, Civil Lines, Rampur and also the office of Director. Secretary and Administrative Manager and share department situate in the Central Office. Civil Lines, Rampur.--These properties relate to the residence of managers. They are buildings held and occupied for the purpose of the factory. The residence of Directors, Manager Personnel. Staff and Workmen are included in the definition of scheduled undertaking u/s 2 (h) (vi) of the Act.

9. Residential quarters along with land appurtenant thereto situate at Govan Colony.--Sri P. C. Jhunjhunwala, P.W. 1. stated that in the Govan Colony there are 100 quarters and out of these he claimed that 22 quarters should be exempted as the company had let out those quarters to other persons. In the examination-in-chief he had categorically stated that the company had let out the quarters in the year 1971. The Act had come into force in the year 1971 and any letting done by them after the said date will not give them any right on these quarters. The plaintiffs had challenged the vires of the Act by filing writ petition in this Court and have obtained stay order and continued to remain in possession till the year 1979 when the possession was taken over from the plaintiffs by the defendants. He has not stated that these quarters in Govan Colony were constructed for the purpose of letting to other persons and not for the purpose of the factory. There are 100 quarter in all but the plaintiffs are claiming only 22 quarters out of 100 quarters. The only inference is that all the quarters were constructed for the purpose of the factory. These quarters will be covered under the definition of scheduled undertaking u/s 2 (h) (vi) of 1971 Act.

10. The light railway line and equipment light loco motiue trolleys and other materials, which are in the use of sugar undertaking since long.--Sri P. C, Jhunjhunwala, P.W. 1, in his statement stated that the land of light railway is vacant and he does not utilise the land for any other purpose. The land in question not being agricultural land or held for the purpose of agriculture cannot be excluded and is covered by Section 2 (h) (vi) of the Act.

11. Temple land --It is a vacant land. It has not been shown by the plaintiffs that they held the land either for cultivation purpose or for use as grove land. Sri P. C. Jhunjhunwala stated that the land known as temple land is vacant. He never stated that any temple existed on the said land. Sri Kailash Bahadur Saxena, D.W. 2. In his statement stated that the temple was never constructed on this land and even the foundation for construction of the temple was never laid. This open land shall be taken to be a scheduled undertaking u/s 2 (h) of the Act.

12. Bagar building land situate in Civil Lines, Rampur --it is open land lying vacant, Sri P. C. Jhunjhunwala also admitted this fact in his statement. Sri Kailash Bahadur Saxena. D.W. 2, stated this open land was being used for parking purpose. This land shall be taken to have been covered under the definition of Section 2 (h) (vi) of the Act.

18. In view of the above discussion, the shops at Nainital Road along with appurtenant land to it shown at item No. 4 in paragraph 10 of the plaint and nursery land, equipment and livestock, etc. shown at item No. 6 in paragraph 10 of the plaint are to be excluded from acquisition and the plaintiffs are entitled for possession of these properties. The learned counsel for the defendant urged that the suit was liable to be dismissed as plaintiffs had sought relief of declaration without seeking the relief of possession and as such it was barred by Section 34 of the Specific Relief Act. The plaintiffs had filed application for amendment of the plaint and had sought relief of possession in the alternative. The application for amendment was allowed by the Court. The plaintiff having claimed the relief of possession, the suit is not barred by Section 34 of the Specific Relief Act.

19. The last submission of the learned counsel for the defendants (Corporation and others) is that the suit is barred by res judicata on the ground that the plaintiffs had filed Writ Petition No. 315 of 1980. In the said writ petition, the Court was not considering as to which of the properties of the plaintiffs is covered under the definition of scheduled undertaking. The suit is, therefore, not barred by res Judicata.

20. In the result both the appeals are partly allowed. The First Appeal No. 265 of 1989 is partly allowed and the suit in respect of Maize Colony referred to in paragraph 10 of the plaint as item No. 3 shall stand dismissed. The First Appeal No. 949 is partly allowed in respect of the shops at Nainital Road along with the land appurtenant to it referred to in paragraph 10 of the plaint. The total result is that the suit is decreed for possession in respect of the properties mentioned at item No. 4 and item No. 6 in paragraph 10 of the plaint on payment of requisite court fees. The suit in respect of other properties referred to in paragraph 10 of the plaint is dismissed.

21. The plaintiff-company shall be entitled to proportionate costs of both the Courts.