

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

: J U D G M E N T :

S.B. CIVIL FIRST APPEAL NO.171/1990

State of Rajasthan
vs.
M/s. Jeewan & Sons, Sirohi.

Date of Judgment :: 30th May, 2014

PRESENT

HON'BLE MR. JUSTICE ARUN BHANSALI

Mr. S.S. Rathore for
Dr. P.S. Bhati, AAG for the appellant – State.
Mr. Nitin Ojha, for respondent No.6.

This appeal is directed against judgment and decree dated 29.08.1990 passed by District Judge, Sirohi, whereby, the suit filed by the plaintiff-respondent No.1 seeking specific performance of contract, permanent prohibitory injunction and possession has been decreed in a manner, whereby, the appellant has been directed to pay compensation to the tune of Rs. 11,95,500/- alongwith interest @ 6% from the date of judgment.

The facts in brief may be noticed thus : the plaintiff filed the suit against the appellant and respondent Nos. 2 to 6, inter alia, with the averments that the plaintiff entered into an agreement with the Erstwhile State of Sirohi on 11.08.1944; the agreement stipulated for grant of licence of land admeasuring 75 Bigha for 30 years; the plaintiff was entitled to exploit mineral, construct factory for manufacturing glass, office building and staff quarters, no rent was chargeable, however,

the plaintiff would pay royalty on the mineral excavated, if the licence was terminated by the State before the stipulated period, the land leased for factory, building etc. would revert to the State and if State desires, it may purchase the factory, buildings, super structures and machinery on a fair valuation to be mutually settled and agreed amount, in case the State did not want to purchase, the licensee would be at liberty to remove the plant and machinery and super structures or to sell it to anybody else, who is bona fide resident of State; plaintiff was at liberty to purchase the land from the State, on which, the buildings were standing not exceeding 75 Bigha @ Rs.150/- per bigha; in the year 1949 the administration of the former Sirohi State was taken over by the Government of India vide Sirohi Merger Agreement dated 08.11.1948 and the Government of Bombay took over the administration on behalf of the Central Government; the Government of Bombay vide its letter dated 17.09.1955 terminated the licence for excavation of minerals and directed the plaintiff to apply for fresh licence under the Mineral Concession Rules and as regard sale of 75 Bigha land, it was stated that the request may be considered on payment of value of the land under the relevant Rules; the State Reorganization Act, 1956 was promulgated and territories of Abu and Abu Road came to be transferred to the State of Rajasthan; the Collector, Sirohi was ordered to take the possession of the land in question from the plaintiff as the lease had been terminated by the State of Bombay, treating the plaintiff as trespasser; the plaintiff moved to the State of Rajasthan for purchase of land as per conditions of the

agreement; the State passed a order restraining the Collector, Sirohi from taking possession of the land from the plaintiff, which order was later on cancelled; the land in question was leased by the Collector, Sirohi for industrial development and was handed over to the Rajasthan Industrial Investment and Development Corporation Limited ('RIICO'), who further allotted the land to defendant Nos. 2 to 5; the State of Rajasthan kept silence over the application made by plaintiff and did not take any step to sell the land in question to the plaintiff and, therefore, the suit for specific performance of the contract as per the agreement was filed seeking possession of the land in question from defendant Nos. 2 to 5 and seeking prohibitory injunction against the appellant claiming that the plaintiff was in possession of a portion of the land in question.

A written statement was filed by the appellant-defendant No.1 accepting the execution of the agreement and contending that as the Government of Bombay terminated the licence in the year 1955, the plaintiff was not entitled to specific performance of the contract; the allegations about plaintiff being in possession of the land were denied and it was submitted that the land had been taken over by the Collector and allotted to various persons for the purpose of establishing industries and they have raised super structures and have started production; plea regarding deficient court fees, the suit being barred by limitation etc. were also raised.

The trial court framed as many as 22 issues, which read as under:-

“(1) आया वादी मेसर्स जीवन एण्ड सन्स आबूरोड भागीदारी फर्म है

जिसके तीन भागीदार है (1) नारायण जीवनजी (2) त्रिकमलाल जीवनजी (3) मुरारजी जीवनजी है एवं यह फर्म रजिस्ट्रार ऑफ फर्मस राजस्थान जयपुर के यहाँ पंजीयन हुआ है?

..... वादी

(2) आया मेसर्स जीवन एण्ड सन्स आबूरोड ने आबूरोड में ग्लास फैक्ट्री खोलने के लिए इकरार भतपर्व सिरोही रियासत के साथ दिनांक 11.8.44 को किया वह भागीदारी फर्म की हैसियत से किया न कि नारायणजीवन व त्रिकमलाल जीवन ने प्रोपराईटर की हैसियत से?

..... वादी

(3) आया बम्बई सरकार ने उनके पत्र दिनांक 17.9.55 के द्वारा 75 बीघा जमीन इकरार दिनांक 11.8.44 के क्लोज 6 के पार्ट 6 की शर्त अनुसार लाईसेन्स समाप्त कर फर्म को बेचने का तय किया?

..... वादी

(4) आया वादी फर्म ने 75 बीघा भूमि पर ग्लास फैक्ट्री, फैक्ट्री, बिल्डिंग ऑफिस बिल्डिंग, स्टाफ क्वार्टर्स इत्यादि बनाये व मशीनरी लगाकर सन् 1947-48 से फैक्ट्री में काम शुरू कर दिया?

..... वादी

(5) आया वादी नारायण जीवन ने अपने पत्र दिनांक 17.1.61 व 31.8.61 के अनुसार इकरार दिनांक 11.8.44 को कैसल होना माना?

..... प्रति.

(6) आया वादी द्वारा इकरार के शर्त के अनुसार जमानत की रकम रूपये 5000/- के नेशनल सेविंग सर्टीफिकेट वापस ले लेने के बाद इकरार दिनांक 11.8.44 कायम नहीं रहा?

..... प्रतिवादी

(7) आया दिनांक 1.11.56 को वादी फर्म की फैक्ट्री का ऐरिया राजस्थान राज्य में वापस मिला देने से इकरार दिनांक 11.8.44 से राजस्थान सरकार पाबंद है और बम्बई सरकार द्वारा इकरार केन्सल करने के बाद भी राजस्थान सरकार के लिए क्लोज संख्या 6 के अनुसार पालना करना अनिवार्य है?

..... वादी

(8) आया सन् 1946 में प्रचलित कानून के अनुसार विवादित खेती भूमि को फैक्ट्री के लिए कनर्वट कर दिया गया था?

..... वादी

(9) आया राज्य सरकार ने आदेश दिनांक 2.9.63 को दिनांक 22.2.71 के द्वारा निरस्त कर दिया?

..... प्रतिवादी

(10) आया विवादग्रस्त 75 बीघा भूमि से सन् 1976-77 में 30 बीघा भूमि पर प्रतिवादी संख्या 2, 3, 4, 5 व 6 ने प्रतिवादी संख्या 1 एक की साजिश से अतिक्रमण किया है व बाकी 45 बीघा भूमि वादी के कब्जे हैं?

..... वादी

(11) आया वादी वाद पद संख्या 12 में बताये अनुसार परमानेंट प्रोहिबिटरी इन्जेक्शन 45 बीघा भूमि के लिए जारी कराने का

अधिकारी हैं?

.....वादी

(12) आया विवादग्रस्त भूमि पर वादी का कब्जा नहीं होने से जवाबदावा पद संख्या 11 में बताये अनुसार लेन्ड रेवेन्यु एक्ट की धारा 92 के अन्तर्गत जिलाधीश ने आदेश दिनांक 30.5.70 के जरिये औद्योगिक क्षेत्र के लिये अलग रखी व कानूनी कार्यवाही कर 27.2.73 को प्रतिवादी संख्या 6 को इसका कब्जा सौंप दिया?

.....प्रतिवादी

(13) आया प्रतिवादी संख्या 6 ने विवादग्रस्त भूमि उद्योग के लिए वितरित कर दी जिस पर लाखों रूपये लगाकर बड़े-बड़े उद्योग लगवाये और कोई भूमि खाली नहीं रही?

.....प्रतिवादी

(14) आया वादी विवादग्रस्त भूमि का अपने हक में बेचान करवाकर रजिस्ट्री कराने का अधिकारी है?

.....वादी

(15) आया वादी का वाद म्याद में हैं?

.....वादी

(16) आया वादग्रस्त संपत्ति की कीमतन् वाद प्रस्तुत करने के समय तीस लाख रूपये थी इसलिए वाद की मालियत वादी द्वारा कम कायम की गई हैं?

.....प्रतिवादी

(17) आया वादी ने कोर्टफीस अपर्याप्त अदा की हैं?

.....प्रतिवादी

(18) आया प्रतिवादी संख्या 1 धारा 35 ए सी.पी.सी. के अनुसार विशेष हर्जाना पाने का अधिकारी हैं?

.....प्रतिवादी

(19) आया प्रतिवादी संख्या 6 को नोटिस दिये बिना प्रस्तुत किया गया। यह वाद चलने योग्य नहीं हैं?

.....प्रतिवादी

(20) आया वाद कृषि भूमि का कब्जा लेने व स्थाई निषेधाज्ञा के संबंधित होने से इस न्यायालय के क्षेत्राधिकार का हैं?

.....प्रतिवादी

(21) आया वादी का वाद प्रतिवादी के अलावा जिन लोगों को भूमि प्रतिवादी सं. 6 दी गई, उनको पक्षकार नहीं बनाये जाने से यह वाद चलने योग्य नहीं हैं?

(22) दादरसी।"

On behalf of the plaintiff PW-1 Trikam Lal was examined and on behalf of defendants five witnesses were examined.

After hearing the parties, on various issues noticed above

the trial court came to the conclusion that at the time of filing of the suit the plaintiff firm was registered with the Registrar of Firms, Rajasthan, Jaipur; though the agreement was signed by Narayan Jeewan and Trikam Lal Jeewan as Proprietors of the Firm M/s. Jeewan & Sons, the agreement on behalf of the firm with the Erstwhile Sirohi State was proved; by letter Exhibit-A/1 issued by the Government of Bombay, the licence was not specifically terminated and the right of plaintiff to purchase the land under General Rules on payment was recognized; the plaintiff had constructed the factory, Chimni, office and quarters on 30 Bigha land, regarding which, in terms of Part-6, Clause-6 the plaintiff had the right to purchase; the amount of Rs. 5,000/- was deposited as security for the mining lease and, therefore, the acceptance of security deposit does not amount to the plaintiff accepting the cancellation of agreement (Exhibit-2); the State of Rajasthan was bound to honour the agreement executed by the Erstwhile Sirohi State; the land in question had been converted for factory purposes; the order dated 22.02.1971 cancelling the order dated 02.09.1963 was passed without giving any opportunity of hearing to the plaintiff and, therefore, the plaintiff was not bound by the said order; the plaintiff had not taken steps in time to stop establishment of factories by respondent Nos. 2 to 5 and, therefore, it would not be appropriate to order handing over of possession of the land to the plaintiff by removing the said factories; plaintiff was not entitled for permanent prohibitory injunction as it was not in possession of the land in question; the possession of the land was not taken according to the law from the plaintiff and in view

of establishment of various factories, the plaintiff stands dispossessed; the plaintiff was entitled to compensation to the tune of Rs. 12,00,000/- for 30 Bigha land and after deducting the cost of land of Rs. 4,500/- the plaintiff was entitled to receive the same from the State; the State and defendant No.6 RIICO should not raise objections regarding limitation and the suit was within limitation; the suit was properly valued and the Court fees paid was sufficient; the State was not entitled to special costs under Section 35A CPC; it cannot be said that for lack of prior notice to RIICO, the suit was not maintainable; the Civil Court had jurisdiction to try the suit; the allotments by RIICO took place during pendency of the suit, therefore, in view of provisions of Section 52 of the Transfer of Property Act, 1882 it cannot be said that the necessary parties were not impleaded and, ultimately, decreed the suit for a sum of Rs. 11,95,500/- alongwith interest @ 6% per annum from the date of judgment, as noticed above.

Feeling aggrieved, the appellant State has filed the present appeal questioning the findings and the award of compensation by the trial court.

The plaintiff has filed cross-objections under Order XLI, Rule 22 CPC seeking compensation for entire 75 Bigha of land instead of 30 Bigha as awarded by the trial court and sought interest and solatium on the damages.

During pendency of the appeal, an application dated 30.01.1992 was filed by the plaintiff seeking amendment in the cross-objections in the nature that the compensation sought was quantified at Rs. 12,53,98,310/-; whereafter another

application under Order VI, Rule 17 CPC was filed on 04.03.1997 seeking amendment in the plaint with a view to seek amendment in the relief clause praying for alternative relief for payment of compensation; another application under Order VI, Rule 17 CPC was filed on 04.10.1997 seeking amendment in the application dated 04.03.1997 with a view to further amend the relief clause sought to be amended by way of application dated 04.03.1997; another application dated 15.10.1997 under Order VI, Rule 17 CPC was filed by the plaintiff seeking amendment in the application dated 30.01.1992, whereby, amendment was sought in the cross-objections with a view to enhance the amount of compensation sought from Rs. 12,53,98,310/- to Rs. 41,39,02,022/-.

The applications were replied by RIICO raising various objections and questioning the very basis for compensation and raising objections about non-payment of requisite court fees on the amount demanded.

During pendency of the appeal several applications were filed seeking impleadment in the appeal as respondents on the ground that the original partners of the firm Trikam Lal Jeewan and Morarjee Jeewan had died and they had executed a power of attorney in favour of one Magan Bhai, who in turn had assigned the rights, which he (Magan Bhai) had, to one Surendra Bhai Patel.

Application was also filed by one Hitendra Tak claiming that Trikam Ji Jeewan erstwhile partner of the firm had a son Hansraj and the applicant was son of Hansraj; the application was filed by Magan Bhai seeking his own impleadment was

dismissed by this Court by order dated 22.07.2004 and application filed by Hitendra Tak was allowed; subsequently by order dated 06.03.2014 the application filed by Surendra Bhai Patel seeking assignment from Magan Bhai was also rejected.

The respondent Hitendra Tak after being impleaded as party chose not to appear and the counsel appearing for Hitendra Tak submitted that despite registered notice as the respondent did not respond, the counsel pleaded no instructions and, therefore, the appeal was ordered to be proceeded ex parte against the said respondent.

It was submitted by learned counsel for the appellant that the trial court was not justified in decreeing the suit and awarding compensation to the plaintiff as no prayer was made in the plaint seeking compensation and once the trial court came to the conclusion that specific performance of the contract cannot be granted, there was no occasion to award compensation in absence of prayer made in this regard and award of compensation is contrary to the provisions of Section 21(5) of the Specific Relief Act, 1963 ('the SR Act'); it was contended that the agreement dated 11.08.1944 was entered into by Narayan Jeewan and Trikam Lal Jeewan as proprietors and, as such, the partnership firm had no locus standi to file the suit; on merits it was contended that the agreement stood terminated vide Exhibit-A/1 on 17.09.1955 and the partners had sought the refund of the security deposit and, therefore, there was no question of seeking specific performance of Clause-6 of Chapter-VI; further contention was raised that the suit was ex facie barred by limitation and the finding of the trial

court in this regard is wholly perverse; it was also submitted that the court fees paid was insufficient; the learned counsel appearing for RIICO supported the contentions raised by the learned counsel for the appellant-State; it was prayed that the appeal deserves to be allowed; it was also submitted that the cross-objections filed by the respondents has no substance and the same also deserve to be dismissed; it was further contended that the applications seeking amendment in the cross-objections, plaint and amendment in application seeking amendment of plaint and application seeking amendment in the amendment application pertaining to cross-objections are merely reflective of the vacillating stand of the plaintiff and the said applications also deserve to be dismissed.

I have considered the various submissions made by learned counsel for the appellant and respondent No.6 RIICO, perused the judgment passed by the trial court and have scrutinized the record of the trial court.

Dealing with the various applications filed by the respondent-plaintiff, the application seeking amendment in the cross-objections seeking to put a value to the tune of Rs. 12,53,98,310/- to the cross-objections, without payment of requisite court fees, cannot be entertained and, consequently, the application seeking amendment in the application dated 30.01.1992 is also not maintainable for the same reason, whereby, the amount of compensation was sought to be enhanced to Rs. 41,39,02,022/-.

So far as applications dated 04.03.1997 and 04.10.1997 are concerned, Section 21 of the SR Act reads as under:-

"21.(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.- The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section."

Hon'ble Supreme Court in *Jagdish Singh v. Natthu*

Singh : AIR 1992 SC 1604 while dealing with philosophy of Section 21 of the SR Act permitted amendment of the plaint at the stage of special leave petition/appeal before it.

In that view of the matter, the applications dated 04.03.1997 and 04.10.1997 filed by the plaintiff seeking amendment in the relief clause of the plaint so as to incorporate relief of compensation in lieu of specific performance as an alternative relief are allowed.

Before dealing with the various submissions raised by learned counsel for the appellant and respondent No.6, the relief clause of the plaint and the relevant clauses of agreement need to be noticed:-

(a) Relief clause:-

"वादी की प्रार्थना है कि बाद तहकीकात दावे हाजा की डिक्री निम्न प्रकार सादिर की जावे:-

(1) यह कि वादी सं० १ (एक) के विरुद्ध specific performance of contract की डिक्री इस प्रकार सादिर की जावे कि प्रतिवादी सं० १ (एक) वादी के हक में वाद ग्रस्त ७५ पच्चतर बीघा जमीन का बेचान लिखत वादी के खर्च से रु० ११२५०) (ग्याहरा हजार दो सौ पचास) प्राप्त कर तकमील व रजिस्ट्री करा दें। विकल्प में निवेदन है कि प्रतिवादी के बेचान लिखत तकमील न कराने की हालत में कोर्ट या कोर्ट के अधिकारी द्वारा प्रतिवादी के तरफ से वादी के खर्च से बेचान लिखत तहरीर व तकमील कर रजिस्ट्री करा दें।

2) प्रतिवादी सं० २ (दो) ता ६ (छ:) ने उपरोक्त ३० (तीस) बीघा

जमीन पर अतिक्रमण किया है उसका कबजा छुड़ाया जाकर वादी को दिलाने की डिक्री पारित की जावे।

३) प्रतिवादी सं० १ व ६ (एक व छ:) के विरुद्ध permanent prohibitory injunction इस अमर का सादिर किया जावे कि वे वादी के कबजे शेष ७४ पेंतालीस बीघा भूमि पर स्वयम अथवा अधिकारियों द्वारा तथा अन्य किसी तरीके से अतिक्रमण कर कबजा न करें।

४) खर्ची दावा हाजा जिम्मे प्रतिवादीगण रखा जावे।

५) अन्य दादरसी वादीगण के हक में व अन्याय संगत हो सादिर की जावे।"

(b) Extracts from Agreement:-

**"AGREEMENT FOR GLASS FACTORY
IN SIROHI STATE**

THIS INDENTURE made this eleventh day of August One Thousand Nine Hundred and Fortyfour between the Sirohi State (hereinafter referred to as the State) of the one part and the firm of Messrs. Jeewan & Sons of Sinugara village in Cutch State now residing at Abu Road having their principal place of business at Abu Road in Sirohi State (hereinafter referred to as the 'Licensees', which expression shall, when the context so admits, be deemed to mean and include the heirs, executors, administrators, representatives and assigns of the said Messrs. Jeewan & Sons) of the other part.

Whereas the Licensees have applied to the Chief Minister, Sirohi State (hereinafter referred to as the Chief Minister, which expression, where the context so admits, shall be deemed to mean the holder of this office for the time being) for the grant of a Licence to run a Glass Factory manufacture glass and glass articles from minerals to be searched, prospected and quarried from the lands specified hereinafter and have agreed to deposit within two months the sum of Rs.5,000/- (rupees five thousand) in cash as security, on which no interest shall be allowed, in respect of such Licence, and whereas the State considers that there is no objection to the grant of such a Licence;

.....

In consideration of the royalties and other payments covenants and agreements and provisions hereinafter reserved and contained and on the part of the licensees to be duly paid, observed and performed, the State hereby grants and demises upto the licensees

(1) the sole right and licence to run a Glass Factory and manufacture in, and export from the State, glass and glass articles and gas used in cerated waters

which is a bye-product of the glass industry, for a term of 30 (thirty) years commencing from the first day of November of the year. One thousand Nine Hundred and Forty four of the Christin era, and the right to search, prospect, quarry, win, and use in the manufacture of glass and glass articles and their said bye-product.

.....

(6) Land upto 75 (seventy – five) bighas in area will be leased to the Licensees for the period of endurance of this licence free of rent for the purposes of construction of the Factory buildings and appertenances, provided that it will not be earth land or near any populated area. For any land required by them in excess of this, the Licensees shall have to pay a reasonable rent or price.

.....

Part V. - The Licensees' Covenants.

.....

5. The Licensees shall duly get their firm registered in the State under the Companies Act in force in the State, and on payment of the prescribed registration fee, and shall also observe the provisions of the Workmen's Compensation Act.

.....

Part VI. - General Provisions.

.....

6. On the expiry or earlier determination of the Licence, the land leased for the Factory buildings etc. will revert to the State, and the State may, if it so desires and will of such desire give 6 (six) months' notice to the Licensees, purchase the Factory buildings super-structure and machinery and appertenances or any of these on a fair valuation to be mutually settled and agreed upon by the State and the Licensees. In case the State does not want to purchase them, the Licensees will be at liberty to remove within 6 (six) months the plant and machinery and also to take away the superstructure or to sell it to anyone (preference for purchase of the same to be given to a bonafide resident of the State provided his offer is not lower than an outsider's), but will also if they so prefer be given liberty to purchase from the State the land (not exceeding 75 bighas mentioned in clause 6 of Part I) on which their buildings stand on payment of price therefor at the rate of Rs.150/- (one hundred fifty) per bigha."

The issue of maintainability of the suit by the firm was

dealt with by the trial court under issue No. 2 and the trial court came to the conclusion that the agreement was entered into by Mr. Narayan Jeewan and Mr. Trikam Lal Jeewan as proprietors of the firm M/s. Jeewan and Sons and, therefore, the suit filed by the firm was maintainable; though the reasons given by the trial court in this regard do not appear to be sound, however, it would be noticed that the agreement was entered into by Narayan Jeewan and Trikam Lal Jeewan as proprietors of the firm M/s Jeewan and Sons vide Exhibit-2.

A specific stipulation has been made under Part-V of the agreement dated 11.08.1944 under licencees' covenants (supra), wherein, the licencees were required to get their firm registered in the State under the Companies Act in force and was required to get registration etc. and observe the provisions of the Workmen's Compensation Act; the plaintiff firm admittedly got itself registered under the Partnership Act, 1932 on 01.04.1949.

In view of the fact that the agreement itself contemplated registration of the firm under the relevant law and the firm in fact got registered as a partnership firm, it cannot be said that the suit filed by the partnership firm was not maintainable and, as such, the finding on issue No. 2 deserves to be upheld though for a different reason.

The objections raised by learned counsel for the appellant regarding lack of relief and the grant of compensation by the trial court being contrary to the provisions of Section 21(5) of the SR Act are no longer valid in view of the fact that the application filed by the appellant seeking amendment in the

plaint for incorporation of the prayer has been accepted.

The crucial issue pertaining to limitation was dealt with by the trial court under issue No. 15; the trial court came to the conclusion that by order dated 17.09.1955 (Exhibit-A/1) only the mining lease was cancelled and the licence of the factory was not cancelled and right of the plaintiff to purchase the land at normal rate was protected; whereafter the proceedings were initiated with the Rajasthan Government and a stay order dated 02.09.1963 was granted, which was vacated on 22.02.1971, however, the order was not communicated to the plaintiff and the suit was filed after the stipulated period in the notice dated 28.11.1981 (Exhibit-A/4) came to an end and as the possession of the disputed land was handed over to RIICO on 27.02.1973 and the suit has been filed within 12 years for possession.

Besides the above, the trial court was also of the opinion that State should not take objection regarding limitation and decided the issue in favour of the plaintiff.

A bare look at the relief in the plaint (supra) would reveal that the plaintiff sought a decree for specific performance of the contract pertaining to 75 Bigha of land @ Rs. 150/- per bigha and sought possession of 30 Bigha of land from defendant Nos. 2 to 6 and injunction against the defendants regarding 45 Bigha of land; para 15 of the plaint, which pertains to the cause of action reads as under:-

"15-(पन्द्रह) यह कि बिनाय दावा व बिनाय मुखास्मत जीवन एन्ड सन्स फर्म की भूतपूर्व सिरोही राज्य के साथ ग्लास फेकट्री कायम करने का इकरार दिनांक 11-8-44 (ग्याहरा-आठ-चौमालीस) तकमील करने से व उस इकरार के क्लाज ६ पार्ट छ: की अनुपालने में फेकट्री का लायसेन्स समाप्त हो जाने पश्चात् राज्य सरकार के ७५ पच्चतर बीघा जमीन का बेचान वादी फर्म के हक में तकमील कर रजिस्ट्री न कराने से specific performance of

contract के लिये व प्रतिवादी सं० १ (एक) की सांजिश से प्रतिवादी गण २ (दो) ता ६ (छ) के करीब तीस बीघा जमीन पर अतिक्रमण कर कबजा करने से व बावजूद तकाजा कबजा नहीं छोड़ने से कबजे के लिये permanent prohibitory injunction व बावजूद नोटिस धारा ८० (अस्सी) जाबता दिवानी प्रतिवादी के किसी प्रकार की तामिल नहीं करने पैदा हुआ है।"

In the said para, it was claimed that the cause arose on cancellation of licence and non-registration of the sale of 75 Bigha of land and the defendant Nos. 2 to 6 not vacating the land despite requests.

The limitation pertaining to suit for specific performance is contained under Article 54 of the Limitation Act, 1963 ('the Limitation Act'), which reads as under:-

<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
54. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

It would be noticed that the term of the agreement was 30 years from 01.11.1944 and the relevant clause giving cause of action for specific performance is contained in Part VI – General Provisions (supra), which prescribes that on the expiry or earlier determination of the licence, the plaintiff had the option to purchase land not exceeding 75 Bigha, on which, their buildings stand on payment of price therefor @ Rs. 150/- per Bigha.

For better appreciation, the contents of the letter Exhibit-A/1 terminating licence dated 11.08.1944 are quoted below:-

"By registered post.

No. MNL 1155/84175 – M.
Development Department,
Sachivalaya, Bombay. 1.
17th September, 1955.

From:

The Asstt. Secretary to the Government
of Bombay,
Development Department.

To

M/s Jeewan and Sons,
Mines Owners, Abu Road, (W.R.)

Subject:- Mining Lease for Silies, Quarts etc.
in certain areas of Banaskantha District
Grant of.

Gentlemen,

With reference to the correspondence ending with your letter No.835, dated 24th August 1955, I am directed to state that the agreement executed by you with the Ex – State of Sirohi on 11th August, 1944 regarding Mining lease for Silies, Quarts, Felspar, Calcite and Limestone and license for running a glass factory is hereby terminated so far as the areas coming within the boundary of the Bombay State are concerned. I am to advise you to make a fresh formal application under the Mineral Concession Rules, 1949, in the prescribed form giving full particulars and sketches of the areas required under a Mining Lease. As regards the sale of land under structures etc admeasuring 75 bighas, as indicated by the Deputy Secretary to Government, Development Department, to you in the meeting of 17th August, 1955 Government would not be bound by the clause regarding sale of Land in question but as you have incurred expenditure in constructing the building, Government would consider your request for grant of land under the normal rules on payment of the value of the land under the relevant rules.

Yours faithfully
sd/-

Asstt. Secretary to Government
of Bombay, Development Department."

By above letter the Assistant Secretary to the Government of Bombay specifically terminated the agreement executed with the State of Sirohi on 11.08.1944 and further indicated that the Government would not be bound by the

clause regarding sale of land in question, however, the Government would consider the request for grant of land under the normal Rules on payment of the value of the land under the relevant Rules.

Under Article 54 of the Limitation Act, a suit for specific performance of contract has to be filed within 3 years from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

Clause-6 of Part VI (supra) envisaged purchase of not more than 75 Bigha of land by the plaintiff either on the expiry or on earlier determination of the licence.

Admittedly, by letter Exhibit-A/1, the agreement Exhibit-2 stood terminated by the Government of Bombay and when by the same letter instead of accepting the plaintiff's plea regarding purchase of the land @ Rs. 150/- per bigha indicated that the Government would not be bound by the clause regarding sale of land in question, but the plaintiff's request for grant of land would be considered under the normal Rules on payment of the value of land under the relevant Rules, the same clearly amount to refusal of performance by the State of Bombay, the then authority dealing with the subject matter of the suit and, as such, the cause of action seeking specific performance started to run with the receipt of letter dated 17.09.1955.

Examining the issue from another angle, the cause of action under Clause-6, Part VI in the alternative contingency would have arisen on the expiry of the period of licence. The licence was granted for a period of 30 years w.e.f 01.11.1944

and, therefore, even taking the said date in the alternative also, the plaint having been filed on 27.04.1982 was ex facie barred by limitation as prescribed in Article 54 of the Limitation Act. The reason assigned by the trial court for deciding the issue in favour of the plaintiff are wholly baseless. The trial court has assumed the limitation from the date when the notice (Exhibit-A/4) was issued by the counsel for the plaintiff on 28.1.1981. The issuance of notice by the counsel after passage of 26 years from the date of termination of the agreement and specially denying purchase of land as stipulated in the agreement, cannot resurrect a cause, which already stood barred by limitation in the year 1958 itself.

The another reason given by the trial court is that the relief sought was regarding possession and, therefore, the limitation would be 12 years. The said reasoning also is ex facie baseless, inasmuch as, the relief sought was only as required by provisions of Section 22 of the SR Act as a consequence of decree of specific performance in favour of the plaintiff and the suit was not a independent suit for possession against defendant Nos. 2 to 6, as such, the limitation as prescribed under Article 64/65 of the Limitation Act prescribing limitation of 12 years has absolutely no application.

So far as reliance placed by the trial court on judgment of Hon'ble Supreme Court in the case of *Dilbagh Raj Jerry v. Union of India & Ors. : AIR 1974 SC 130* and *The Madras Port Trust v. Hymanshu International by its Proprietor v. Venkatadri (dead) by L.Rs. : AIR 1979 SC 1144* is concerned, the said judgments by themselves do not lay down that plea of

limitation is not available in any suit filed against the State and even ex facie stale claims can be entertained by the civil courts and a complete go bye to the provisions of Section 3 of the Limitation Act has to be given in cases instituted against the State, wherein, the duty has been cast on the Courts to dismiss the suit instituted after the prescribed period of limitation although limitation has not been set up as a defence.

In view thereof, the finding on issue No. 15 recored by the trial court holding the suit as within limitation has absolutely no basis and the same is, therefore, reversed and it is held that the suit filed by the plaintiff is ex facie barred by limitation.

Even on merits, the State had specifically raised objection about maintainability of the suit on account of the fact that pursuant to the termination of the agreement (Exhibit-2), the plaintiff had obtained the security deposited under the agreement and had accepted the cancellation and, therefore, it was estopped from seeking specific performance and issue Nos. 5 and 6 were framed in this regard. The trial court while dealing with the issues construed the agreement Exhibit-2 and terminated Exhibit-A/1 pertaining to the mining lease only and not regarding the licence agreement. The findings in this regard are ex facie incorrect.

A bare reading of the relevant clause in the agreement (supra) would reveal that 'for the grant of a licence to run a glass factory, manufacture glass and glass articles from minerals to be searched, prospected and quarried from the lands, the plaintiff had agreed to deposit a sum of Rs. 5,000/- in cash as security, on which, no interest was to be allowed' in

respect of such licence. Further by letter Exhibit-A/1 reproduced hereinbefore, the agreement dated 11.08.1944 i.e. lease for mining and licence for factory was terminated and there is nothing in the letter dated 17.09.1955 to assume that the licence for the factory continued to remain in force. Further the very fact that even as per the plaintiff Clause-6 of Part-VI regarding purchase of the land came into force necessarily means that the entire agreement pertaining to the mining and manufacture of glass came to an end. Further, by Exhibit-A/2, the appellant specifically sought return of the National Saving Certificates amounting to Rs. 5,000/- deposited in pursuance to the agreement dated 11.08.1944, as a consequence to which, he was necessarily estopped from thereafter questioning the cancellation/seek specific performance of a part of the contract. Therefore, the findings on issue Nos. 4 and 5 recorded by the trial court also cannot be sustained and the same are, therefore, reversed.

The finding on issue No. 9 pertained to the passing of a stay order dated 02.09.1963 and its cancellation on 22.09.1971. It is strange that the trial court recorded a finding on the said issue despite the fact that neither order dated 02.09.1963 nor order dated 22.02.1971 was on record of the trial court and, therefore, the issue has been determined based on the assumptions, which finding also cannot be sustained and, consequently, the same is also reversed.

So far as the cross-objections filed by the respondent-plaintiff is concerned, in view of the fact that no one has appeared on behalf of the respondent No.1, the same are

dismissed for non-prosecution. Even otherwise, in view of the findings on various issues hereinbefore including issue of limitation, the cross-objections have no substance.

In view of the above discussion, the appeal is allowed. The judgment and decree dated 29.08.1990 passed by the trial court is set aside and the suit filed by the plaintiff is dismissed. No costs.

(ARUN BHANSALI), J.

A.K.Chouhan/-