

NARENDRA BAHADUR TANDON

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v.

SHANKERLAL (SINCE DECEASED) BY LRS. AND ANR.

January 25, 1980

[N. L. UNTWALIA AND O. CHINNAPPA REDDY, JJ.]

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Lease—Land leased to a company—Company went into voluntary liquidation—Land transferred to one of the Creditors, a Bank—Bank went into liquidation—Official liquidator of Bank found no deed of transfer executed—Voluntary liquidator executed deed of transfer—If competent to do so—Property if passed to state by escheat—Lessor's interest transferred to plaintiffs—Official liquidator sold land to defendant—Defendant raised structures on land—Plaintiffs never objected to raising of structures—Plaintiffs, if estopped from contending that defendant had no right in land.

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The original owners of the land in dispute granted a permanent lease of the land to a company. The lessee could use the land for any purpose and could also transfer the leasehold interest. Though a permanent lease the lessor could forfeit the lease if the lessee failed to pay rent for three consecutive years. The lessors interest changed hands twice and by virtue of a decree in a suit for pre-emption filed by the respondents they became entitled to such interest.

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In the meanwhile the company went into voluntary liquidation and the liquidator executed an agreement of sale of all its assets including the leasehold interest in favour of a Bank which was the biggest creditor of the Company. Immediately thereafter the Bank itself went into liquidation. Sometime later the official liquidator of the Bank found that no deed of transfer was executed by the voluntary liquidator in favour of the Bank, the erstwhile voluntary liquidator therefore executed a deed of sale in favour of the Bank. Thereafter the official liquidator of the Bank transferred the lease-hold interest in the land to the defendant-appellant.

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Before the company went into liquidation the first transferee of the land accepted rent from the voluntary liquidator. After the transfer of the leasehold interest to the Bank the second transferee demanded from the official liquidator arrears of rent for four years and claimed that the lease was forfeited by reason of the Bank's failure to pay rent for a continuous period of three years in terms of the lease. The official liquidator denied the right to forfeit the lease. He, however, paid rent which was accepted by the lessors. Even subsequently rent was accepted by the lessors.

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The respondent sued to recover possession of the suit land on the ground that the lease-hold interest was not validly transferred by the voluntary liquidator and that therefore neither the Bank nor the defendant acquired any right in the land. The defendants contended that the voluntary liquidator had the authority in law to execute the deed of sale and formally complete a transaction which had already taken place, that the predecessors in interest of the plaintiff having accepted rent from the official liquidator were estopped

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- A** from contending that the transfer in favour of the Bank was not valid and that the lease-hold interest in the land had escheated to the Government on the dissolution of the company.

The suit was dismissed by the Trial Court and the Appellate Court. On second appeal, the High Court decreed the suit holding that the voluntary liquidator had no authority to execute the deed of sale after the dissolution of the company and that there was neither estoppel nor escheat.

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Allowing the appeal,

C HELD : 1. The High Court was right in holding that the liquidator had no jurisdiction to execute the deed of sale after the company had been dissolved. Once the company was dissolved in accordance with the procedure laid down in the Indian Companies Act, 1913 it ceased to exist and therefore the voluntary liquidator could not represent a non-existent company. If the liquidator was to discharge any duty or perform any function on behalf of the dissolved company he should have express statutory authority to do so, which he did not have under the Act. [826 D, 825 G]

D 2. If the company had a subsisting interest in the lease on the date of dissolution, such interest must necessarily vest in the Government by escheat or *bona vacantia*. It is well settled that the property of an intestate dying without leaving lawful heirs and the property of a dissolved corporation passes to the Government by escheat or *bona vacantia*. If the lease-hold interest of company became vested in the Government on its dissolution, a suit at the instance of the plaintiffs was not maintainable. [826 E, 827 G]

E 3. The successors in interest of the original lessors accepted rent from the official liquidator indicating that they accepted the position that the Bank had succeeded to the rights of the company in the lease-hold interest. The official liquidator sold the land to the defendant with the permission of the Company Judge only when he failed to get the highest bid in public auction. At no point of time did the predecessors in interest of the plaintiffs raise an objection to the sale of the lease-hold interest. When the defendant obtained permission of the Municipal Board and raised constructions on the land, the plaintiffs who resided near-about the land did not raise any objection to the constructions. In the circumstances the plaintiffs were estopped from contending that the defendant had no right in the land. Their only right is to receive rent. [827 F-828 B]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 575 of 1970.
From the Judgment and Decree dated 17-2-1966 of the Allahabad High Court in Special Appeal No. 92 of 1960.

S. S. Javali and *B. R. Aggarwal* for the Appellant.

R. K. Garg and *V. J. Francis* for the Respondent.

The Judgment of the Court was delivered by

H CHINNAPPA REDDY, J. Hulas Chand and Bilas Chand, original owners of a certain plot of land in Saharanpur, granted a permanent lease of the land to Patel Mills Ltd., in May, 1930. The annual rent

was Rs. 75/-. The lease was empowered to use the land for any purpose whatsoever. The rights of the lessee were expressly made transferable. Though the lease was permanent, there was a condition that the lessor could forfeit the lease if the lessee failed to pay rent for three consecutive years. On November 1, 1932 Hulas Chand and Bilas Chand transferred their interest to Budh Singh and Jialal. Jugal Kishore, became entitled to the rights of Budh Singh and Jialal by purchase under sale deeds dated April 17, 1943 and May 11, 1943. But, Shankerlal and Piareylal (present plaintiff) filed a suit for presumption against the vendors and Jugal Kishore and as a result of the decree passed in the suit, they became entitled to the lessor's interest in the suit plot of land on August 13, 1945.

Meanwhile the lessee Patel Mills went into liquidation and Mehra was appointed voluntary liquidator of the company on May 11, 1937 by a special resolution at a meeting of the creditors of the company. Benaras Bank Ltd., was the biggest creditor of the Company. So the liquidator negotiated the sale of all the assets of the Company to the Benaras Bank Ltd., for a sum of Rs. 70,000/- and on February 23, 1939 executed an agreement of sale after receiving the consideration. The lease-hold interest in the suit plot was also included as one of the assets in the agreement of sale. As a meeting held on May 4, 1939 the creditors accepted the final report of the voluntary liquidator. The report was sent to the Registrar of Joint Stock Companies, and registered on September 9, 1939. The company thus stood dissolved with effect from December 9, 1939. Subsequently on March 1, 1940 the Benaras Bank Ltd. itself went into liquidation. The Official Liquidator of the Benaras Bank Ltd. found that there was no duly executed deed of transfer executed by the voluntary liquidator of the company in favour of the Benaras Bank Ltd. in respect of the lease-hold interest in the suit plot of land. At the instance of the official liquidator of the bank, Shri Mehra the erstwhile voluntary liquidator of the company executed a deed of sale on January 28, 1941 and had it duly registered. On March 9, 1943 the official liquidator transferred the lease-hold interest in the suit plot of land to the defendant-appellant.

We have mentioned that Patel Mills Ltd., stood dissolved with effect from December 9, 1939. Budh Singh and Jialal had earlier, i.e. on April 12, 1939, accepted rent from the voluntary liquidator of the company. After the dissolution of the company and the transfer of the lease hold interest by the voluntary liquidator to the Benaras Bank Ltd. Budh Singh and Jialal sent a notice dated January 11, 1941 to the liquidator of the Benaras Bank Ltd. through their lawyer demanding payment of arrears of rent for four years and asserting that the

- A** lease was forfeited consequent on the lessee's failure to pay rent for a continuous period of three years. The liquidator denied the claim of right of the lessor to forfeit the lease but admitted the claim for rent. Rent was accordingly paid and was accepted by Budh Singh and Jialal. Later, on March 21, 1946, Jugal Kishore who had purchased the rights of Budh Singh and Jialal also accepted rent from the official liquidator of the Benaras Bank Ltd.

Shankerlal and Piarey Lal who became entitled to the lessor's interest in the suit plot of land as a result of the decree from pre-emption which they obtained against Jugal Kishore and his vendors, filed the suit out of which the appeal arises to recover possession of the land.

- C** Their case was that the lease hold interest in the land was not validly transferred by the voluntary liquidator and therefore, the defendant acquired no right in the land.

- Several defences were raised. It was claimed that the voluntary liquidator had the authority in law to execute the deed of sale and formally complete a transaction which had already taken place. It was also claimed that the predecessors in the interest of the plaintiffs having accepted rent from the official liquidator of the bank, the plaintiffs were estopped from contending that the transfer in favour of the bank was not valid. Section 53A Transfer of Property Act was also invoked as a defence to the action of the plaintiffs. It was lastly pleaded that the plaintiffs had no right to sue for possession as the lease-hold interest in the land had escheated to the Government on the dissolution of the Company. The suit was dismissed by the Trial Court. The judgment and decree of the Trial Court were affirmed by the 1st Appellate Court and a learned single Judge of the High Court in second appeal. The learned Single Judge found in favour of the defendant on the question of estoppel, escheat and authority of the voluntary liquidator to execute the sale deed but found against the defendant on the applicability of s. 53A of the Transfer of Property Act. On appeal by the plaintiffs under clause 10 of the Letters Patent a Division Bench of the High Court reversed the judgment and decree of the Subordinate Courts and decreed the suit. The Division Bench held that the voluntary liquidator had no authority to execute the deed of sale after the dissolution of the company and that there was neither estoppel nor escheat. The Division Bench also held that s. 53A of the Transfer of Property Act did not protect the defendant. The defendant has preferred this appeal after obtaining a certificate from the High Court under Art. 133(1)(b) of the Constitution.

H The submissions of Shri Javali learned counsel for the appellant on the question of applicability of s. 53A of the Transfer of Property

Act and the authority of the voluntary liquidator after the dissolution of the company to execute the deed of sale may be easily disposed of. We do not think that s. 53A of the Transfer of Property Act is attracted to the facts of the present case. The right under s. 53A is available against the transferor (effecting the incomplete transfer) and any person claiming under him. It is difficult to understand how the successor-in-interest of a lessor can ever be said to a person claiming under a lessee making an incomplete transfer of the lease-hold interest. Nor do we find force in the submission of the learned counsel that the voluntary liquidator had legal authority, after dissolution of the company to execute the deed of sale so as to formally complete the transaction which had already been entered into. Reliance was placed by the learned counsel for the appellant on the decision of Farwell, J., in *Pulsford v. Demanish*⁽¹⁾. In that case a liquidator was guilty of gross dereliction of duty. In the words of Farwell J., "A more gross dereliction of duty by a liquidator I have seldom heard of". Though in possession of sufficient assets of the liquidating company to pay all its debts in full the liquidator took no steps to ascertain the creditors of the liquidating company or to see that they were paid. Instead he sold the business and assets of the company to a purchasing company who covenanted to pay all the debts and liabilities of the liquidating company. The purchasing company did not pay the debts. The liquidating company was dissolved. The creditors had no remedy by which they could recover their debts. A creditor of the liquidating company sued the liquidator for recovery of damages. It was held that the liquidator was guilty of negligence in the discharge of his statutory duty and was liable in damages to the unpaid creditors of the liquidating company. What was decided in the case was not that a liquidator could represent the erstwhile company after it was dissolved but that a liquidator could be sued in damages for breach of a statutory duty which he had failed to perform while functioning as liquidator. We do not think that this case is of any assistance to the appellant. We are unable to appreciate how after the company was dissolved the liquidator could still claim to represent the company and execute a registered deed of sale. Once the company was dissolved it ceased to exist and the liquidator could not represent a non-existing company. If the liquidator was to discharge any duty or perform any function on behalf of the dissolved company he should have express statutory authority. The Companies Act 1913 contained no provision enabling the liquidator to do any act on behalf of a dissolved company. S. 209(H) of the Companies Act, 1913 enjoined the liquidator as soon as the affairs of the company were wound up to make up an account of the winding up and to call a gene-

(1) [1903] 2 Ch. Divn. p. 625.

A ral meeting of the company and a meeting of the creditors for the purpose of laying the accounts before the meetings. The liquidator was then required to send to the Registrar a copy of the account and to make a return to him of the holding of the meetings. The Registrar on receiving the accounts and the returns was required to register them an on the expiration of three months of registration the company was
B to be deemed as dissolved. The only duty cast upon the liquidator thereafter was that under s. 244(B). It was that the liquidator should on the dissolution of the company pay into the Reserve Bank of India, to the credit of the Central Government in an account called the Companies Liquidation Account any money representing unclaimed dividend or any undistributed assets in his hands on the day of dissolution.
C No other duty was stipulated to be performed by the liquidator under the provisions of the Companies Act, 1913, after the dissolution of the company. We are, therefore, unable to agree with the submission of the learned counsel that the liquidator had the jurisdiction to execute the deed of sale dated January 28, 1941 after the company had been dissolved.
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The next question which we must consider is what was the effect of the dissolution of the company on the lease-hold interest which the company had in the land. No term of the lease has been brought to our notice by which the lease would stand extinguished on the dissolution of the company. If the company had a subsisting interest in the lease on the date of dissolution such interest must necessarily vest in the Government by escheat or as *bona vacantia*. In India the law is well settled that the property of an intestate dying without leaving lawful heirs and the property of a dissolved Corporation passes to the Government by escheat or as *bona vacantia*. Of course such property will be subject to trusts and charges, if any, previously effecting its
E vide *M/s. Pierce Leslie & Co. Ltd., v. Violat Ouchterlong Wapshare & Ors.*⁽¹⁾. It is also to be noticed here that s. 244(B) of the Companies Act 1913, as well as s. 555(2) of the Companies Act 1956 expressly enjoin a duty on the liquidator to deposit, on the dissolution of the company, into an account in the Reserve Bank of India known as the Companies Liquidation Account any money representing unpaid dividend or undisputed assets lying in his hands at the time of dissolution. The learned counsel for the appellant relied upon the decisions of the Allahabad High Court in *Tulshi Ram Sahu & Anr. v. Gur Dayal Singh & Anr.*⁽²⁾ and *Mussamat Ramman Bibi v. Mathura Prasad & Anr.*⁽³⁾. Both were cases of fixed rate tenancies. As pointed out
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(1) A.I.R. 1969 pp. 843.

(2) I.L.R. 33 Allahabad 111.

(3) 75 Indian Cases 621.

by the Full Bench in *Tulsi Ram Sahu & Anr. v. Gur Dayal Singh & Anr.*,⁽¹⁾ one of the incidents of a fixed rate tenancy was that provided by s. 18 of the Agra Tenancy Act 1901 which prescribed that a right of occupancy would stand extinguished when a fixed-rate tenant died leaving no heir entitled under the Act to inherit the right of occupancy. It followed therefrom that the land had to revert to the landlord and could not go to the Government by escheat. On the other hand in *Sonet Kooer v. Himmat Bahadur & Ors.*⁽²⁾ The Privy Council held that on the failure of heirs to a tenant holding land under Mukerrori Tenure there was nothing in the nature of the tenure which prevented the Crown from taking the Mukerrori by escheat, subject to the payment of rent to the Zamindar. If the leasehold interest of the company in the land became vested in the government on the dissolution of the company it must follow that the suit at the instance of the plaintiffs was not maintainable.

The next question for consideration is whether the plaintiffs were estopped from denying the validity of the sale in favour of the Benaras Bank Ltd., and the character of the possession of the Benaras Bank Ltd., and its successors in interest. As already mentioned by us Budhsingh and Jialal sent a notice dated January 11, 1941, through their lawyer demanding of the liquidator of the Benaras Bank Ltd., payment of arrears of rent for four years and asserting that the lease was forfeited consequent on the lessee's failure to pay rent for a continuous period of three years. The liquidator denied the claim of right of the lessor to forfeit the lease but admitted the claim for rent. The liquidator paid the rent and it was accepted by Budh Singh and Jialal. Later also the evidence shows that Jugal Kishore the purchaser from Budh Singh and Jialal also accepted rent from the official liquidator of the Benaras Bank Ltd. This course of conduct of Budh Singh and Jialal and their successor Jugal Kishore clearly indicates the acceptance, by them, of the position that the Benaras Bank Ltd. had succeeded to the rights of the company in the leasehold interest. Further, the official liquidator of the Benaras Bank Ltd. said first tried to sell the leasehold interest by public auction. When that sale did not fructify because of the failure of the highest bidder to deposit the sale price, the leasehold interest was sold to the defendant with the sanction of the Company Judge. At no point of time did the predecessors-in-interest of the plaintiffs raise the slightest objection to the sale of the leasehold interest. It was thereafter that the defendant obtained the permission

(1) I.L.R. 33 Allahabad 111.

(2) I.L.R. (I) Calcutta 391.

- A** of the Municipal Board, Saharanpur, and raised construction on the land. The plaintiffs themselves admittedly reside nearabout the land in dispute. They did not raise any objection to the raising of the constructions. The plaintiffs as well as the defendants appeared to proceed on the common understanding that the defendants had succeeded to the interest of Patel Mills Ltd., in the lease-hold interest. We are,
- B** therefore, of the view that the plaintiffs were estopped from contending that the defendant had no interest in land. The amount only right of the plaintiffs was to receive the rent. The result of our discussion is that the appeal is allowed and the suit is dismissed with costs throughout. It is, however, made clear that the plaintiffs have the right to receive rent from the defendants.
- C**

P.B.R.

Appeal allowed.