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U.P. STATE SUGAR CORPORATION AND ANR.

v.

M/S. MAHALCHAND M. MOTHARI AND ORS.

OCTOBER 29, 2004

B

[D.M. DHARMADHIKARI AND P.P. NAOLEKAR, JJ.]

*Civil Appeal Nos. 357-358 of 1999:*

*U.P. Sugar Undertakings (Acquisition) Ordinance 1971/Act 1971—*  
C *Section 3—U.P. Zamindari Abolition and Land Reforms Act, 1950—Sections 279(1) (g), 286A—Receiver of a mill appointed by Collector for recovery of dues of cane growers—Statutory receiver—Powers of—Held, contractual liabilities arising against the Receiver is not merely enforceable against him but is a liability attached to the property in his receiver-ship—It can be recovered from the party in whom the property stand vested—Further Held, D since the receiver was not in possession of the property, he need not be impleaded in the suit.*

*Words and Phrases—'Receiver'—'Statutory Receiver'—Meaning of.*

E *Respondent No. 1 filed two suits in 1982 in the Court of Assistant District Judge, Guwahati for recovery of damages caused to it as a result of non-supply of sugar by the Receiver who was managing the Sugar Mill for the orders placed by the plaintiff for supply of different quantities of sugar in the year 1979 on payment of advance money. The prices of sugar having gone up in the period of supply under the contract, the Receiver neither sent the quantity of sugar nor returned the advance price paid by the plaintiff. The erstwhile Mill owner and the Appellant Corporation were made defendants to the suits because by that time, Sugar Mill already stood transferred to, vested in and been in actual possession of the Corporation in accordance with section 3 of the U.P. Sugar Undertakings (Acquisition) Act, 1971.*

G *The Appellant repudiated the claims made in the two suits pleading *inter alia* that there was no privity of contract between the plaintiff and the Corporation that the Receiver was managing the Sugar Mill on the date of alleged non-supply of quantity of sugar; and that the erstwhile owner of the Sugar Mill had filed writ petition in the High Court of Allahabad challenging the constitutional validity of the Uttar Pradesh Sugar Undertakings*

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(Acquisition) Ordinance, 1971 in which operation of the Ordinance was stayed A and the possession of the Sugar Mill was restored to the erstwhile owner on specified terms and conditions of the order of stay.

The Assistant District Judge, Guwahati decreed both the suits holding *inter alia* that the Corporation cannot avoid its liability towards the claims of the plaintiff as the Sugar Mill stood transferred to and vested in it from the 'appointed day' i.e. 3.7.1971 under Section 3 of the Act. B

The Appellant preferred two appeals to the High Court of Guwahati which were allowed solely on the ground that the suits were not maintainable as the Respondent No.1 was not a registered partnership firm and was, therefore, incompetent to sue as a firm. This Court, on appeal, remitted the appeals to the High Court for their decision on merits. C

After remand, the High Court dismissed both the appeals of the Corporation and confirmed the decrees granted by the trial court.

Before this Court, the Appellant contended that there was no privity of contract between plaintiff and the Corporation, therefore, it could not be held liable towards the losses and damages caused to the plaintiff by alleged breach of contract committed by the Receiver in not supplying the sugar, that for transferring and vesting of Sugar Mill in the Corporation, the 'appointed day' fixed under Section 3 of the Ordinance/Act was 3.7.1971 but the erstwhile owner of the Sugar Mill challenged the validity of the Ordinance in the Allahabad High Court and obtained a stay order on 09.7.1971 where under the Receiver, who was already managing the Sugar Mill as a nominee of the Collector under section 279(1)(g) read with Section 286A of the Act of 1950, continued in the management of the Sugar Mill for and on behalf of the erstwhile owner that when two orders for supply of sugar were alleged to have been placed on 02.2.1979 and 09.2.1979 by the plaintiff, the Receiver was in possession and management of the sugar mill, and that he was acting not for the Corporation but for and on behalf of the erstwhile owner of the mill who was in *de jure* possession of the mill. D E F

The respondent contended that the order obtained by the erstwhile owner of the Sugar Mill on 09.7.1971 staying operation of the Ordinance had been vacated by the High Court on 29.7.1974 on the application of the Receiver, that therefore, the Sugar Mill would be deemed to have stood transferred to and vested in the Corporation on the 'appointed day' 03.7.1971, that the orders for supply of sugar were placed after the stay against Ordinance had been H

A vacated by the High Court, that therefore for the acts and omissions of the Receiver, the Corporation, in whom the Sugar Mill stood vested, could not have been allowed to repudiate its liability towards the breach of contract committed by the Receiver.

**Dismissing the Appeals, the Court**

B **HELD:** 1. From the proceedings of the writ petition, it is clear that Receiver entered into alleged contract for Supply of agreed quantities of sugar to the plaintiff respondent on 2.2.1979 and 9.2.1979 when stay order dated 9.7.1971 passed in the writ petition was in operation. [770-E-F]

C 2. From the provisions of the Act of 1950 and the Ordinance/Act, it is clear that the Receiver who was in the management of the Sugar Mill on the 'appointed day' was not a Receiver appointed by any Court. He was a Receiver appointed by the Collector under the Act of 1950 and on the vesting of the Sugar Mill on the appointed date 3.7.1971, was in possession and management D of the Sugar Mill not as an agent either of the erstwhile Sugar Mill owner or the corporation. He was a statutory Receiver appointed under section 279(1)(g) read with section 286-A of the Act of 1950 for the purpose of recovery of dues of the cane-growers in the manner as arrears of land revenue. He was allowed to continue in management of the Sugar Mill by the High Court on the terms and conditions imposed in the order of stay passed during pendency E of the writ petition. [776-A-B-C]

F 3. The liabilities incurred by a statutory Receiver in the course of management of the Sugar Mill are liabilities attached to assets or properties of the Sugar Mill because neither the erstwhile owner nor the Corporation, which later acquired the Sugar Mill, was responsible for the alleged losses or damages caused to the plaintiff by the alleged breach of contract committed by the receiver in non-supply of the quantity of sugar. [776-C-D-F]

G 4. A statutory Receiver is merely the legal representative of the property placed in his hands as such. In determining his liability the court will only determine the liability of the property. It is not material whether the liability existed before or has accrued since his appointment. A contractual liability arising against the receiver during the course of management of the property for acts or omissions committed by him for the benefit of the property, is not merely enforceable against the receiver but is a liability attached to the property in his receivership, which can be recovered from the property and H through the person in whom the property vests. [776-H; 777-A-B]

*Corpus Juris Secundum Vol. 75 Articles 325 & 187 at pages 833 and A  
1000 and Words and Phrases Permanent Edn. Vol. 36 at Pg. 742 from  
"Representative of Property", referred to.*

5. The liability arising from breach of contract committed by the Receiver was not of the Corporation. It was an obligation attached to the property of the Sugar Mill which was under the management of the Receiver, initially under the 1950 Act and continued under the order of stay passed by the High Court. Since the liability towards breach of contract was attached to the sugar mill under the management of the Receiver, the Corporation in whom title of the sugar mill stands vested under Section 3 of the Act cannot avoid the liability - it being a burden on the said property and recoverable from it. [777-G-H; 778-A] B C

6. The legal status and position of a receiver appointed by the Court and a Receiver appointed under a Statute are different. In the instant case, the receiver appointed under the Act of 1950 and continued by the High Court on terms and conditions contained in the stay order during pendency of the writ petition, was a statutory receiver and his rights and liabilities were attached to the property for the management of which he was appointed. The receiver was not an agent of either of the parties. For his acts and omissions, a third party could raise a claim against the party in whom the property stood vested and to which the liability was attached. [778-E-F] D E

7. The suits were filed by the plaintiff claiming losses and damages for breach of contract committed by the receiver within the prescribed period of limitation. On the date of filing of the suits, the receiver was not in possession of the Sugar Mill as the actual possession of the Sugar Mill had been restored to the Corporation. It was, therefore, not necessary for the plaintiff to implead the receiver as a party to the suits. The Receiver could not be made personally liable for his acts and omissions in the course of management of the Sugar Mill and which are not alleged to be *malafide*. As none of the parties i.e. the erstwhile owner or the Corporation is personally liable for the breach of contract committed by the receiver in the course of management of the Sugar Mill, the contractual liability of the receiver towards the plaintiff is recoverable from the property of the Sugar Mill, and therefore, through the Corporation in whom the property stands vested under the Act. G

|778-G; 779-A-B|

**A** From the Judgment and Order dated 16.7.98 of the Gauhati High Court at Assam in F.A. Nos. 48 and 49 of 1989.

Pradeep Misra for the Appellants.

Arvind Minocha and R.K. Agarwal for the Respondents.

**B** The Judgment of the Court was delivered by

**DHARMADHIKARI, J.** By Uttar Pradesh Sugar Undertakings (Acquisition) Ordinance, 1971 which later became an Act No. 23 of the same name [hereinafter referred to shortly as the 'Ordinance/Act'], M/s Maheshwari

**C** Khetan Sugar Mill Pvt. Ltd., [Respondent No. 2 herein] at Ramkola, District Deoria in the State of Uttar Pradesh, was acquired by the appellant U.P. State Sugar Corporation [shortly referred to as 'the Corporation'].

**D** On the date of coming into force of the Ordinance, the Sugar Mill was under management of Receiver appointed on 04.3.1970 by the Collector for recovery of dues of cane-growers as arrears of land revenue in accordance with section 279(1)(g) read with Section 286A of the U.P. Zamindari Abolition and Land Reforms Act, 1950 [shortly referred to as 'the Act of 1950'].

**E** M/s Mahalchand M. Kothari which is a partnership firm carrying on trade in Guwahati in the State of Assam filed two suits in the Court of Assistant District Judge, Guwahati for recovery of damages caused to it as a result of non-supply of sugar under the contract entered into by the plaintiff firm with the Receiver who was managing the Sugar Mill. The orders were placed by the plaintiff for supply of different quantities of sugar in the year 1979 and advance money was paid to the Receiver for timely supply. The **F** prices of sugar having gone up in the period of supply under the contract, the Receiver neither sent the quantity of sugar nor returned the advance price paid by the plaintiff. Both the suits Nos. 11 and 27 were filed in the year 1982. The erstwhile Mill owner and the appellant Corporation were made defendants to the suits because by that time, Sugar Mill already stood transferred to, vested in and been in actual possession of the Corporation in accordance with section 3 of the Act.

**G** The Corporation repudiated the claims made in the two suits pleading *inter alia* that there was no privity of contract between the plaintiff and the Corporation; the Receiver was managing the Sugar Mill on the date of alleged non-supply of quantity of sugar; the erstwhile owner of the Sugar Mill had

filed writ petition in the High Court of Allahabad challenging the constitutional validity of the Uttar Pradesh Sugar Undertakings (Acquisition) Ordinance, 1971 in which operation of the Ordinance was stayed and the possession of the Sugar Mill was restored to the erstwhile owner on specified terms and conditions of the order of stay. A

The Assistant District Judge, Guwahati by two separate judgements, decreed both the suits holding *inter alia* that the Corporation cannot avoid its liability towards the claims of the plaintiff as the Sugar Mill stood transferred to and vested in it from the 'appointed day' i.e. 3.7.1971 under Section 3 of the Act. B

The Corporation had preferred two appeals to the High Court of Guwahati which were allowed on 26.6.1996 solely on the ground that the suits were not maintainable as the plaintiff was not a registered partnership firm and was, therefore, incompetent to sue as a firm. The plaintiff then had approached this Court by Civil Appeal Nos. 3057 and 3058 of 1997 which were allowed on 25.7.1997 as it was pointed out that original certificate showing registration D of the firm had been produced before the trial court. This Court, therefore, remitted the appeals to the High Court for their decision on merits. C

The Division Bench of the High Court by the impugned judgment dated 16.7.1998 dismissed both the appeals of the Corporation and confirmed the decrees granted by the trial court in the two suits in favour of the respondent/ plaintiff. E

The Corporation, therefore, after seeking leave is before this Court in these two appeals. F

Learned counsel appearing for the Corporation has taken us through the relevant dates and proceedings of the Allahabad High Court in the writ petition which was filed challenging the Ordinance/Act. It is strenuously urged that there was no privity of contract between plaintiff and the Corporation. The Corporation, therefore, could not be held liable towards the losses and damages caused to the plaintiff by alleged breach of contract committed by the Receiver in not supplying the sugar for which orders had been placed by the plaintiff. It is submitted that for transferring and vesting of Sugar Mill in the Corporation, the 'appointed day' fixed under Section 3 of the Ordinance/Act was 3.7.1971 but the erstwhile owner of the Sugar Mill challenged the validity of the Ordinance in the Allahabad High Court and obtained a stay order on 09.7.1971 whereunder the Receiver, who was already G H

- A managing the Sugar Mill as a nominee of the Collector under section 279(1)(g) read with Section 286A of the Act of 1950, continued in the management of the Sugar Mill for and on behalf of the erstwhile owner. It is contended by the counsel on behalf of the Corporation that when two orders for supply of sugar were alleged to have been placed on 02.2.1979 and 09.2.1979 by the plaintiff, the Receiver was in possession and management of the sugar mill.
- B He was acting not for the Corporation but for and on behalf of the erstwhile owner of the mill who was in *de jure* possession of the mill as an effect of the order of stay dated 09.7.1971 obtained in Writ Petition No. 4193 of 1971 filed in the Allahabad High Court challenging the constitutional validity of the Ordinance. Under the terms of the order of stay, operation of the Ordinance
- C was stayed and possession of the mill was restored to the erstwhile owner.

Learned counsel appearing for the respondent plaintiff heavily relied on the photocopies of the order-sheets of the writ petition No. 4193 of 1971 filed in the Allahabad High Court. An attempt has been made to show that the order obtained by the erstwhile owner of the Sugar Mill on 09.7.1971 staying

- D operation of the Ordinance had been vacated by the High Court on 29.7.1974 on the application of the Receiver who was experiencing various difficulties in managing and running the Sugar Mill. The learned counsel for the respondent plaintiff contended that as the stay against Ordinance/Act passed on 09.7.1971 stood vacated on 29.7.1974, the Sugar Mill would be deemed to
- E have stood transferred to and vested in the Corporation on the 'appointed day' 03.7.1971. The orders for supply of sugar were placed on 02.2.1979 and 09.2.1979 by the plaintiff after the stay against Ordinance had been vacated by the High Court on 29.7.1974. On behalf of the respondent plaintiff, it is, therefore, submitted that for the acts and omissions of the Receiver the Corporation, in whom the Sugar Mill stood vested, could not have been
- F allowed to repudiate its liability towards the breach of contract committed by the Receiver.

At the outset, it is necessary to put straight the factual position which is discernible on a careful perusal of the proceedings of the writ petition in the High Court in which the constitutional validity of the Act/Ordinance was challenged.

- G On behalf of the respondent plaintiff, an attempt was made to project that the order dated 09.7.1971 granting stay against the Ordinance/Act, stood vacated on 27.9.1974 on the application of the Receiver who prayed for unfettered right to manage the Sugar Mill. In the additional documents filed
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by the parties before us, a copy of the application filed by the receiver seeking vacation of stay and photocopies of the order-sheets of the High Court in the writ petition have been produced. The Receiver had filed an affidavit on 16.5.1974 in the High Court of Allahabad in which prayer was made to vacate the *interim* order of stay. A

On behalf of respondent plaintiff, reliance is placed on the order-sheet recorded in the writ petition on 29.7.1974. It reads thus:- B

*'Hon. Gulati J.'*

29.7.1974. 'Application dated 17.3.1974 allowed. List the writ for hearing on 16.9.1974.' C

Learned counsel for the respondent submitted that in the above quoted order, the date of the application mentioned as 17.3.1974 should be correctly read as 17.5.1974 as according to him the hand-written figure 3 showing the month should be read as 5. We find that nothing turns on the fact whether the application which was allowed on 29.7.1974 was of date 17.3.1974 or 17.5.1974. After 29.7.1974, the writ petition stood adjourned to several dates for hearing. The order-sheet of 22.5.1976 reads thus :- D

*'Hon. Sapru J.,'*

22.5.1976 'An application to vacate the stay order has been filed on 10.5.1976. A counter affidavit has been filed within three weeks. The rejoinder affidavit may be filed by 07th of July, 1976. List it for orders on 08.7.1976.' E

Office Report dated 07.07.1976 reads thus :-

*Misc. 5657/76 dated 10.5.76 (to vacate stay)* F

In compliance of court's order dated 20.5.1976, neither counter nor rejoinder affidavit has been filed. Put up for further orders.

On 08.7.1976, as directed earlier, the case was listed before the Division Bench which recorded the following order :-' G

*Hon. Yashoda Nandan J.,*

*Hon. H. N. Seth J.,*

8.7.1976 'We are informed that the application for vacating the stay order is part-heard before a Bench consisting of Hon. C.P.S. Singh and Hon. Mahrotra JJ. List this application before the bench concerned at H

A an early date.'

From the above quoted subsequent orders, it appears that the parties were repeatedly taking time to file additional pleadings and counters but no orders on application for vacating stay was passed. The writ petition was placed before various benches between July, 1997 to April, 1979. The writ petition challenging the validity of the Ordinance/Act was dismissed on 3.5.1979 which can be said to be the event whereupon the *interim* order of stay of the Ordinance/Act passed on 09.7.1971 stood automatically vacated.

From the resume of the above facts gathered out from the photocopies of the proceedings of the writ petition, the fact which conclusively emerges is that the conditional *interim* stay granted on 9.7.1971 in the writ petition challenging constitutional validity of the Ordinance/Act stood vacated only on the final dismissal of the writ petition on 03.5.1979. As is sought to be projected on behalf of the respondent, the stay was not vacated on 29.7.1974. On that date, some other application dated 17.3.1974 (details of which are not clear from the proceedings of the writ petition) happened to be allowed. The further proceedings in the writ petition clearly go to show that the application for vacating stay remained pending on 22.5.1976 and 08.7.1976. It was never decided during pendency of the writ petition. The stay order stood vacated only when judgment was delivered on 03.5.1979 and the writ petition questioning the validity of the Ordinance/Act was dismissed.

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On these facts culled out from the proceedings of the writ petition, it is clear that Receiver entered into alleged contract for Supply of agreed quantities of sugar to the plaintiff respondent on 2.2.1979 and 9.2.1979 when stay order dated 9-7-1971 passed in the writ petition was in operation.

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Next, we have to consider what is the legal effect of the order of stay passed by the High Court in the writ petition on 09.7.1971. To ascertain the legal effect of the stay order passed in writ petition, it is necessary to reproduce its contents and examine it critically.

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## ORDER

Issue notice.

Till further orders of this Court, *the operation of U.P. Ordinance No. 13 of 1971 shall remain stayed so far as the Receiver is concerned. The status quo, as on July 2, 1971, shall be restored and the petitioner company which admittedly, was running the mills on that date, will*

*be put back in possession. This order will, however, not affect any other proceedings pending and any other orders that may be passed by any competent court or authority hereafter.* This order will be further subject to the following condition:-

1. The Receiver shall make arrangements for the off season repairs of the machinery etc. and if he takes advances from Bank for this purpose, final orders regarding repayment of the same would be passed at the time of the final disposal of the writ petition. A B
2. The amount of money to be spent on the repairs shall not exceed the average amount spent in the last three years. C
3. The Receiver is restrained from removing or disposing of any property of the *undertaking other than sugar, molasses and waste products.* D
4. The Receiver shall maintain the plant and machinery in good repairs to ensure the satisfactory running of the factory in the coming crushing season. The Collector, Deoria, shall, however, have free access to the factory and will be consulted by the receiver in matters of management. It will be open to the Collector to prepare such inventory as he desires. If an inventory is prepared, the Collector shall supply a copy thereof to the Receiver. E
5. The Receiver shall not create any long term or unduly heavy liabilities on the property including the mortgage of fixed assets; any loans that he may raise shall be only for the purpose of capital investment or working capital of the undertaking concerned. F
6. The Receiver shall make no changes in the terms and conditions of any employee, except with the previous permission of this Court. G

Copies of this order may be supplied to the counsel for the parties on payment of usual charges. G

[Emphasis supplied]

From the terms and conditions of the above quoted order of stay passed on 9-7-1971, what seems to us is that the operation of the impugned H

- A Ordinance/Act was partially stayed on specified conditions to regulate the power of the Receiver which was already managing the Sugar Mill under section 279(1)(g) read with section 286A of the Act of 1950. The legal effect of the order of stay (quoted above) was that the Receiver which was appointed under the Act of 1950, was to continue in management of the Mill on the conditions imposed by the High Court. From term no. 3 in the stay order, it is clear that the Receiver had only power to carry on day-to-day business of the Sugar Mill and for that purpose, to sell sugar, molasses and waste products. The Receiver, when entered into the alleged contract in February, 1979 to supply sugar to the plaintiff respondent was acting as a statutory Receiver who was allowed with added conditions to continue in management
- B of the Sugar Mill by the High Court in accordance with section 279(1)(g) and Section 286-A of the Act of 1950. Under the terms of the stay order, the *status-quo* as existing on 2.7.1971 i.e. a day before the 'appointed day' was restored and the erstwhile owner was directed to be put back in possession of the Sugar Mill. The *de jure* possession of the Sugar Mill was thus restored to the erstwhile owner but *de facto* possession on terms and conditions contained in the order of stay was allowed to be retained by the Receiver with right to manage the Sugar Mill.

The next legal question that arises is: what is the legal effect of vacation of the order of stay on ultimate dismissal of the writ petition on 3.5.1979?

- E The other related question is : what was the position of the Receiver who was managing the Sugar Mill? Whether he was representing the erstwhile owner or the Corporation or he was representing none of them but was representing the Collector who had appointed him under the Act of 1950? For the aforesaid questions, a brief survey of the provisions of the Ordinance/
- F Act and the Act of 1950 would be necessary.

The Act of 1950 prescribes appointment of Receiver on the property of the defaulter as one of the modes of recovery of dues as arrears of land revenue. Section 279 (1)(g) reads as under :-

- G "Section 279. Procedure for recovery of an arrear of land revenue.-  
(1) An arrear of land revenue may be recovered by any one or more of the following processes :

.....

- H .....

(g) by appointing a receiver of any property, moveable or immovable A  
of the defaulter.

Section 286A of the Act of 1950 is the other relevant Section which empowers the Collector to appoint a Receiver for recovery of dues as arrears of land. It reads as under :-

“Section 286-A. Appointment of Receiver.—(1) Notwithstanding anything in this Act when [an arrears of revenue or any other sum recoverable as an arrear of revenue] is due, the Collector, may in addition to or instead of any of the processes hereinbefore specified, by order —

- (a) appoint, for such period as he may deem fit, a receiver of any moveable or immovable property of the defaulter;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver ;
- (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents, as the defaulter himself has or such of those powers as the Collector thinks fit.”

As the *Statement of Objects and Reasons* of the Ordinance/Act indicates that the legislation is brought into force by the State to acquire such Sugar Mills where because of the mismanagement of the Mills, serious problems are faced by the cane-growers and the labour with consequential adverse impact on the general economy of the area where the mills are situated. Under the Act, the scheduled Sugar Mills or undertakings are acquired by the State which stand transferred to and vested in the Corporation from the ‘appointed day’. Section 2(a) and (c) of the Act define ‘appointed day’ and ‘Corporation’ respectively. Section 2(a) and (c) and section 3 of the Act read as under:-

*Section 2. Definition.*—In this Act, unless the context otherwise requires—

**A** (a) 'appointed day' in relation to the undertakings specified in Schedule I means July 3, 1971 and in relation to the undertakings specified in Schedule II means October 28, 1984.

(b) .....

**B** (c) "Corporation" means the Uttar Pradesh State Sugar Corporation Limited, a Government Company within the meaning of section 617 of the Companies Act, 1956 (Act I of 1956).

(d) .....

**C** *Section 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 :

**D** 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 :

**E** 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 realization 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.

**F** One of the consequences of vesting of the sugar mill in the Corporation under section 3 of the Act, as provided in section 4(a), is that any receiver appointed by the court on the scheduled undertaking/Sugar Mill shall cease to function from the appointed day. Section 4(a) of the Act reads thus :-

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

**H** (a) *every appointment of Receiver* over any scheduled undertaking by any court shall cease;

(b) \_\_\_\_\_"

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[Emphasis supplied]

The aforesaid provision refers to any 'Receiver appointed by any the court' and not a Receiver appointed by the Collector under the provisions of the Act of 1950. The mode of delivery of possession of the acquired Sugar Mill is contained in section 5. It provides first delivery of possession of the Sugar Mill by the owner to the Collector who shall prepare inventory of property, assets, books of accounts, registers etc., and thereupon shall deliver the possession of the undertaking/Sugar Mill to the Corporation. Section 5 of the Act reads thus :-

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

D

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

E

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

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

F

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

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The entry at Serial No. 4 in Column Nos. 2 and 3 of Schedule I attached to the Act, shows the Sugar Mill named Maheshwari Khetan Sugar Mills (Pvt.) Ltd., Ramkola, District Deoria stands acquired and vested in the Corporation on the appointed day on payment of fixed compensation of Rs.

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**A** 11,00,000.

From the aforesaid provisions of the Act of 1950 and the Ordinance/Act, it is clear that the Receiver who was in the management of the Sugar Mill on the 'appointed day' was not a Receiver appointed by any Court. He was a Receiver appointed by the Collector under the Act of 1950 and on the **B** vesting of the Sugar Mill on the appointed date 3.7.1971, was in possession and management of the Sugar Mill not as an agent either of the erstwhile Sugar Mill owner or the corporation. He was a statutory Receiver appointed under section 279(1)(g) read with section 286-A of the Act of 1950 for the purpose of recovery of dues of the cane-growers in the manner as arrears of **C** land revenue. He was allowed to continue in management of the Sugar Mill by the High Court on the terms and conditions imposed in the order of stay passed during pendency of the writ petition.

The liabilities incurred by a statutory Receiver in the course of management of the Sugar Mill are liabilities attached to assets or properties **D** of the Sugar Mill because neither the erstwhile owner nor the Corporation, which later acquired the Sugar Mill, was responsible for the alleged losses or damages caused to the plaintiff by the alleged breach of contract committed by the receiver in non-supply of the quantity of sugar.

The general rule is that a receiver takes the rights, causes, and remedies **E** which were in the individual or estate whose receiver he is, or which were available to those whose interests he was appointed to represent. Ordinarily none of the parties to the suit in which a receiver was appointed is personally responsible for losses and liabilities incurred in the administration of the receivership, but, except as the receiver may be personally liable therefor, such losses and liabilities fall on the estate. [See statement of law in Corpus **F** Juris Secundum Vol.75 Articles 325 and 187 at pages 833 and 1000, respectively]

In the present suit, the Receiver has not been impleaded as a party-defendant and there is no claim against him for any misconduct committed by him in management of the Sugar Mill. He is not alleged to be personally **G** liable for the alleged breach of contract. The liability, therefore, towards the alleged loss or damage arising from breach of contract attaches to the Sugar Mill and can be allowed to be realized from the person in whom the title of Sugar Mill stands vested.

A statutory Receiver is merely the legal representative of the property **H** placed in his hands as such. In determining his liability the court will only

determine the liability of the property. It is not material whether the liability A existed before or has accrued since his appointment. A contractual liability arising against the receiver during the course of management of the property for acts or omissions committed by him for the benefit of the property, is not merely enforceable against the receiver but is a liability attached to the property in his receivership, which can be recovered from the property and through the person in whom the property vests. [See *Statement of law in Words and Phrases, Permanent Edition Vol.36 at page 742 from the Heading—Representative of property*] B

As is the admitted position, on the coming into force of the Ordinance, the Sugar Mill stood transferred to and vested in the Corporation on the appointed date 3.7.1971. On that date, the Receiver appointed by the Collector under the provisions of 1950 Act was already holding custody of the Sugar Mill and was managing the same. During course of the Writ Petition filed by the owner of the Sugar Mill in which the constitutional validity of the ordinance/Act was challenged, a stay order, on the limited terms and conditions, was passed on 9.7.1971. The terms and conditions of the order reproduced above, restored the *de jure* possession of the Sugar Mill to the erstwhile owner but *de facto* possession and management of the Sugar Mill was allowed to remain undisturbed with the receiver although with limited powers to him. The Receiver was specifically allowed in accordance with term No.3 of the stay order to sell sugar, molasses and other waste products. By virtue of the order of stay passed by the High Court, during pendency of the writ petition, the Receiver appointed under the Act of 1950, continued to manage the Sugar Mill subject to the ultimate result of the writ petition. The Writ Petition ultimately came to be dismissed on 3.5.1979 and the stay order containing the terms and conditions (quoted above) passed on 9.7.1971 stood automatically vacated. The natural consequence was restoration of full F operation of the provisions of the ordinance/Act as was originally passed. In accordance with Section 3 of the Act, the Sugar Mill stood transferred and vested in the Corporation from the appointed date 3.7.1971. On vacation of the stay order with effect from the appointed day—3.7.1971, the operation of the Ordinance/Act was revived. The liability arising from breach of contract committed by the Receiver was not of the Corporation. It was an obligation attached to the property of the Sugar Mill which was under the management of the Receiver, initially under the 1950 Act and continued under the order of stay passed by the High Court. Since the liability towards breach of contract was attached to the sugar mill under the management of the Receiver, the Corporation in whom title of the sugar mill stands vested under Section G H

A 3 of the Act cannot avoid the liability—it being a burden on the said property and recoverable from it.

It is of no importance or consequence that actual or *de facto* possession of the property was received by the Corporation under a formal order of Collector, Deoria on 23.5.1979, only after dismissal of the Writ Petition on

B 3.5.1979 and consequent discharge of the Receiver.

The Ordinance was stayed by the High Court to restore *status quo ante* existing on 2.7.1971 that is a day prior to appointed date 3.7.1971. But on the dismissal of writ petition and automatic vacation of the stay order of the High

C Court, the operation of the Ordinance/Act with all legal consequences flowing from the said law stood restored from the appointed date. The trial court and the High Court are perfectly right in holding in their judgments that the order of stay passed in writ petition could have no effect of postponing the 'appointed day; statutorily fixed under section 3 of the Ordinance/Act.

D The argument advanced on behalf of the corporation cannot be accepted that the Sugar Mill came to be transferred to the Corporation only when its actual possession was formally obtained from the Collector, Deoria on 23.5.1979 after dismissal of the writ petition.

E The legal status and position of a receiver appointed by the Court and a Receiver appointed under a Statute are different. In the instant case, the receiver appointed under the Act of 1950 and continued by the High Court on terms and conditions contained in the stay order during pendency of the writ petition, was a statutory receiver and his rights and liabilities were attached to the property for the management of which he was appointed. The receiver was not an agent of either of the parties. For his acts and omissions, a third party could raise a claim against the party in whom the property stood vested and to which the liability was attached.

G The suits were filed by the plaintiff claiming losses and damages for breach of contract committed by the receiver within the prescribed period of limitation. On the date of filing of the suits, the receiver was not in possession of the Sugar Mill as the actual possession of the Sugar Mill had been restored to the Corporation. It was, therefore, not necessary for the plaintiff to implead the receiver as a party to the suits. The Receiver could not be made personally liable for his acts and omissions in the course of management of the Sugar Mill and which are not alleged to be *mala fide*.

H

Our conclusion, therefore, is that as none of the parties i.e. the erstwhile A owner or the Corporation is personally liable for the breach of contract committed by the receiver in the course of management of the Sugar Mill, the contractual liability of the receiver towards the plaintiff is recoverable from the property of the Sugar Mill, and therefore, through the Corporation in whom the property stands vested under the Act. B

As a result of the detailed discussion of facts and law as above, both the appeals stand dismissed with costs and the decrees granted by the trial court are hereby confirmed.

VM.

Appeals dismissed.

C