A

STATE OF PUNJAB

v.

SARDAR SEWA SINGH GILL & ORS.

October 27, 1969

B [V. RAMASWAMI AND I. D. DUA, JJ.]

Agreement between State and promoters of company—Construction of—Land given to company to revert to State in case of winding up of company—Machinery etc. to be removed by company with 24 months of notice—Requirements of valid notice under 4th proviso to cl. 6(a) of Agreement.

C Respondent No. 1 was granted certain land in Patiala State in 1946 for the purpose of promoting a company for the manufacture of Banaspati ghee. After he had paid the costs of the land possession of the said land was given to respondent No. 1 on November 17, 1946. On February 12, 1947 a promoting company was formed. There was an Agreement between the Patiala State and the promoting company. The third proviso to cl. 6(a) of the Agreement laid down *inter alia* that if the proposed D company was wound up the land granted to it would revert to Patiala State. On such reversion compensation would be paid by the State. The fourth proviso to cl. 6(a) further laid down that in the above case the land would be delivered to Patiala State by the proposed company within a reasonable time and the company would be under an obligation to remove its machinery etc. from such land within 24 months after a notice had been given in this regard by the State. If it was not removed within the notice period or a further period of 6 months which the State could E allow the machinery etc. would become the property of the State. The proposed company (respondent No. 2 herein) was incorporated on May 27, 1948 but it never went into production. In 1951 respondent no. 1 filed a petition for the winding up of the company, in the name of the company. Two provisional liquidators were appointed, but the petition was dismissed as incompetent. Thereafter in 1955 on a petition by certain shareholders an order for winding up of the company was passed by the F High Court. The voluntary liquidators resigned and the Bank of Patiala as Official Liquidator entered into possession of the company's property and auctioned the same in 1959. Considering a claim by respondent No. 1 to the land a Single Judge of the High Court held that the land had vested in the company and respondent no. 1 was not entitled to it. The Division Bench held that the land belonged to the State but the company would continue in possession till a valid notice was given in terms of the 4th proviso to cl. 6(a) of the Agreement. In appeal before this Court G the State urged that the notice given by the Director of Industries to the provisional liquidators on August 14, 1952 was legally sufficient.

HELD : The title to the land had already vested in the State Government under the third proviso to cl. 6(a) of the Agreement because of the order of winding up of the company made by the High Court. There was nothing in the Agreement to show that the company was entitled to be in possession of the property even after the title had vested in the H State Government. The 4th proviso only said that if the company did not deliver possession within reasonable time and if any machinery plant, buildings or structures remained on the land the title to these also would vest in the State Government if the company did not remove the struc-

tures or the machinery within 24 months from the date of the notice. In the circumstances of the case it must be held that the notice given by the Director of Industries dated August 14, 1952 satisfied the requirements of the fourth proviso to cl. 6(a) of the Agreement. The notice period having expired, the State was entitled to possession of the land. [17 B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1434 of 1967.

Appeal from the judgment and order dated May 8, 1964 of the Punjab High Court in Letters Patent Appeals Nos. 230—304 of 1962.

V. C. Mahajan and *R. N. Sachthey*, for the appellant.

Harbans Singh, for respondent No. 2.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought by certificate from the judgment of the Punjab High Court dated May 8, 1964 in L.P.A. Nos. 230/304 of 1962.

Sardar Sewa Singh Gill (respondent no. 1) wanted to promote a company for the manufacture of Banaspati and for that purpose he approached the Maharaja of Patiala for certain concessions and grant of land at Doraha. Subsequently by an order of the *Jflis-i-khas* dated October 29, 1946 it was decided to give to Sardar Sewa Singh Gill a plot of land measuring about 96,700 sq. yds. at Doraha. This plot of land was to be made over to him on payment of the costs of the land. Certain undertakings were given by the respondent no. 1. Possession of the land was handed over to respondent no. 1 on November 17, 1946 *vide* Ex. P.W. I/I, report no. 96. On February 4, 1947 an agreement Ex. C.W. I 3 was entered into between Sewa Santokh Brothers (P) Ltd., and the Patiala State for grant of certain concessions for the establishment of the ghee factory. The ghee factory that was to be established was styled as the Patiala Banaspati and Allied Products Co. Ltd., (hereinafter referred to as the Company). Clause 6 of the agreement states :

"The Patiala State agrees to give the proposed Company the following among other facilities :

(a) The Patiala State shall provide for the proposed company land upto 100 acres at Doraha as required by the company. In respect of such portion of the land as the Government property it shall be made available at such concessional rates as may be fixed by the Minister in charge of Development and in regard to such portion as may have to be acquired for the Company from private owners, such cost shall be paid

A to the State as may be assessed under the provisions of the Patiala Land Acquisition Act, 1995 Bk. Besides the above 100 acres as required for the factory site and the factory farm, another 25 acres of land will be acquired under the said Act for the brick kilns at a suitable site near the factory area.

B

Provided firstly, that the Patiala State shall protect and indemnify the proposed Company against any claims or actions arising out of the acquisition of the land or the construction of the factory of the proposed Company thereon.

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Provided secondly, that if the Mill of the proposed Company is not erected on the land provided, within two years after the receipt of vegetable ghee machinery against orders to be placed by the proposed Company which period shall in case of Force Majeure be reasonably extended, the land will revert to the Patiala State, in which case the proposed Company shall be reimbursed with the full cost of acquisition paid by it.

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Provided thirdly, that in the case of winding up of the proposed Company or before that the land or any part thereof not required by the proposed Company shall revert to the Patiala State, who shall pay therefor a price equivalent to the original value of the land within 12 months less such reasonable compensation as may be assessed by the Minister in charge Development for damages done to the said land by the proposed Company in consequence of the removal of machinery, buildings, materials etc.

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Provided fourthly, that if, as soon as the Company is free to hand over the possession of such land, the same is not delivered by the proposed Company to the Patiala State within reasonable time after it is no longer required for the said purpose, and there shall remain in or upon the said land any machinery, plant, building, structure stores and other works, erections and conveniences, the same shall, if not removed by the proposed Company within 24 calendar months, after notice in writing requiring their removal be given to the proposed Company by the Minister in charge Develop-

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ment be deemed to become the property of the Patiala State and may be sold or disposed of for the benefit of the Patiala State, in such manner as they shall deem fit without liability to pay any compensation or to account to the proposed company in respect thereof. Provided, however, that the said period of 24 months may be extension is necessary."
State, in case they are satisfied that such an extention is necessary."

On February 12, 1947 Messrs Sewa Santokh Brothers was incorporated and on May 27, 1948 the Company was incorporated. On April 20, 1948 prospectus of the Company as filed with the Registrar of Joint Stock Company, Patiala and on July 21, 1948 certificate for the commencement of business was granted to the Company. Admittedly the Company never went into production or ever erected the factory. On December 24, 1951 a petition for the winding up of the Company was filed by S. Sewa Singh Gill in the name of the Company. On February 26, 1952 two provisional liquidators of the Company were appointed namely S. Kartar Singh Kawatra and R. N. Sanghi. This petition was, however, dismissed on October 13, 1952 on the ground that it was not competent. On October 28, 1954 13 shareholders filed a petition for compulsory winding up of the Company and on 21st October 1955 an order for the compulsory winding up of the Company was passed by the PEPSU High Court. On the passing of this order the voluntary liquidators resigned and the Bank of Patiala was appointed as the Official Liquidator. The Bank of Patiala took over possession of the property of the Company and on August 13, 1959 auctioned its machinery. Various claim petitions were filed including L.M. 106 of 1957 and L.M. 32 of 1952 wherein, respondent no. 1 claimed various sums on account of expenses incurred including the land at Doraha. The petitions were heard by Mahajan, J. who by his order dated May 26, 1962 disallowed the claim of respondent no. 1 to the land but held that the land remained vested in the respondent Company till such time as State exercised its rights under the agreement of February 4, 1947. Against the judgment of the learned Single Judge the State of Punjab filed L.P.A. 304 of 1962 and respondent no. 1 filed L.P.A. 230 of 1962. The appeals were heard by Dulat and Pandit, JJ. who on May 8, 1964 allowed the appeal of the State to the extent that the land in dispute belonged to the State but its possession would remain with the Company till a valid notice was given by the State.

In support of this appeal it was contended on behalf of the State of Punjab that the High Court was in error in holding that

A the first notice given by the Director of Industries to the provisional liquidators was not legally sufficient and the respondent no. 2 was not bound to give possession to the State unless a fresh notice was given. In our opinion the argument put forward on behalf of the appellant is well-founded and must be accepted as correct. In the first place it is obvious that the title to the land B has already vested in the State Government under the third proviso to cl. 6(a) of the Agreement because of the order of winding up of the Company made by the High Court. There is nothing in the agreement to suggest that the Company was entitled to be in possession of the property even after its title had vested in the State Government. The 4th proviso only states that C if the Company does not deliver possession within reasonable time and if any machinery, plant, buildings or structures remain on the land the title to these also will vest in the State Government if the Company does not remove the structures or the machinery within 24 months from date of the notice. In the circumstances of the case we are of opinion that the respondents were given sufficient notice by the letter of the Director of Industries dated D August 14, 1952. That notice satisfies the requirements of the fourth proviso of cl. 6(a) of the Agreement and the State is entitled to take possession of the land and other properties located therein within two years from date of that notice. It is necessary to state that according to P.W. 4 Jaswant Singh the buildings on the site are in an area of one bigha, the structure was pucca but E temporary. It is the admitted case that the machinery has been sold by auction more than seven years back and only grass grows on the land. The evidence of Tarachand R. W. 1 also shows that a greater part of the land is barren and the machinery and other valuable properties had already been removed. Counsel on behalf of respondent no. 2 prayed that some further time may F be given before the State takes possession of the properties. We consider that a further period of six months' time will be sufficient.

For these reasons we hold that the order of the Division Bench May 8, 1964 should be modified and the respondents should be directed to hand over possession of the land in dispute to the State of Punjab within six months from this date. We G accordingly allow this appeal. But there will be no order as to costs.

G.C. *Appeal allowed.*